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KING COUNTY SUPERIOR COURT
STATE OF WASHINGTON

CREST A.E.R.O., Inc., a Washington Nonprofit corporation, as agent for Flying Acres real property owners; JEFFREY M. MONTGOMERY, in his individual capacity and as representative of the Class Action for Flying Acres; DAVID G. LEHMAN, in his individual capacity and as representative of the Class Action for Flying Acres; and THE FLYING ACRES CLASS.

Plaintiffs,

vs.

CREST AIRPARK, INC., a Washington corporation, Norman C. Grier and Jane Doe Grier and the marital community comprised thereof, All unknown heirs of Norman C. Grier and Jane Doe Grier, and All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, tenancy or Interest in the Property Described in the Complaint Herein, Grier Family Holdings. L.L.C., a Washington Limited Liability Company

Defendants.

No. 01-2-33022-5 KNT

**SPECIAL MASTER'S
FINDINGS OF FACTS,
CONCLUSIONS OF LAW IN
ARBITRATION**

1 THIS MATTER came on for arbitration hearing upon Order of the King County
2 Superior Court entered September 30, 2003 by the Honorable Dean S. Lum. Attorney J.
3 Richard Manning was selected to act as Special Master/Arbitrator for the case. An arbitration
4 was conducted between the dates of March 8, 2004 and March 17, 2004. The King County
5 Superior Court Rules were utilized during the proceeding and the proceeding was recorded by
6 a Court Reporter. Plaintiffs appeared by their Counsel, Christopher A. Benson. Defendants
7 appeared through their Counsel, Paul A. Spencer and Robert E. West.. The following
8 Findings of Fact and Conclusions of Law reflect the consideration given by the undersigned
9 to several critiquing drafts, memorandum and letters by and among Counsel and the Special
10 Master following the undersigned's first rendition of findings on May 26, 2004. The Special
11 Master ("Arbitrator") makes the following Findings of Fact and Conclusions of Law.

12 **I. EVIDENCE RELIED UPON**

13
14 The following witnesses testified under oath during the proceeding:

- 15
16 1. Linda Oliveira, CPA
17 17615 SE 272nd St. Suite 106
18 Covington, WA 98042
19 (253) 639-3252

20 Ms. Oliveira is a certified public account who is the accountant for Crest
21 Airpark, Inc. (Defendant), Mr. Grier (individually and Defendant) and CREST A.E.R.O
22 (one of the Plaintiffs herein). Ms. Oliveira testified concerning financial records of
23 Defendants including, but not limited to, her preparation of income tax returns for the
24 Defendants, the IRS Guidelines regarding preparation of tax returns in general, the
25 methodology of the tax returns that she has prepared for Crest Airpark, Inc. (i.e. IRS

1 Rules and Cash basis for income/expenses versus GAAP Rules and Accrual basis for
2 income/expenses) and corrections/revisions made to General Ledger entries of Crest
3 Airpark, Inc.

4
5 2. Janet Gundlach
6 17627 SE. 292nd Pl.
7 Kent, WA 98042

8 Ms. Gundlach is a member of The Flying Acres Class. Ms. Gundlach is a former
9 employee/airport manager of Crest Airpark. She is also the Treasurer and Board Member of
10 CREST A.E.R.O. Ms. Gundlach testified regarding easement issues, her knowledge of airport
11 operations, taxes, expenses and maintenance. Ms. Gundlach testified regarding her knowledge
12 of the history of the airport and the residents of Flying Acres.

13 3. Mr. Don Bakken
14 18848 Sulfur Springs Rd.
15 Mt. Vernon, WA 98274
16 (360) 422-6909

17 Mr. Bakken, not a homeowner, testified that he has had his aircraft pilot license since
18 1946 and he was the airport manager of Paine Field in Everett, Washington for 12 years. Mr.
19 Bakken, who has extensive public airport management experience, testified regarding his
20 knowledge of the aviation industry. He testified regarding costs associated with maintenance
21 of a landing strip and taxiways as well as his general knowledge of all airports in general.
22 Mr. Bakken's Declaration and a 2003 report on Crest Airpark by the Washington State
23 Department of Transportation, Aviation Division was admitted as Exhibit 27 at the hearing.

24 4. William Lardent
25 Smyrna, Tennessee

1 Mr. Lardent was called by the Defendants “out of order”. Mr. Lardent, formerly a co-
2 purchaser with Norman Grier, testified regarding his creation of the Green River Flying Club,
3 his contacts and discussion with Mr. Grier in 1975/1976 as well as his knowledge of his
4 discussions in 1975 with Virginia Nesland regarding the purchase of Crest Airpark including
5 the terms of the Real Estate Contract. Mr. Lardent testified that he discussed an easement
6 with Ms. Nesland as part of the negotiations to purchase Crest Airpark from the Neslands.
7 Mrs. Nesland, who owned over 40 lots at the time of the sale to Grier and Lardent, told
8 Lardent that the cost sharing she had in mind for the homeowners in maintaining the landing
9 strip and taxiways included the “costs of the airport”. The Neslands were the sole parties and
10 drafters of the 1975 Nesland Easement at issue in the case at bar.

11 5. David Lehman
12 17621 Southeast 297th Place
13 Kent, Washington 98042

14 Mr. Lehman testified that he has been a pilot since 1973 and has been an aviation
15 safety inspector for the FAA since 1978. He is also a long-time resident of the Crest Airpark
16 community. Currently, Mr. Lehman is President of CREST A.E.R.O which is one of the
17 named Plaintiffs. Mr. Lehman is also individually named as a Plaintiff and as a similarly
18 situated member of the Flying Acres Class. Mr. Lehman testified regarding his use of the
19 easement as well as procedures utilized by him at Crest Airpark for conducting an “operation.”

20 Mr. Lehman testified regarding the Flying Acres Class’ use of Crest Airpark as well as
21 the easement, subject properties, maintenance, tax issues, general knowledge of airports and
22 the minimum requirements for an “airport” to exist. Mr. Lehman testified regarding pilot
23 responsibilities of aircraft safety.

24 Mr. Lehman testified regarding the CREST A.E.R.O. Board of Director’s position
25 regarding the claims of the Defendants both as to categories of reimbursement claimed,

1 quantum of reimbursement regarding each category and potential mechanisms for enforcement
2 and collection of funds from Property Owners regarding the 1975 Nesland Easement.

3 Mr. Lehman testified regarding his observations of use of the landing strip and
4 taxiways of Crest Airpark by Property Owners compared to non-property owners usage. In
5 Mr. Lehman's opinion, the Property Owners conduct about 20% of all operations at Crest
6 Airpark and that 80% of all operations are conducted by a combination of itinerant aircraft and
7 Crest Airparks' own rental planes. Mr. Lehman also testified regarding his observations of
8 "maintenance" performed by Crest Airpark.

9 6. Michael E. McGahan
10 17630 SE 303r^d Pl.
11 Kent WA 98402

12 Mr. McGahan testified regarding his education, business background and sampling
13 techniques. Mr. McGahan was one of the original founders of CREST A.E.R.O. along with
14 Virginia Nesland. Mr. McGahan testified regarding his observations of use of the landing
15 strip and taxiways of Crest Airpark by Property Owners compared to non-property owners'
16 usage. In Mr. McGahan's opinion, the Property Owners conduct about 20% of all operations
17 at Crest Airpark and that 80% of all operations are conducted by a combination of itinerant
18 aircraft and Crest Airparks' own rental planes.

19 Mr. McGahan testified regarding his observations of "maintenance" performed by
20 Crest Airpark, general knowledge of negotiations and conversations with Norm Grier and
21 Rikki Birge regarding the easement, subject properties and expenses. Mr. McGahan testified
22 regarding the creation of the "Agency Appointments" signed by Property Owners. Mr.
23 McGahan also testified regarding his use of taxiway "J" (which is on a portion of the Grier
24 house lot) and his use of the easement and access to Crest Airpark.

1 7. Jeff Montgomery
2 17673 Southeast 297th Place
3 Kent, Washington, 98042

4 Mr. Montgomery has been associated with the Crest Airpark Community since he was
5 a young man. Mr. Montgomery used to work for Mr. Grier at the airport and Janet Gundlach
6 was his “boss” at that time. Mr. Montgomery has been a licensed pilot since 1979 and is
7 currently a 777 pilot with United Airlines. Mr. Montgomery purchased a home at Crest in
8 1996 and later became President of Crest A.E.R.O. Mr. Montgomery is a named plaintiff in
9 the case at bar as well as a member of the Flying Acres Class.

10 Mr. Montgomery testified regarding his knowledge of negotiations and conversations
11 with Norm Grier and Rikki Birge regarding the easement, subject properties, taxes and
12 maintenance costs. Mr. Montgomery testified regarding his use of the landing strip and
13 taxiways at Crest Airpark.

14 Mr. Montgomery testified regarding his observations of use of the landing strip and
15 taxiways of Crest Airpark by Property Owners compared to non-property owners usage. In
16 Mr. Montgomery’s opinion, the Property Owners conduct about 20% of all operations at Crest
17 Airpark and that 80% of all operations are conducted by a combination of itinerant aircraft and
18 Crest Airparks’ own rental planes.

19 Mr. Montgomery also testified regarding his observations of “maintenance” performed
20 by Crest Airpark.

21 8. Norman C. Grier

22 Mr. Grier testified regarding his relationship with William Lardent, his purchase of
23 Crest Airpark from the Neslands. Mr. Grier testified regarding his role at Crest Airpark,
24 easement and access issues, real estate parcel boundaries, observations of Property Owners’
25 use, transient aircraft use, maintenance issues, financial issues of Crest Airpark, Inc. and the

1 reimbursement claims of the Defendants. Mr. Grier also testified about the transfer of two
2 real estate parcels into Grier Family Holdings, L.L.C.

3 Mr. Grier testified regarding his observations of use of the landing strip and taxiways
4 of Crest Airpark by Property Owners compared to non-property owners usage. In Mr. Grier's
5 opinion, the Property Owners conduct about 50% of all operations at Crest Airpark and that
6 50% of all operations are conducted by a combination of itinerant aircraft and Crest Airparks'
7 own rental planes.

8 9. Rikki Birge

9 Ms. Birge is the daughter of Mr. Grier. She testified regarding her fulltime
10 management of Crest Airpark including but not limited to, daily operation of the airport,
11 financial records, employee duties, the Defendants' claims for reimbursement from Property
12 Owners, maintenance issues, real estate tax parcels at issue and interaction with Property
13 Owners and the Plaintiffs herein over the past few years.

14 Ms. Birge testified regarding her observations of use of the landing strip and taxiways
15 of Crest Airpark by Property Owners compared to non-property owners usage. In Ms. Birge's
16 opinion, the Property Owners conduct about 50% of all operations at Crest Airpark and that
17 50% of all operations are conducted by a combination of itinerant aircraft and Crest Airparks'
18 own rental planes.

19 The following documentary evidence was admitted during the proceeding:

- 20 1. Order Certifying Class 12/18/2002.
 - 21 2. Nesland Easement dated December 11, 1975.
 - 22 3. Plaintiffs' Amended Complaint.
 - 23 4. Grier Deed and Declarations concerning transfer to Grier Family Holdings, L.L.C.
 - 24 5. Order signed 9/30/03 re: Granting Partial Summary Judgment.
- 25

- 1 6. Order signed 9/30/03 re: Transferring Case to Arbitration.
- 2 7. Secretary of State information concerning CREST A.E R.O.
- 3 8. Sample Agency Agreement signed by David Lehman.
- 4 9. The Flying Acres Class tender of payment of taxes and maintenance 12/28/00; 4/3/01;
- 5 7/13/01; 9/30/01; 3/25/02; 6/20/02; 9/24/02; 12/27/02; 3/31/03; 7/1/03 and rejection
- 6 letters from Defendant dated 4/3/01; 7/13/01; 10/10/01; 3/28/02; 6/27/02; 9/26/02;
- 7 12/30/02; 4/3/03; 7/10/03.
- 8 10. January 8, 2001 Letter from attorney for Crest Airpark and Mr. Grier regarding
- 9 extension of easement.
- 10 11. Stipulated Order Authorizing Publication to Unknown.
- 11 12. Affidavit of Publication by the Daily Journal of Commerce.
- 12 13. IRS Publication 535 Business Expense For 2002.
- 13 14. IRS Publication 946 How To Depreciate Property For 2002.
- 14 15. IRS Publication 551 Basis Of Assets For 2002.
- 15 16. Crest Airpark, Inc. Tax Return for 2000.
- 16 17. Crest Airpark, Inc. Tax Return for 2001.
- 17 18. Crest Airpark, Inc. Tax Return for 2002.
- 18 19. 2 Large Tax Maps (on wall of Mr. Spencer's office).
- 19 20. Tax Parcel # 012105-9066-01 information for 2001, 2002, 2003 and 2004.
- 20 21. Tax Parcel # 362205-9020-04 information for 2001, 2002, 2003 and 2004.
- 21 22. Tax Parcel # 062106-9175-03 information for 2001, 2002, 2003 and 2004.
- 22 23. Tax Parcel # 012105-9009-01 information for 2001, 2002, 2003 and 2004.
- 23 24. Tax Parcel #0121059001 information for 2001, 2002, 2003 and 2004
- 24
- 25

- 1 25. Crest Airpark's summary of Real Estate Tax Claim.
- 2 26. Crest Airpark's summary of Claimed Maintenance Expenses.
- 3 27. Declaration of Don Bakken.
- 4 28. Billing for installation of separate electrical meter dated 2/10/2000 and copy of
- 5 payment for installation by CREST A.E.R.O. in the sum of \$409.97.
- 6 29. Picture of separate electrical meter.
- 7 30. Corrections made by Oliveira regard General Ledger Categories of Crest Air Park
- 8 (multiple pages).
- 9 31. Employee Information Listing regarding Crest Airpark (multiple pages).
- 10 32. Crest Airpark Department of Revenue Excise Tax Returns (multiple pages).
- 11 33. Regal Aviation Insurance Information (multiple pages).
- 12 34. ** Not Presented ** MCI Billing information (multiple pages) **
- 13 35. AT&T Billing information (multiple pages).
- 14 36. Eschelon telephone billing information (multiple pages).
- 15 37. Visa Bill file for 2001, 2002, and 2003 (multiple pages).
- 16 38. Costco bill file for 2001, 2002, and 2003 (multiple pages).
- 17 39. Equitable (Sar-Sep) file for 2001, 2002 and 2003 (multiple pages).
- 18 40. Hartford Insurance files for 2001, 2002, and 2003 (multiple pages).
- 19 41. Real Estate Contract dated December 15, 1975 regarding sale of real property from
- 20 Nesland to Grier and Lardent.
- 21 42. Quit Claim Deed dated January 26, 1980 from Lardent to Grier.
- 22 43. Secretary of State information regarding Crest Airpark, Inc.
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- 1 44. Quit Claim Deed dated April 15, 2002 from Norman C. Grier to Grier Family
- 2 Holdings. L.L.C.
- 3 45. Secretary of State information re: Grier Family Holdings, L.L.C.
- 4 46. Defendants' Damage Binder (Multiple pages).
- 5 47. Crest Airpark General Ledger Expense Categories Inclusive of All Expenses.
- 6 48. Crest Airpark General Ledger Expense Categories Relevant Expenses.
- 7 49. Defendants' Damage Summary 2001-2003.
- 8 50. Crest Airpark Total Expenses by General Ledger Category 1998-2003.
- 9 51. General Insurance Reconciliation documentation.
- 10 52. Excerpts from Linda Oliveira File.
- 11 53. Crest Airpark General Ledger account detail for 1/1/2001 through 12/31/2001 for
- 12 Building Rent.
- 13 54. Illustrative Exhibit prepared by Defendants entitled "Crest Airpark Relevant General
- 14 Ledger Expenses Categories Average Percentage over Past three years after
- 15 adjustment"
- 16

17 **II. FINDINGS OF FACT**

18 As appropriate, the documentary exhibits will be referenced herein; however, a
19 substantial amount of oral testimony was taken in the case at bar and the testimony was
20 recorded by a Court Reporter. Therefore, all of the following Findings of Fact are supported
21 by the official record even though each Finding of Fact may not be found in whole or in part in
22 a documentary exhibit.
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1 Further, previous Findings of Fact and Conclusion of Law entered by the Court in the
2 case are adopted herein and will not be repeated to avoid duplication.

3
4 1. On or about December 11, 1975, Stanley N. Nesland and Virginia S. Nesland as
5 owners of real property legally described below created an express easement (hereinafter
6 Nesland Easement) to benefit numerous real property owners. It was recorded on
7 December 16, 1975 under King County Auditor Number 7512160233.

8 The legal description of the "burdened property" is as follows:

9 DESIGNATED LANDING STRIP AND TAXIWAYS ONLY, LIVING WITHIN
10 THE FOLLOWING DESCRIBED PROPERTY.

11 THAT PORTION OF THE EAST QUARTER OF SECTION 1, TOWNSHIP 21
12 NORTH, RANGE 5 EAST, W.M., IN KING COUNTY, WASHINGTON AND OF
13 GOVERNMENT LOTS 5 AND 6, SECTION 6, TOWNSHIP 21 NORTH, RANGE 6 EAST,
14 W.M., IN KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS
15 FOLLOWS:

16 BEGINNING AT A POINT ON THE WESTERLY MARGIN OF
17 W. I. THOMAS COUNTY ROAD "181ST SE" IN SAID
18 GOVERNMENT LOT 5 WHICH IS 170 FEET NORTHERLY,
19 MEASURED ALONG SAID MARGIN, FROM THE NORTHEAST
20 CORNER OF LOT 17, FLYING ACRE'S DIVISION NO. TWO,
21 ACCORDING TO THE PLAT RECORDED IN VOLUME 87 OF
22 PLATS, PAGE 94-95-96, IN KING COUNTY, WASHINGTON,
23 THENCE SOUTHWESTERLY, ALONG A LINE PASSING
24 THROUGH A POINT ON THE WEST LINE OF SAID SECTION 6
25 WHICH IS 2120 FEET SOUTHERLY OF THE NORTHWEST
CORNER OF SAID SECTION, A DISTANCE OF 467 FEET TO THE
EASTERLY MARGIN OF 179TH PLACE SE AS SHOWN ON SAID
PLAT; THENCE SOUTH 9°03'14" EAST ALONG SAID EASTERLY
MARGIN TO THE SOUTHWEST CORNER OF LOT 1 IN SAID
PLAT; THENCE SOUTH 89°47'53" WEST 66.65 FEET TO THE
NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE

1 SOUTHEAST QUARTER OF SAID SECTION 1; THENCE SOUTH
2 00°0450" EAST ALONG THE EAST LINE OF SAID SECTION 1 A
3 DISTANCE OF 1269.51 FEET TO THE NORTH LINE OF THE
4 SOUTH 50 FEET OF SAID SECTION; THENCE NORTH 89°1212
5 WEST ALONG SAID NORTH LINE 600 FEET, MORE OR LESS, TO
6 AN INTERSECTION WITH THE WESTERLY MARGIN OF PACIFIC
7 NORTHWEST PIPELINE CORP. EASEMENT RECORDED UNDER
8 FILE NUMBERS 4705906, 5491878 AND 7108040394; THENCE
9 NORTHEASTERLY ALONG SAID WESTERLY MARGIN 765 FEET,
10 MORE OR LESS, TO AN INTERSECTION WITH A LINE BEARING
11 SOUTH 9°0'14" EAST FROM THE SOUTHEAST CORNER OF LOT
12 23, FLYING ACRES DIVISION NO. 3, ACCORDING TO THE PLAT
13 RECORDED IN VOLUME 98 OF PLATS, PAGE 99, IN KING
14 COUNTY, WASHINGTON; THENCE NORTH 9°03'14" WEST TO AN
15 ANGLE POINT IN THE EAST MARGIN OF LOT 45, FLYING
16 ACRES, ACCORDING TO THE PLAT RECORDED IN VOLUME 92
17 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON; THENCE
18 NORTH 00°0455" EAST 442.92 FEET TO THE NORTH LINE OF SAID
19 SECTION 1; THENCE SOUTH 89°06'15" EAST ALONG SAID NORTH
20 LINE 420.47 FEET TO A POINT 479.25 FEET FROM THE
21 NORTHEAST CORNER OF SAID SECTION; THENCE SOUTH
22 0°53'45" WEST 210.00 FEET TO THE SOUTH MARGIN OF SE 288TH
23 PLACE AS DEDICATED IN THE SAID PLAT OF FLYING ACRES;
24 THENCE EASTERLY ALONG SAID SOUTH MARGIN TO AN
25 INTERSECTION WITH THE WEST LINE OF THE PLAT OF CEDAR
TERRACE, ACCORDING TO THE PLAT RECORDED IN VOLUME
82 OF PLATS, PAGE 47, IN KING COUNTY, WASHINGTON;
THENCE SOUTHERLY AND EASTERLY ALONG THE WESTERLY
AND SOUTHERLY LINES OF SAID PLAT OF CEDAR TERRACE
TO THE WEST MARGIN OF W. I. THOMAS ROAD NO. 1084;
THENCE SOUTHERLY ALONG SAID WEST MARGIN TO AN
INTERSECTION WITH THE WEST LINE OF SAID SECTION 6;
THENCE SOUTHERLY ALONG THE WEST LINE OF SECTION 6
TO THE NORTHWEST CORNER OF GOVERNMENT LOT 5 IN
SAID SECTION; THENCE EASTERLY ALONG THE NORTH LINE
OF SAID GOVERNMENT LOT 5 TO THE WEST MARGIN OF W. I.
THOMAS COUNTY ROAD; THENCE SOUTHERLY ALONG SAID
WEST MARGIN TO THE POINT OF BEGINNING; EXCEPT THAT
PORTION THEREOF LYING WITHIN SE 288TH PLACE AS
DEDICATED IN SAID PLAT OF FLYING ACRES AND AS

1 CONVEYED TO KING COUNTY BY DEED RECORDED UNDER
2 AUDITOR'S FILE NO. 6683389.

3 2. Pursuant to Court Order entered December 18, 2002, Judge Lum certified the group of
4 real Property Owners benefited by the Nesland Easement as the "The Flying Acres Class"
5 consisting of 114 individual lot owners (117 platted lots have been reduced to 114) that own
6 real property in the following Plats:

7 Flying Acres recorded in Vol. 92, Plats, pages 83 and 84;

8 Flying Acres #2 - recorded in Vol. 87, Plats, pages 94, 95 and 96;

9 Flying Acres # 3 - recorded in Vol. 98, Plats, pages 99 and 100;

10 Proposed Plat of Flying Acres # 4 - recorded in Vol. 99, Plats, pages 22 and 23 all in
11 King County, Washington

12 Hereinafter, the benefited real property owners will sometimes be collectively referred
13 to herein as "The Flying Acres Class." Ex. 1. However, Flying Acres development consists of
14 a total of 120 separate tax parcels. The Arbitrator finds that six property owners have opted
15 out of the class and are not parties to this proceeding. The property owners that have opted
16 out are M.F. Gehring, John Mermis, Lois Smith, Thomas & Barbara Gregory, Mark and Julia
17 Hilsen and Albert Sprague. Steve and Linda Crider, successors in interest to Lois Smith, are
18 presumed to be "Other Owners" unless they opt in to the Plaintiff class without objection from
19 either Plaintiffs or Defendants. The aforementioned group or their successors shall be referred
20 to as the "Other Owners" herein. The balance of the property owners of Flying Acres are
21 Plaintiff Class members.
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1 3. Subsequent to December 16, 1975, The Flying Acres Class started utilizing the
2 easement for the purpose of accessing and utilizing the burdened property as an airplane
3 landing strip and taxiway of the Crest Airpark Airport for the purpose of landing and taking
4 off small private aircraft.
5

6 4. On December 24, 1975, the Neslands conveyed their legal interests by real estate
7 contract in the burdened real estate to Norman C. Grier and Susanne May Grier,
8 husband and wife and William E. Lardent and Elizabeth E. Lardent, husband and wife
9
10 Ex. 41. The Real Estate Contract was recorded in King County on February 23, 1976. The
11 easement was recorded on December 16, 1975. Ex. 41. Mr. Grier testified that all five (5) of
12 the real estate tax parcels at issue in the case at bar were included in the Nesland sale.

13 5. Crest Airpark, Inc. is a Washington subchapter "S" corporation in good standing
14 formed in 1993 with UBI Number 601440500 and Mr. Grier is the sole stockholder of Crest
15 Airpark, Inc. Ex. 43 CREST A.E.R.O., Inc. is a Washington Non-Profit corporation in good
16 standing formed in 1992 with UBI Number 601424829. Ex. 7.
17

18 Grier Family Holdings, L.L.C. is a Washington Limited Liability Company in good
19 standing formed in 1999 with UBI Number 01948128. Ex. 45

20 6. Crest Airpark, Inc. does not own the real estate. Crest Airpark, Inc. is the Fixed
21 Base Operator (FBO) that also uses the landing strip and taxiways that are involved in this
22 dispute. However, all real estate taxes, employee costs, business expenses and landing strip
23 and taxiway maintenance expenses are paid by Crest Airpark, Inc.
24
25

1 7. Grier Family Holdings, L.L.C. owns two of the five tax parcels burdened by the
2 Nesland Easement namely: (1) King County Tax Parcel 012105-9001-09 where the Crest
3 Airpark, Inc. office, airplane hangars, most of the aircraft tie-downs, fuel tanks/dispensing
4 area, office parking lot and driveway from SE 288th Place to the Crest Airpark, Inc. office are
5 located. Ex. 4, 24, 19, 25, 44; and (2) King County Tax Parcel 012105-9066-01 where the
6 actual landing strip and parallel taxiway for Crest Airpark is located. Some aircraft tie-downs
7 that generate rental fees for Crest Airpark, Inc. are also located on the West-side of the landing
8 strip. Ex. 4, 19, 20, 25, 44.
9

10
11 8. Defendant Norman C. Grier individually owns three of the five tax parcels
12 burdened by the Nesland Easement namely: (1) King County Tax Parcel 362205-9020-04
13 which is a very small triangle-shaped parcel across SE 288th Place. Ex. 4, 19, 21, 25, 44; (2)
14 King County Tax Parcel 062106-9175-03 which is over a hill that is East of and contiguous to
15 the tax parcel where the Crest Airpark, Inc. office is located. Ex. 4, 19, 22, 25, 44; and (3)
16 King County Tax Parcel 012105-9009-01 which contains Mr. Grier's personal residence and
17 is South of and contiguous to the Tax Parcel where the actual landing strip and taxiway is
18 located. Ex. 4, 19, 23, 25, 44. A portion of taxiway J lies on a portion of this tax parcel.
19

20
21 9. No written lease agreement exists between Crest Airpark, Inc., Grier Family
22 Holdings, L.L.C and/or Norman C. Grier. Likewise, no rent has ever been paid from Crest
23 Airpark, Inc. to Grier Family Holdings, L.L.C..
24
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1 10.Crest Airpark, Inc. has made a claim for reimbursement from the Flying Acres
2 Class for past “Rent” paid and indicated on its General Ledger (“GL”) bookkeeping system
3 under GL 4110 entitled “Building Rent.” Ex. 26. However, Crest Airpark, Inc. has not paid
4 any “rent.” Upon review of the business records of Crest Airpark, Inc., the bookkeeping
5 entries for GL 4110 evidence payments made to Mr. Grier individually each week and
6 payments made to Costco for personal items of Mr. Grier. Ms. Oliveira testified that the
7 payments listed under GL 4110 and made by Crest Airpark, Inc. to Mr. Grier and for Mr.
8 Grier’s behalf to Costco are distributions to Mr. Grier as the sole shareholder of Crest Airpark,
9 Inc.. Therefore, Ms. Oliveira, as the accountant for Crest Airpark, Inc., changed the payments
10 to Costco and Mr. Grier to reflect the category of GL 2998.00 entitled “Distributions to
11 Shareholder.” Ex. 30.

14 11. Likewise, upon review of the U.S. Income Tax Return for an “S” Corporation
15 Form 1120Ss for Crest Airpark, Inc. for 2000, 2001 and 2002, it is clear that no “Rent” was
16 paid by Crest Airpark, Inc. for those years and it was not itemized as a deduction on the tax
17 returns. Ex. 16, 17, and 18.

19 12. The 1975 Nesland Easement contains the following language:
20 ...the right to use the airplane landing strip and taxiways of the Crest Airpark
21 Airport located on the following described real property: SEE EXHIBIT A
22 ATTACHED HERETO until December 31, 2000, for the purpose of landing
23 and taking off small private aircraft. (Emphasis Supplied).

25 Property Owners shall have the option to extend this agreement for an additional

1 25 years to December 31, 2025, under the following conditions:

- 2 1. That at least 60% of the then property owners agree to pay 50% of the
3 cost of maintenance of the landing strip and taxiways and 50% of the
4 taxes assessed or attributable to the landing strip and taxiways.
5 2. During the extended period from January 1, 2001 to December 31, 2025,
6 any Property Owner not contributing his share of the maintenance and
7 taxes shall not have the right to use the landing strip and taxiways.
8 3. The right to use the landing strip and taxiways may be terminated during
9 the extended period from January 1, 2001 to December 31, 2025 by
10 agreement of 2/3 of the Property Owners.

11 The rights granted herein shall not prevent the Airport Owner from using the
12 aircraft tie down areas or from construction of buildings so long as the use of the
13 runways and adjoining taxiways are not impaired.

14 The right herein granted may be terminated at any time prior to December 31,
15 2000 by agreement of 100% of the Property Owners.

16 This agreement shall be binding upon the heirs and assigns of the parties and

17 shall run with the land.

18 Exhibit "A" attached to the 1975 Nesland Easement provides at the top of the page as
19 follows:

20 EXHIBIT A

21 DESIGNATED LANDING STRIP AND TAXIWAYS ONLY, LYING
22 WITHIN THE FOLLOWING DESCRIBED PROPERTY.

23 **Real Estate Taxes**

24 13. During the hearing, the Defendants clarified that no claim was being made for past
25 or future reimbursement concerning tax parcels 362205-9020-04 and 062106-9175-03. Ex.
26 25.

27 14. During the hearing, the Plaintiffs acknowledged liability for payment of 50% of

1 future real estate taxes assessed concerning Tax Parcel 012105-9066-01 where the actual
2 landing strip and parallel taxiway is located. At the same time, the Plaintiffs argued that they
3 should not have to reimburse the Defendants for prejudgment interest on real estate taxes
4 assessed for 2001 through the date of the hearing because the Plaintiffs have tendered
5 estimated payments for the Property Owners' real estate tax obligation based
6 on Plaintiffs' information obtained from King County Records. All of the tender of payments
7 had been rejected by Defendants. Ex. 9 and 10.

8 15. As set forth in Exhibits 9 and 10 as well as oral testimony, CREST A.E.R.O.
9 tendered payments on behalf of the Property Owners in the sum of \$3,000 every calendar
10 quarter from January of 2001 through July, 2003 (with the exception of the June 26, 2001
11 tender which was in the sum of \$5,000). Testimony presented indicated that the tender of
12 payments was for payment of real estate taxes and estimated maintenance costs of the
13 landing strip and taxiway. Ex. 9

14 16. CREST A.E.R.O. tendered payments on behalf of the Property Owners
15 Totaling \$14,000 in 2001, \$12,000 in 2002 and \$9,000 in 2003 (The obligation to tender
16 payments beyond the third calendar quarter of 2003 were suspended by Court Order entered
17 September 30, 2003. Ex.5.

18 17. Fifty per cent of the real estate taxes for King County Tax Parcel 012105-9066-01
19 for 2001 would be \$2,779.16.

20 18. Fifty per cent of the real estate taxes for King County Tax Parcel 012105-9066-01 for
21 2002 would be \$3,475.06.

22 19.. Fifty per cent of the real estate taxes for King County Tax Parcel 012105-9066-01
23 for 2003 would be \$3,464.25.
24
25

1 20.The Defendants argued that the Defendants should recover prejudgment interest for
2 the past real estate taxes claimed by the Defendants for 2001 through the date that a Judgment
3 is entered in this matter.

4 21. CREST A.E.R.O. tendered payments substantially in excess of the Property
5 Owners' fifty percent real estate tax obligation for 2001, 2002 and 2003 for King County Tax
6 Parcel 012105-9066-01.

7 22.During the course of the hearing, the property owners acknowledged their liability
8 for some share of real estate taxes for the Grier house property tax parcel which is
9 encroached upon by Taxiway "J". The Plaintiffs acknowledged liability for these taxes
10 using the formula as calculated by the Defendants in Exhibit 25 concerning
11 King County Tax Parcel 012105-9009-01.
12

13 23.The formula used by the Defendants for reimbursement of real property taxes by the
14 Property Owners is as follows: Tax Assessed Land Value divided by total value of land plus
15 improvement multiplied times the total real estate tax assessed for Tax Parcel 012105-9009-01
16 and then multiplied times 50%. (See Ex. 25).

17 24.For Tax Parcel 012105-9009-01, the formula proposed by the Defendants is
18 reasonable.

19 25.Utilizing the formula for Tax Parcel 012105-9009-01, the Property Owners' liability
20 for 2001 is \$583.35.

21 26.Utilizing the formula for Tax Parcel 012105-9009-01, the Property Owners' liability
22 for 2002 is \$549.95.

23 27.Utilizing the formula for Tax Parcel 012105-9009-01, the Property Owners' liability
24 for 2003 is \$536.19.
25

1 28. However, the Plaintiffs argued that the Plaintiffs should not have pay the Defendants
2 for prejudgment interest on real estate taxes assessed for 2001 through the date of the
3 hearing because the Plaintiffs have tendered estimated payments for the Property Owners' real
4 estate tax obligation based on Plaintiffs' information obtained from King County Records. All
5 of the tender of payments have been rejected by Defendants. (Ex. 9 and 10).

6 29. I find that the only real estate tax liability (both past and future) that is in dispute
7 between the parties pertains to King County Tax Parcel 012105-9001-09 where the Crest
8 Airpark, Inc. office, 68 airplane hangars, most of the 56 aircraft tie-downs, fuel
9 tanks/dispensing area, office parking lot and driveway from SE 288th Place to the Crest
10 Airpark, Inc. office are located. (Ex. 4, 24, 19, 25, 44)

11 30. Plaintiff homeowners have differing views on whether and how much this parcel is
12 necessary for the use of the airstrip and taxiways. However, Don Bakken, the professional
13 airport manager called by Plaintiffs declared that some portion of this parcel and the office
14 located thereon is a reasonable expense pertaining to the maintenance of the landing strip and
15 taxiways. The office building, containing airport staff, a pilots lounge, restroom facilities,
16 vending machines, office facilities, radio transmitter/receiver for Unicom, Ms. Birge's
17 computer sideline business, etc., is an older but well maintained 1200 square foot building.
18 The primary use of this office building and the land immediately adjacent of this tax parcel is
19 by the Airpark for its income producing operations unrelated to the maintenance of the landing
20 strip and taxiways. Most of the land and improvements of this tax parcel is occupied by
21 hangars owned and rented by the Airpark, again unrelated to the maintenance of the landing
22 strip and taxiways. The Assessor's data indicates hangars rented by the Airpark alone
23 constitute more than 64,000 square feet of improvements to this tax parcel. Also, the Airpark
24
25

1 engages in the rental of 12 aircraft owned by it. Airpark's Washington State Department of
2 Revenue excise tax returns for the period March, 2001 through February, 2002 (excluding
3 November and December – for which there are no tax returns) show gross revenue from
4 aircraft rental to be in excess of \$330,000. Likewise, aircraft tiedown and hangar rental is
5 shown to be in excess of \$153,000 for the same period of time excluding November and
6 December. None of this gross revenue reflects fuel, parts and other sales made by the Airpark.

7 . Without regard to allocation of any expense to Plaintiffs, I have assigned a rent factor of
8 \$1000 per month to the use value of this building and its parking and driveway area which
9 includes real estate taxes, for which the individual Plaintiff/Class Members should be
10 responsible in part as their total obligation for this tax parcel. I find that 50% of the use of this
11 office, parking and driveway is related to the maintenance of the landing strip and taxiways.
12 Since the Plaintiffs/Class Members are responsible for 50% of any such cost, they shall be
13 obliged to reimburse Defendants the sum of \$3,000 for each of the years 2001, 2002, 2003, or
14 a total of \$9,000. Commencing in 2004, this rent factor shall increase at the rate of three
15 percent (3%) per annum.
16

17 For many reasons, I have not attempted to apportion real estate taxes of Tax Parcel
18 012105-9001-09 among the various improvements and land and allocate a specific portion of
19 this parcel's tax to the maintenance and use of the landing strip and taxiways. Other reasons
20 for not allocating this tax directly are set out below. See also Finding #73.

21 31. In addition to the foregoing, Ms. Birge conducts a separate business in which
22 Washington State Tests for various Washington State Licenses are conducted on three
23 computers located in the building in which Crest Airpark, Inc. operates its daily business.
24 Ms. Birge personally derives income for administering tests taken by applicants on her
25

1 computers located at the Crest Airpark, Inc. Office. The applicants are required to be
2 physically present in the Crest Airpark, Inc. Office while they are taking the test on a
3 computer. Further, either Ms. Birge or someone on her behalf must act as the test proctor
4 during the examination. Three computers are used by Ms. Birge in the Crest Airpark, Inc.
5 office to administer the tests. Ms. Birge does not pay rent to Grier Family Holdings, L.L.C.,
6 Mr. Grier or Crest Airpark, Inc. for her use of the Crest Airpark, Inc. Office as a testing
7 facility.

8 32. Crest Airpark is a public airpark. As stated by Ms. Birge, Crest Airpark has been
9 designated “as an essential public utility” for small aircraft. Any aircraft with the capability
10 of conducting a “safe” operation within the physical boundaries of the Tax Parcel where the
11 landing strip and parallel taxiway are located may in fact conduct an operation by utilizing the
12 landing strip and taxiway. Crest Airpark is not a “controlled” landing strip. An aircraft does
13 not need the permission of the FBO to conduct an operation (landing or takeoff) at Crest
14 Airpark.
15

16 33. It is not necessary for any Members of the Flying Acres Class to cross Tax Parcel
17 012105-9001-09 in order to utilize the Nesland Easement. Likewise the Nesland Easement
18 does not provide access rights for the Flying Acres Class to access Tax Parcel 012105-9001-
19 09. The FBO and/or Grier Family Holdings, L.L.C. (which owns Tax Parcel 012105-9001-09)
20 have complete discretion to construct and/or tear down any physical structure they desire and
21 may conduct any activity they desire on Tax Parcel 012105-9001-09 as long as it does not
22 interfere with the Property Owners’ easement right under the Nesland Easement. This finding
23 is not intended to impose a greater restriction on the Plaintiffs’ right of access to the office
24 area than that of the public at large.
25

1 mowed. Landing strip and taxiways must be kept clear of any debris such as wind blown tree
2 limbs, cones and other assorted items.

3
4 42. Testimony was also presented as to what is “necessary” to qualify as an “airport”
5 and what items are “nice” or “convenient” to have at an airport.

6 43. Testimony was presented regarding different types of airports in Washington
7
8 ranging from what constitutes an “unattended airport” to constitutes a “controlled airport.”

9 44. When the 1975 Nesland Easement was created, Crest Airpark was an “attended”
10 airpark that was “uncontrolled” with an oil-mat (like macadam) landing surface.

11 45. An “uncontrolled airport” means that an aircraft does not require the permission or
12 directions of the airport in order to conduct an operation at the airport.

13 46. A “controlled airport” means that an aircraft does require the permission and take-
14 off/landing directions of the airport in order to conduct an operation at the airport.

15 47. An operation is defined as an aircraft “taking-off” from the airport or “landing at”
16 the airport.
17

18 48. An “attended airport” means that someone is at the airport on behalf of the FBO at
19 some part of a day or week. It is not required that someone be at the airport on behalf of the
20 FBO 24 hours per day and/or 7 days per week for an airport to be classified as “attended.”
21 Each uncontrolled-attended airport can set its own “hours” that someone is actually
22 “attending” the airport.
23
24
25

1 49. All controlled airports are attended. However, not all attended airports are
2 controlled.

3 50. As of March 2004, Crest Airpark is an “attended” airpark that is “uncontrolled” but
4 now has an asphalt landing strip and taxiway surface which the Defendants had paved at
5 Defendants’ expense. Mr. Grier testified that the current asphalt surface is in “good repair.”
6

7 51. The Flying Acres Class advocated a simple approach to determining what
8 constitutes “maintenance” of the landing strip and taxiways in that hard costs should be
9 included and that some amount of soft costs should be included as reasonably necessary to
10 maintain the landing strip and taxiway.
11

12 52. The defendants advocated a more complex approach in requesting that most of
13 their business expenses relate in one way or another to maintaining the “airport” as a whole
14 and that the landing strip and taxiway cannot easily be distinguished from the overall business
15 operation of Crest Airpark, Inc. The list of categories of business expenses that Crest Airpark,
16 Inc. seeks reimbursement for are contained in Exhibit 49 as well as the quantum of
17 reimbursement for 2001, 2001 and 2003.
18

19 53. I find that the total requested reimbursement made by Crest Airpark, Inc. is not
20 reasonable (1) in light of the for profit business conducted at Crest Airpark by Crest Airpark,
21 Inc. and by Ms. Birge; (2) in light of the discretion that Crest Airpark, Inc. has exercised in the
22 past on its expenses relating to tools, tractors, vehicles, cellular phone service, computers,
23 office supplies, employees and related compensation.
24
25

1 54. Ms. Oliveira, the CPA, who I found to be professional and candid, has to
2 consistently make numerous changes to the classifications of expenses that Crest Airpark, Inc.
3 selects to classify on its own. (Ex. 30.)
4

5 55. Upon review of various business records, including but not limited to, Costco
6 receipts (Exhibit 38), Cellular telephone bills (Exhibit 35), “land line” telephone bills
7 (Exhibit 36), and utility bill records and comparison of those records/invoices to the General
8 Ledger Print outs contained in Exhibit 36, it is clear that, historically, Crest Airpark, Inc.
9 commingles payment of expenses related to its own commercial business,
10 personal and household items of Mr. Grier with expenses related to maintenance of the
11 landing strip and taxiways Based on the testimony presented, the numerous hand-written
12 changes, modifications and notations that Crest Airpark, Inc. has made to the financial records
13 makes it clear that it is extremely difficult for the Flying Acres Class to independently look at
14 a receipt and determine if a particular purchase or expenditure is related in any way to
15 maintenance of the landing strip and taxiway.
16
17

18 56. During cross examination of Ms. Birge, she testified that she does not utilize any
19 particular system or notation on an invoice whereby a person could look at the receipt and
20 determine if Crest Airpark, Inc. included the item in its General Ledger under any particular
21 General Ledger Category. By way of example and not limitation, Ms. Birge had to look at
22 each item purchased at Costco and attempt to “recreate”(and not always precisely) the sum
23 actually claimed by Crest Airpark, Inc. for reimbursement by the Property Owners.
24
25

1 57. Upon review and comparison of Crest Airpark, Inc.’s U.S. Income Tax Return for
 2 an “S” Corporation Form 1120S regarding Line item “9 Repairs and maintenance” for 2001
 3 (Ex. 17), Tax Return for 2002 (Ex. 18), and the summary of Crest Airpark, Inc.’s claim for GL
 4 4120.00 , 4130 and 4160 (Ex. 49), the claimed “repair and maintenance” expenses on line 9 of
 5 the tax returns are inconsistent with Crest Airpark, Inc.’s general ledger and also its reconciled
 6 summary of the maintenance portion of its claim.
 7

8 58. For example, for the only two years in which we have data for line 9 (repairs and
 9 maintenance) of the Crest tax returns, the Crest general ledger account # 4120 (maintenance –
 10 airport) and Ms. Birge’s reconciliation of account 4120 (to try to capture only maintenance of
 11 the airstrip and taxiways), we find the following:
 12

	2001	2002	2003
Tax Return (ll 9)	\$12,993	\$22,227	N/A
Gen.Ledger #4120	\$19,446	\$15,317	\$12,7337
Birge Reconcil.	\$8,091	\$9,148	\$12,737**

13
14
15
16
17
18
19 ** The general ledger exhibit indicates an adjustment to \$9826.

20 Thus for 2001, the Birge reconciliation of account #4120 is 62% of the amount
 21 reported on line 9 of the tax return; and for 2002 is 41% of the amount reported on line 9 of
 22 the tax return. The reason for the differences is that line 9 of the tax return applies in part to
 23 repairs and maintenance not attributable to the landing strip and taxiways.
 24
 25

1 59. In light of the record keeping system of Crest Airpark, Inc., it is desirable that a
2 method and formula to determine the actual “hard” maintenance costs and moreover the “soft”
3 maintenance costs (e.g. certain labor and other expense) be established so that the Property
4 Owners will not have to have a complete financial audit of Crest Airpark, Inc.’s financial
5 records and receipts every year.
6

7 60. Plaintiffs’ witness Don Bakken, a professional public airport manager testified
8 hard costs should include products and material used to maintain the airstrip and taxiways
9 such as: Painting and marking, asphalt, overlay, light bulbs along runway and taxiways,
10 windsock, airport rotating beacon, and so forth.
11

12 61. Ms. Oliveria, Crest’s CPA utilizes the Federal Internal Revenue Service guidelines
13 and regulations as the method for preparing the annual IRS tax returns for Crest Airpark, Inc
14

15 62. Utilizing the IRS rules would conform to the “tax rule- based approach” that Crest
16 Airpark, Inc. has utilized in the past in filing its U.S. Income Tax Return for an “S”
17 Corporation Form 1120S.

18 63. Utilizing the currently available data(see Finding 61) for purposes of ascertaining
19 “hard costs” only approximately 50% of the “repairs and maintenance” reported on line 9 by
20 Defendant is unrelated to the taxiways and airstrip maintenance.
21

22 64. Based on the evidence, there are also other costs of maintenance that are not
23 reported on line 9, for example (but not by way of limitation) labor. These other costs will be
24 dealt with elsewhere in these findings. While this is not a precise statistic, it can help in
25

1 calculating a base line amount to be allocated to the homeowners annually, subject to other
2 costs as well as adjustments from time to time. The base line for these particular costs for the
3 years 2001 through 2003 would be line 9 of the Crest tax return, discounted by 50% (to
4 determine) the total amount allocable to the airstrip and taxiways, of which then, 50% of the
5 remainder is to be paid by the homeowners. For now, this yields an effective rate of 25% of
6 line 9.

8 65. The Covered “hard cost” maintenance expenses that the Property Owners must
9 reimburse the Defendants for 2001 is \$3,248.25 ($\$12,993 \times 25\%$).

10 66. The Covered “hard cost” maintenance expenses that the Property Owners must
11 reimburse the Defendants for 2002 is \$5,556.75 ($\$22,227 \times 25\%$).

12 67. The Covered hard cost maintenance expense that the Property Owners must
13 reimburse Defendant for 2003 is \$6,988 ($\$27,953 \times 25\%$). (The record is to be
14 supplemented with the Defendant’s 2003 corporate federal income tax return.
15

16 68. To establish a base line for these costs, 2002 is the most current data. Line 9 of the
17 tax return reports \$22,227. 25% of that yields \$5,557 hard cost maintenance and repair. It
18 shall be referred to as the “baseline hard cost maintenance and repair amount” later in these
19 Findings of Fact and Conclusions of Law).

20 69. The Covered “hard cost” maintenance expenses that the Property Owners must
21 reimburse the Defendants for the years 2004 through 2025 shall be the greater of either (a.)
22 25% of the amount actually reported by Crest Airpark, Inc. for its relevant tax return for Line
23 Item “9. Repairs and Maintenance”; or (b.) the baseline hard costs maintenance and repair sum
24
25

1 (\$5,557) plus an annual compounded three (3) per cent adjusted increase for each succeeding
2 year (**Baseline Hard Cost Maintenance Formula**). For example the baseline hard cost for
3 2003 is \$5,724(\$5,557 -2002 baseline x 1.03). The adjusted increase for 2004 shall be \$5,896
4 (\$5,724 2003 baseline x 1.03). The adjusted increase for 2005 shall be \$6,073 (\$5,896 2004
5 baseline x 1.03). The adjusted increase for 2006 shall be \$6,255 (\$6,073 2005 baseline x
6 1.03). These costs may be adjusted as hereinafter provided.

8 70. If Defendants anticipate and in fact, will incur, an **Extraordinary Hard Cost**,
9 cost that in fairness to Defendants should be reimbursed to them that is not adequately
10 addressed by Paragraphs 63 through 69. of these Findings for the direct costs (without
11 overhead or indirect costs) for landing strip and taxiway repaving or maintenance (including
12 fencing and gating mandated by a governmental authority) then Defendants shall give the
13 Property Owners at least 60 days written notice of any such Extraordinary Hard Cost expense
14 together with the basis therefore and an itemized cost breakdown. In the event of a justifiable
15 emergency where 60 days advance notice cannot be given, Defendants shall immediately give
16 the Property Owners a good faith estimate and all available information pertaining to cost.
17 Defendants shall keep detailed copies of all such expense invoices and records which justify
18 and support the additional cost. The Property Owners shall be responsible for payment of
19 such Extraordinary Hard Cost in the same manner as calculated in Paragraphs 63., 64 and 69.
20 of these Findings; provided that such additional expense to be paid by the Property Owners
21 shall not affect the annual calculation of Baseline Hard Cost in subsequent years. Such
22 adjustment, together with any other adjustments, shall not be made more than once a year, if

1 at all. . In addition to the foregoing, Plaintiffs or Defendants may revisit annually the current
2 **Baseline Hard Cost Formula** and the allocation of 25% of line 9 of the tax return to
3 homeowners as set out in Paragraph 69. of these Findings. Any percentage increase or
4 decrease in the allocation proposed by a party should be accompanied by a statement signed
5 by a Certified Public Accountant (without audit but with a “compilation” as that term is
6 employed in the Financial Accounting Standards) that such increase or decrease appears
7 justified based on the Defendant’s cost data. If a party disagrees, then the audit procedures
8 outlined in *paragraphs 77and 78. et seq.* shall apply. A party dissatisfied with the results of a
9 paragraph 77 and 78 proceeding may submit its differences to binding arbitration as provided
10 hereinafter.
11
12

13 If the parties cannot agree on any of the issues concerning the **Extraordinary Hard**
14 **Cost** or reallocation of the homeowners share of expenses set out on line 9 of the Defendant’s
15 tax return then a party may submit the dispute to Binding Arbitration with an Arbitrator
16 selected by both parties or appointed by the King County Superior Court under the provisions
17 of RCW 7.04 if an Arbitrator cannot be agreed upon. In the event of arbitration, all parties
18 shall bear their own attorney fees and costs and shall equally share the expenses of the
19 arbitration.
20
21

22 **Soft Costs**

23 71. In addition to actual “hard cost” expenses directly related to the actual maintenance
24 of the landing strip and taxiway, it is reasonable for the Property Owners to pay certain “soft
25

1 costs” of maintaining the landing strip and taxiway. Per the testimony of Don Bakken
2 (Exhibit 27) who is not a homeowner, these expenses include but are not limited to labor and
3 equipment in tree pruning, mowing and maintaining grass and weeds in the approach areas,
4 landing strip and taxiways, as well as daily inspections of the landing strip. Other soft costs
5 attributable to the taxiways and landing strip include a portion of:
6

7 Electrical utilities, insurance, education related to safety and security (primarily
8 that mandated by state and federal authorities), office, accounting, computer, office
9 supplies, postage, telephone, bank charges, Unicom (a radio frequency used in the
10 vicinity of the airport to advise other pilots of landings or takeoffs, weather
11 conditions, etc.), community activity (to educate and prevent hazards to air
12 navigation, approaches and takeoffs) and the time of personnel when these
13 activities are directly related to the maintenance and operation of the landing strip
14 and taxiways.
15
16

17 72. Mr. Bakken testified that supervisory personnel were reasonable soft costs to be
18 included in the maintenance of the landing strip and taxi ways under the circumstances.

19 73. For the years 1998 –2003, (Exhibit 50) data exists for labor costs and was set out
20 in general ledger account numbers 4170 (payroll), 4920 (FICA taxes), 4925 (Medicare Taxes),
21 4930/4940 (Taxes –Misc.) and 4004 (Sar-Sep Retirement). I find the labor rates currently
22 paid by Defendant to be reasonable. Exhibit 50 reflects the combined wage expense of each
23 of the foregoing categories for each year as follows:

24 1998 \$91,814
25

1	1999	\$91,634
2	2000	\$88,695
3	2001	\$83,782
4	2002	\$101,354
5	2003	\$114,681

6 Over a six year period, Defendants' gross payroll has increased just under 25% or an
7 average of slightly more than 4% a year. During the years 2000 and 2001, gross payroll
8 dipped significantly. Testimony reveals that as the boom years of the 90's began to fade in
9 2000, then came the calamity of September 11, 2001 with not only further economic
10 consequences, but a federally mandated "no fly" restriction on general aviation airports in the
11 U.S. through the remainder of 2001 and some restrictions in early 2002. While a 4% annual
12 increase may be "reasonable", it exceeds all the cost of living indexes for Puget Sound and
13 nationally by about 1%. The reasons for a 4% increase are probably highly debatable and
14 endless. I refer to some of them only because I believe it is more reasonable that *future*
15 increases be limited to what the indexes have been indicating as the norm – roughly 3%.

16 An examination of the Defendant Crest Airpark's Damage Binder ("Defendant's
17 Binder") which contains W-2's, detailed payroll reports and state quarterly reports, reveals
18 some information. For example, compensation for Zachary Birge (son of the manager, Rikki
19 Berge) has increased from \$2,800 in 2001 (Account 4900, Doc.000396) to more than \$13,
20 500 in 2003 (Defendant's Binder, 2003 Pay History, Doc.000416). Zachary attends
21 Washington State University and works summers at the airpark. According to Ms. Birge,
22 during the time he attends WSU he is paid weekly as the "Webmaster" for the airpark. I find
23 the connection between an airpark website, an entrepreneurial activity, and maintenance of the
24 landing strip and taxiways to be remote.

25

1 Based on the evidence, other than normal inflationary increases in labor costs, the
2 quantum of labor necessary to maintain the landing strip and taxi ways would normally
3 average out to a constant. On the other hand, a continuing increase in the volume of
4 Defendant's overall for profit operations during these years would explain the additional
5 payroll costs. An examination of the only corporate income tax return submitted by Crest
6 Airpark for the year 2000 shows only five (5) rental aircraft on the depreciation schedule. A
7 review of the Regal Aviation Insurance Company policy through 2003 for the airpark shows a
8 schedule of twelve (12) aircraft. If this information is accurate for rental aircraft, then there has
9 been a substantial increase in the last three years for such operations. While aircraft
10 mechanical maintenance for the most part is not performed by the airpark personnel, there is
11 still much they have to perform. Inspection for damage, aircraft fluids, tachometers, and
12 transponders have to be checked after each use and periodic cleaning is required. Other
13 simple maintenance tasks not required to be performed by an FAA certified mechanic are done
14 routinely. Arranging for FAA required annual aircraft inspections and scheduling flight
15 instruction by non-airpark certified flight instructors are some other tasks .

16 Defendant carries on a for profit commercial operation. Much of the Airpark's labor
17 costs are related to these operations. See Finding # 30. Other pertinent information is
18 detailed in the Washington State Department of Transportation, Aviation Division report
19 printed August 18, 2003 attached to Don Bakken's Declaration (Exhibit 27). I find Bakken's
20 oral testimony and written declaration persuasive. The report deals with data for the year
21 2002 provided by Rikki Berge. The estimates provided by her are illuminating. For example,
22 aircraft operations (a takeoff or a landing is a single operation) for 2002 were estimated to
23 total 97,000. Of these, 88% (85,000) were itinerant, i.e.visiting aircraft, many of which were
24 undoubtedly doing "touch and go" – a touchdown immediately followed by a takeoff. Only
25

1 12% of the operations (12,000) were by aircraft rented by the Defendant or owned by the
2 Plaintiffs/Class Members (or other property owners who opted out of the Class)

3 There is considerable testimony by some of the homeowners that based on their
4 observations, their usage of the landing strip and taxiways is 20% to 25% of the total usage.
5 The Wash DOT report, together with all the evidence pertaining to the Defendant's business
6 activity, more than supports this observation

7 74. Based on the foregoing, I find that the Plaintiffs usage is about 25% of the total
8 usage of the landing strip and taxiways. The only significance of such a finding is the
9 inference of the quantum of business operations carried on by Defendant which are unrelated
10 to maintenance of the landing strip and taxiways. The Finding does not mean that the
11 Plaintiffs should therefore bear 25% of those various kinds of costs which are reasonably
12 related to the maintenance of the landing strip and taxiways in view of the Defendant's
13 extensive commercial activities. There is no exact way to ascertain a fair share to be paid by
14 the Plaintiffs. However, after examining all the financial data provided by Defendant, I
15 believe it is fair to say that generally about 75% of its expenses are totally unrelated to the
16 maintenance of landing strip and taxiways. Except as otherwise provided, this percentage will
17 be the bench mark by which I allocate various costs to the Plaintiffs.

18 The payroll. and payroll tax accounts referenced in Exhibit 49 and Finding #73 shall
19 be calculated by taking the six year average of payroll expenses as set out in the foregoing (i.e.
20 \$95, 327) as a baseline for 2001; and thereafter each year from 2002 through 2025 shall be
21 increased at a rate of 3% annually.

	25% GROSS PAYROLL COST ADJUSTED FOR 3% ANNUAL INCREASE	PLAINTIFFS' 50% SHARE OWED TO DEFENDANT
24	2001 \$23, 832	\$11, 916
25	2002 \$24, 547	\$12, 373

1 2003 \$25, 283

\$12, 642

2 If in the future, Defendant elects to carry health insurance on full time or eligible part
3 time employees, or other events force Defendants to incur extraordinary wages, then
4 Defendants may seek an adjustment to its reimburseable payroll costs not reflected by the
5 automatic 3% increase. Likewise, should there be a substantial decrease in Defendant's actual
6 total gross payroll costs as compared to the calculation set out in this finding for a period of
7 two or more calendar years, then Plaintiffs may seek an adjustment to the 3% annual rate of
8 adjustment.
9

10 75. From a review of the General Ledger Printouts as well as the testimony presented,
11 it is difficult to segregate and establish what utilities, insurance and office expenses pertain
12 only to maintenance of the landing strip and taxiways. At the same time, various analyses of
13 the following accounts (by general ledger number) suggest that up to 25% of the particular
14 expenses relate to maintenance of the landing strip and taxiways. The pertinent accounts are:
15

- 16 • 4005 – Education
- 17 • 4100 – Utilities
- 18 • 4160 – Maintenance – Equipment
- 19 • 4200 – Auto Allowance
- 20 • 4210 – Accounting
- 21 • 4216 – Licensing
- 22 • 4219 – Computers
- 23
- 24
- 25

- 1 • 4220 – Office supplies
- 2 • 4230 – Postage
- 3 • 4250 – Telephone
- 4 • 4280 – Dues
- 5 • 4320 – Insurance – Auto
- 6 • 4330 – Insurance – General
- 7 • 4380 – Bank Charges

8
9
10 In Exhibit 49, Ms. Berge attempted to reconcile and adjust the above accounts to exclude
11 personal items of Mr. Grier and other costs clearly unrelated to the business of operating Crest
12 Airpark. If 25% of these expenses are attributable to the maintenance of the landing strip and
13 taxiways, then the Plaintiffs/Class members would cover 50% of those costs. I find that on the
14 basis of the evidence to date, the above referenced accounts should be discounted by 75%
15 *using the gross amounts shown in Exhibit 49 as a template and baseline.* I am mindful that
16 the owners' use of water and garbage is somewhat minimal and that electricity for the airstrip,
17 taxiways and office is separately metered. Also, I haven't overlooked the conflicting evidence
18 that some of the above accounts which I'm partially allocating to the Plaintiffs contain a
19 quantum of expenses that arguably have nothing to do with Plaintiff's obligations under the
20 Nesland easement. That is why I have chosen the foregoing method of allocating expenses, a
21 method which will not encourage Defendant to let its expenses get out of line when it will be
22 bearing most of the cost. The Homeowners share of soft costs as Covered Expenses for 2001-

1 2003 per the designated accounts – gross amount column, Exhibit 49 in this Finding is
2 therefore:

	2001	2002	2003
4 Total Crest Overhead	\$45,421	\$53,602	\$54,621
5 Homeowners' Share 50%			
6 (After discounting gross by 75%)	\$5,678	\$6,700	\$6,828

7 You will note that certain expenses requested by Defendant are not allowed. Account
8 #4281, "Advertising" has no relevance to maintaining the landing strip. Account #4130,
9 "Auto Maintenance" is not allowed because the amount allowed under Account #4200, "Auto
10 Allowance" is so substantial (\$4,400 to \$6,000 a year), that it should be adequate to cover
11 maintenance as well.
12

13 I further find that subject to the "adjustment" provisions such as those set forth
14 in these findings, the allocation of the gross amounts of soft costs or airpark overhead (as
15 identified in these accounts) attributable to the landing strip and taxiways in the future should
16 be discounted by 75% as totally unrelated to the maintenance of landing strip and taxiways,
17 and the Plaintiffs responsible to Defendant for 50% of the remainder. In making this
18 allocation, it is incumbent upon Defendant to account for purchases made for personal use of a
19 Birge or Grier family member as personal draws so that no segregation has to be made in
20 various corporate accounts for these items. Products purchased for resale to the public or for
21 Defendant's rental aircraft must be separately accounted, again so that no segregation need be
22 made in reviewing corporate accounts.
23
24
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1 76. Plaintiffs should be named as additional insureds with respect to any liability
2 insurance maintained by Defendants on airport operations and property, providing such
3 additions can be reasonably made by Crest Airpark’s insurer. Further, and as a condition
4 precedent to such addition, Plaintiffs individually should name Crest Airpark, Inc. and Grier
5 Family Holdings, LLC as additional insureds on each of Plaintiff’s liability policies In so far
6 as permitted by their respective insurance companies. Additional premium costs, if any, shall
7 be paid by the party benefited by this additional insurance coverage.
8

9
10 **Right to Audit**

11 77. The Defendants or their successors shall maintain detailed records of costs incurred
12 relating to the Covered Expenses. Five or more individual Plaintiffs or Class Members may
13 request a review by “compilation” or “audit” (as those terms are defined by the then current
14 Financial Accounting Standards for CPA’s) of the expenses incurred on an annual basis. Any
15 such review shall be requested in writing and delivered to Defendants or their successors
16 within the later of (1) 60 days of the completion of any calendar year or (2) receipt by the
17 homeowners of an itemized cost statement from Defendants which includes the general ledger
18 account number, the gross expenditure for each account and the net amount for each account
19 claimed to be reimbursable by the owners based on the formulas contained in these findings..
20 Upon the timely written request of five or more individual Plaintiffs or Class members, the
21 parties shall choose a certified public accountant (“Auditor”) to review the expense records of
22 Defendants or their successors in accordance with these findings. If the parties cannot agree
23 on an Auditor, either party may petition the Court for appointment of an independent Auditor.
24
25

1 78. The Auditor chosen shall review the expenses of Defendants as defined herein and
2 all back-up documentation for the preceding year and issue to Defendants and their successors
3 and the individual Plaintiffs and Class members a written report as to his/her findings within
4 60 days of his/her appointment. The report will also include a recommendation with respect
5 to any adjustments that should be made upwards or downwards to the expenses including
6 allocation of any expense category to the homeowners for the preceding year. Thereafter,
7 either party may petition the Court for adjustment of the expenses for the preceding year
8 and/or a review of the Auditor's report in the event they disagree in whole or in part with the
9 report. Unless the Auditor finds that adjustments of less than five percent (5%) are warranted
10 to the covered expenses, the cost of the Auditor shall be split equally between the Defendants
11 (or their successors) and the Plaintiff Class members then utilizing the easement. If the
12 Auditor finds that adjustment of claimed expenses is five per cent or less, then the requesting
13 party that does not prevail to its benefit in expense reduction or increase, shall be solely
14 responsible for the cost of Audit. If a party does not accept the determination of the Auditor,
15 the dis-satisfied party shall submit the dispute to binding arbitration as set forth in these
16 Findings. The right to Audit is in addition to any other of the Plaintiffs' rights set forth in
17 these findings.

18 **Notification and Enforcement**

19 79. On or after January 1st of each year, Crest Airpark, Inc. or its successor(s) shall bill
20 the individual Plaintiffs and/or Class members who have not had their easement rights
21 previously extinguished for his/her/their projected pro rata share of the Covered Expenses for
22 the coming year. Each Plaintiff/Class Members' "Projected pro rata share" of Covered
23 Expenses shall be computed as follows: (1) Crest Airpark, Inc. or its successor(s) shall
24 calculate the Covered Expenses as set out in these findings; and then (2) the Covered
25

1 Expenses shall then be divided by the number of individual Plaintiffs or Class members that
2 paid their pro rate share the preceding year.

3 80. Crest Airpark, Inc. or its successor(s) shall mail each invoice (in the amount of
4 each homeowner's Pro Rata Share) regular mail, postage prepaid, to each individual Plaintiff
5 and Class Member at their last known address. Each class member will have thirty (30) days
6 following the date of the invoice to make payment on the invoice. In the event that payment is
7 not made, Crest Airpark, Inc. or its successor(s) shall advise the delinquent individual Plaintiff
8 or Class Member of the delinquency in writing by forwarding a Notice of Delinquency
9 certified mail (however no signature and/or return receipt shall be required), postage prepaid,
10 to the non-paying Plaintiff or Class member's last known address and simultaneously mailing
11 a copy of the notice to the designated representative of Crest A.E.RO Inc. Thereafter, if the
12 delinquency is not cured within 14 days of the date of mailing the notice, then such Plaintiff or
13 Class Member's rights under the Easement shall be permanently terminated.

14 81. In the event that an individual Plaintiff and/or Class member fails to make
15 payment and fails to cure such delinquency as provided above, then Crest Airpark or its
16 successor or assigned may record with King County a Notice of Termination of Rights against
17 the non-paying delinquent property owner, reflecting the permanent termination of that
18 person(s) rights under the Easement pursuant to these findings.

19 82. Within 90 days of the end of each calendar year, Crest Airpark or its successor or
20 assigned shall calculate the actual Covered Expenses incurred for the preceding year and
21 divide such actual Covered Expenses by the number of individual Plaintiffs and/or Class
22 members who paid the Projected pro rata share to obtain an Actual pro rata share. Crest
23 Airpark shall include in this calculation any sums received from the Other Owners as defined
24 in Finding of Fact No.2 up to the Projected pro rata share amount (for each other Owner). The
25

1 Actual pro rata share shall then be compared to the Projected pro rata share and the difference
2 shall be billed (if underpaid) or credited (if overpaid) on the next billing statement issued by
3 Crest Airpark or its successor or assigned. In the event of an under billing, Crest Airpark or
4 its successor or assigned may issue a special billing/invoice to collect the prior years under
5 billing. Under such circumstance the annual billing terms and conditions apply including
6 timing of payment, delinquency, cure and/or termination.

7 83. The arbitrator recognizes that 2004 will require a special circumstance with respect
8 to billing Covered Expenses. Within 90 days of the Court's entry and/or approval of these
9 findings or within 90 days of the Court's decision in this matter becoming final, whichever is
10 later, Crest Airpark or its successor or assigned shall calculate/project the Covered Expenses
11 as set out in these findings for 2004 (or submit the actual expenses for 2004 if available) and
12 then (2) the expenses shall then be divided by the number of individual Plaintiffs or Class
13 members involved in this lawsuit of one hundred and fourteen (114) affected lots with the
14 resulting figure being a Plaintiff/Class member's Projected pro rata share of Covered
15 Expenses for 2004 or actual pro rata of 2004 expenses if available.

16 84. The invoicing of these expenses by Crest Airpark (including the notices for any
17 delinquency or termination of Plaintiff or Class Member's rights) shall be the same as that set
18 out in Finding No. 80.

19 85. In the event that an individual Plaintiff and/or Class member fails to timely make
20 payment as set out above in Finding of Fact No. 80 and 84 and fails to cure said delinquency
21 as provided therein, then Crest Airpark or its successor or assigned may record with King
22 County a Notice of Termination of Rights against the non-paying property owner, reflecting
23 the permanent termination of that person(s) rights under the Easement pursuant to these
24 findings.

1 86. The Court’s Order requires the Arbitrator to create a mechanism for enforcement
2 of the Easement against non-paying property owners. The “common fund – civil penalty”
3 enforcement proposal by the Plaintiffs is complex, could require considerable administration,
4 and might be difficult to prove violations, and would require homeowners to be “big brother”
5 and could well lead to more dissension and litigation. The Arbitrator finds that a reasonable
6 mechanism would include regulating access by gating each taxi way. However, it must be
7 emphasized that such gate should have an electronic capability of being remotely controlled by
8 individual owners who are current in their obligations to Crest Airpark or its successor or
9 assigned. Every effort should be made by Plaintiffs and Crest Airpark or its successor or
10 assigned to agree on an available technology that reduces or eliminates the need for a pilot to
11 have to shut down an engine twice to exit a gate (this is a safety issue). No gate shall be
12 required from a taxiway to the landing strip where all the owners are current.

13 Since gating access to the landing strip will be of limited benefit to a homeowner
14 current in payment, the primary cost of a gate should be borne by Crest Airpark or its
15 successor or assigns in the proportion of 75% by Crest Airpark and 25% by the Plaintiff. This
16 cost sharing formula is based partly on the fact that only six property owners (“Other
17 Owners”) have opted out of the Class. Those six may or may not pay Crest Airpark for their
18 share. If others opt out of the Class and gates are installed or maintained primarily because
19 these additional owners are not paying Crest Airpark a pro rata share similar to the Plaintiffs
20 or Class Members, then equitably, this cost sharing formula should be subject to adjustment in
21 the same equitable manner as provided elsewhere under the Audit and Arbitration provisions
22 in these Findings.

23 87. Plaintiffs have lodged a claim for attorneys’ fees and costs under a common fund
24 theory. Plaintiffs have the burden of proving that this claim is supported by the exception to
25

1 the American Rule on attorneys' fees and complies with the requirements of the exception
2 itself. I find that Plaintiffs' have failed to meet this burden of proof. Plaintiffs provided no
3 evidence that absent such an award they would have been denied access to litigate this claim
4 due to an inability to afford the service of an attorney. To the contrary, the overwhelming
5 evidence before me at the arbitration indicated that Plaintiffs individually and as a class
6 banded together and pooled resources to pursue their claims.

7 88. I further find that the common fund theory requires that a claim result in a
8 common fund being created for the benefit of the class. Again, Plaintiffs failed to meet this
9 burden of proof. All of the evidence in this case indicates that the funds at issue in this case
10 relate to and/or belong to Defendants. In other words, no common fund for the benefit of
11 Plaintiffs is being created. Therefore, based upon Plaintiffs failure to meet the burden of proof
12 offering evidence to satisfy the purpose of the common fund exception, no fund being created
13 for the benefit of Plaintiffs and equity otherwise working in favor of Defendants, Plaintiffs'
14 claim for an award of attorneys fees and costs must be denied with respect to the matters
15 determined in this Special Master proceeding.

16 89. Defendants seek pre-judgment interest on amounts found to be due them in this
17 proceeding. All of the amounts due, other than for real estate taxes, involved an exercise
18 of discretion as to quantum with no ascertainable fixed standard to guide the arbitrator. Thus
19 interest should not be allowed (see Prier v. Refrigeration Engineering, 74 Wn2d 25.)
20 Prejudgment interest on real estate taxes should not be allowed because Plaintiffs timely
21 tendered an amount sufficient to reimburse Defendants who in turn rejected the tender.
22 However, I find that interest should accrue on the balance of unpaid amounts set out above,
23 referred to as the reimbursed Covered Expenses for 2001-2003 from the time by which the
24
25

1 Arbitrator's Draft Findings of Fact and Conclusions of Law were in the hands of Counsel on
2 June 15, 2004.

3
4 90. Covered Expenses shall include the following expenses referenced and calculated
5 in these findings: property taxes, rent, hard costs, extraordinary hard costs, labor costs, soft
6 costs, regulation of entry (gating or fencing as specified in Findings No. 70 and No. 86) and
7 offices expenses.

8 91. Although Plaintiffs are being charged with a proportionate share of labor,
9 accounting and certain other overhead costs of Defendants, it is likely that Crest Airpark will
10 incur additional expense in segregating, categorizing and calculating expenses, invoicing,
11 mailing, accounting and other administration costs related to the obligations of Plaintiffs
12 specified in these Findings. If Crest Airpark seeks some reimbursement of the excess of such
13 costs directly related to the administration imposed on it by these Findings, then it shall
14 carefully track all such excess costs. Crest Airpark shall provide to the Plaintiffs all cost data
15 (including historical comparative data) to demonstrate its entitlement to reimbursement for
16 50% of such excess costs from Plaintiffs, Defendants bearing the remaining 50% of such
17 excess costs. No overhead or profit shall be included by Crest Airpark in its calculation of
18 such costs. Any demand for payment under the terms of this Finding shall be subject to the
19 Audit and Arbitration provisions of the Findings.

20 Based upon the above Findings of Fact, I enter the following Conclusions of Law:

21 **III. CONCLUSIONS OF LAW**

22 1. The intent of the Neslands in defining the costs to be covered under the Easement
23 (hereinafter "Covered Expenses") for the time period of January 1, 2001 through December 31,
24
25

1 2025 was to include 50% of the costs of running the Crest Airpark as they pertain to
2 maintaining the landing strip and taxi ways.

3 2. The Arbitrator concludes that such Covered Expenses include “hard costs”, costs
4 directly attributable to the landing strip and taxi ways of the Airpark (by way of example but
5 not limitation painting and marking the landing strip and taxiways, runway lights, rotating
6 beacon, windsock, taxiway signs, asphalt paving and patching).

7 3. The Arbitrator further concludes that such Covered Expenses were intended to also
8 include “soft costs”. Examples of soft costs include but are not limited to: labor/payroll e.g.
9 grass mowing, tree pruning, daily runway inspections, etc. and a portion of certain office
10 expenses.

11 4. The easement requires no interpretation for **real estate taxes** for the parcel devoted
12 exclusively to runway and taxiways (Tax Parcel 012105-9066-01(landing strip/taxiways)) .
13 But for taxiway “J” a portion of which encroaches on a portion of Grier’s house property (Tax
14 Parcel 012105 –9009-01) , the individual Plaintiff/Class member’s share of taxes for this
15 Covered Expense should be calculated on the basis of a formula agreed to in Finding No. 23
16 by both Plaintiffs and Defendants. For the parcel on which the office is located (and many
17 hangars, tie downs, fuel depot, parking and maintenance facilities) Tax Parcel 012105-9001-
18 09 it is reasonable to adopt the formula set out above in Finding of Fact No.30 within which
19 the landlord bears the bulk of the burden of building maintenance and taxes in the form of
20 rent. Therefore, I conclude that the individual Plaintiff/Class Member’s share of taxes for this
21 Covered Expense in the future shall be as set out in Finding of Fact No.30.
22
23

24 For the years 2001-2003 and as indicated, I conclude that the Plaintiffs shall pay to
25 Defendants the following amounts as reimbursement of Covered Property Tax Expenses:

1 (i.) For Tax Parcel 012105-9066-01(landing strip/taxiways) \$9718.47 and in the
2 future, 50% of all taxes billed by the King County Treasurer.

3
4 (ii.) For Tax Parcel 012105 –9001-09 (the office, parking and commercial operations
5 parcel) a total of \$9,000 as rent for the years 2001 through 2003 which includes Plaintiffs’
6 share of taxes for this parcel. In the future, the Plaintiffs shall pay \$3,000 per year which rent
7 shall increase by 3% a year beginning with the year 2004.(iii.) For Tax Parcel 012105-9009-01
8 (Taxiway J), for the years 2001 through 2003, the total sum of \$1, 669.49, and in the future
9 the amounts as calculated in Findings No. 22 and 23.

10 5. Plaintiffs shall pay to Defendants as a portion of their Covered Expense to Crest
11 Airpark the **hard costs** of the landing strip and taxiways for the years 2001-2003 in the sum
12 of \$15, 793. In the future, the individual Plaintiffs/Class Members shall pay as the hard cost
13 Covered Expense to Crest Airpark or its successors or assigned the greater of (a) 25% of the
14 amount actually reported by Crest Airpark, Inc on Line 9, “Repairs and Maintenance” of its
15 federal corporate income tax return, or (b) the baseline hard costs maintenance and repair sum
16 (\$5,723) plus an annual compounded three (3%) percent adjusted increase for each succeeding
17 year, all as outlined in Findings # 64-70. Extraordinary hard costs which Crest Airpark may
18 incur, if at all, shall be borne by Plaintiffs as specified in the Findings.

19 6. Plaintiffs shall pay as the labor/soft cost reimbursement to Crest Airpark for
20 landing strip and taxiways maintenance for 2001-2003 the sum of \$36, 931See Finding #74.

21 7. In the future, the individual Plaintiffs/Class Members shall pay as the **labor/soft**
22 **cost** to Crest Airpark or its successors or assigned for the following Crest Air Park, Inc.
23 general ledger payroll accounts 4004 Sar – Sep; 4170 Payroll; 4920 FICA; 4925 Medicare;
24
25

1 4930/4940 Taxes – Misc. (FUTA, etc.) a portion of the six year average payroll of \$95, 327
2 (base year 2001) to be adjusted for annual increases of 3% for each year thereafter, with each
3 such year’s annual gross payroll discounted 75%, the Plaintiffs paying one half of the
4 remainder thereof. If the Defendant elects to carry health insurance coverage for full time
5 and eligible part time employees, or other events force Crest Airpark to incur extraordinary
6 wages, then Defendant may seek an adjustment to its reimbursable payroll costs not reflected
7 by the automatic 3% increase. Likewise, should there be a substantial decrease in Crest
8 Airpark’s actual total gross payroll costs as compared to the calculation set out in this
9 paragraph for a period of two or more years, then Plaintiffs may seek an adjustment to the 3%
10 annual rate .
11
12

13 8. The Plaintiffs should pay to the Defendants for **office expense soft cost** Covered
14 Expense reimbursement for the years 2001-2003 the sum of \$19,206. In the future, the
15 individual Plaintiffs/Class Members shall pay as the office soft cost Covered Expense to Crest
16 Airpark or its successors or assigns 12.5% of the following Crest Airpark, Inc. general ledger
17 accounts gross amounts (using Exhibit # 49 as a template) as outlined in Finding of Fact #75:
18 4005 Education; 4100 Utilities; 4160 Maintenance – Equipment; 4200 Auto Allowance; 4210
19 Accounting; 4216 Licensing; 4219 Computers; 4220 Office supplies; 4230 Postage; 4250
20 Telephone; 4280 Dues; 4320 Insurance – Auto; 4330 Insurance – General; 4380 Bank
21 Charges.
22

23 It is incumbent upon Defendant to account for purchases made for personal use of a
24 Birge or Grier family member as a personal draw so that no segregation has to be made in
25

1 various corporate accounts for these items. Products purchases for resale to the public or for
2 Defendant's rental aircraft must be separately accounted so as to avoid having to segregate any
3 of these items from accounts for which Plaintiffs bear some payment obligation.
4

5 9. To the extent permitted by their insurance companies, Plaintiffs should be named as
6 additional insureds with respect to any liability insurance maintained by the Defendants on
7 airport operations and property. Likewise, to the extent permitted by their insurance
8 companies, Plaintiffs should name Defendants Crest Airpark, Inc. and Grier Family Holdings,
9 LLC or their successors or assigns as additional insureds on their policies of insurance.
10 Additional premium, if any, for such coverage shall be paid by the party benefiting from such
11 additional insureds.

12 10. Crest Airpark, Inc. or its successor or assigns may bill/invoice each individual
13 Plaintiff/Class member on or after January 1st of each calendar year for his/her/their Projected
14 pro rate share of Covered Expenses. Covered Expenses shall include the following expenses
15 referenced and calculated in these findings: property taxes, rent, hard costs, extraordinary hard
16 costs, labor costs, soft costs (which includes certain office expenses) and certain gating and
17 fencing expense specified in Findings No. 70 and No. 86.

18 11. Each Plaintiff/Class Members pro rata share of Covered Expenses shall be
19 computed as follows: (1) Crest Airpark, Inc. or its successor(s) or assigns shall project and
20 calculate the anticipated Covered Expenses as set out in these findings for the coming year;
21 and then (2) the Covered Expenses should then be divided by the number of individual
22 Plaintiffs or Class members that paid their respective pro rate share of Covered Expenses the
23 preceding year. Crest Airpark shall include and account in this calculation any sums received
24 from Other Owners (as defined in Finding No. 2) up to the Projected pro rata share amount for
25 each Other Owner. The baseline calculation for 2004 shall be 114 persons.

1 12. After January 1st of each calendar year Crest Airpark, Inc. or its successor(s) or
2 assign(s) shall mail an invoice to each individual Plaintiff/Class member (in the amount of
3 his/her/their Projected Pro Rata Share) regular mail, postage prepaid at their last known
4 address.

5 13. Each individual Plaintiff/Class member shall have thirty (30) days from the date of
6 the invoice to make payment on the invoice. In the event that payment is not made, Crest
7 Airpark, Inc. or its successor(s) or assign(s) shall advise the delinquent individual Plaintiff or
8 Class member of the delinquency in writing by forwarding a Notice of Delinquency certified
9 mail and regular mail postage prepaid to the non-paying individual Plaintiff or Class
10 member(s) at his/her/their last known address, simultaneously mailing a copy of the notice to
11 the designated representative of Crest A.E.R.O., Inc. No signature of receipt or return receipt
12 shall be required. Thereafter, if the individual Plaintiff/Class member does not cure the
13 delinquency within fourteen (14) days of the date of mailing the Notice of Delinquency, then
14 his/her/their rights under the Easement shall be immediately and permanently terminated.

15 14. The Plaintiff/Class members shall have a right to audit the Crest Airpark, Inc. or its
16 successor or assign's Covered Expenses on an annual basis. The procedure for any such audit
17 is described in Findings of Fact No. 77 and No. 78. The right to audit is in addition to the
18 remedy of arbitration of disputes provided for the parties in Finding of Fact paragraph 70.

19 15. For individual Plaintiff/Class Member's who fail to make their payment
20 obligations as provided herein, Crest Airpark or its successors or assigned shall be allowed to
21 erect an access gate at a taxiway serving an owner whose easement rights have been
22 terminated. Individual Plaintiff/Class Members shall share in the cost of such installation in
23 the percentage set out in Finding of Fact No. 86.

1 16. Defendants are entitled to the entry of Judgment against the individual
2 Plaintiffs/Class Members, joint and severally in the amount of \$92,216.96 for reimbursement
3 of expenses for the time period of January 1, 2001 through December 31, 2003, together with
4 interest at the rate provided by law from June 15, 2004 on this amount. The above figure
5 includes those sums identified as Covered Expenses in the Findings of Fact set out above and
6 as reflected in Conclusions of Law Nos. 4, 5, 6 and 7. Enforcement of the judgment shall be
7 stayed for 60 days to allow the Plaintiffs an opportunity to pay so that their easement rights are
8 not unduly forfeited. In the event of non-payment of the Judgment amount within the 60 day
9 period, all of Plaintiffs' rights under the Easment shall be terminated.

10 17. The Arbitrator concludes that Crest Airpark, Inc. should within 90 days of the
11 Court's entry and/or approval of these findings and conclusions or within 90 days of the
12 Court's decision in this matter becoming final, whichever is later, calculate the Covered
13 Expenses as set out in these findings for the year 2004 year to date; and then divide the
14 Covered Expenses by one hundred and fourteen(114)with the resulting figure being the
15 individual Plaintiff/Class member's Projected Pro Rata Share of Covered Expenses for 2004..

16 18. Crest Airpark's invoicing, notices of delinquency and termination of an owner's
17 rights with respect to these 2004 expenses shall follow the same procedure as set out in
18 Conclusion No. 13.

