

IN THE COUNTY COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN AND
FOR FLAGLER COUNTY, FLORIDA

FLAGLER COUNTY, a political subdivision
of the State of Florida,

Plaintiff,

CASE NO.: 2023 CC 000091

DIVISION:

v.

PEN AND PILOT, INC., a Florida profit
corporation,

Defendant.

Unofficial Copy

COMPLAINT FOR NON-RESIDENTIAL TENANT EVICTION

Plaintiff, FLAGLER COUNTY (hereinafter “County”) by and through its undersigned counsel, sues Defendant, PEN AND PILOT, INC. (hereinafter “Pilot”), and alleges as follows:

1. This is an action for possession of real property brought pursuant to Sections 83.20(1), 83.21, and 51.011, Florida Statutes.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff is Flagler County, a political subdivision of the State of Florida, pursuant to Art. VIII, s. 1(a), Florida Constitution and Florida Chapter 7399, Acts of 1917.

3. Defendant is Pen and Pilot, Inc., a Florida profit corporation located at 114 Seaside Landings Drive North, Flagler Beach, Florida 32136.

4. Pilot remains in possession of real property owned by the County, located at 201 Airport Road, Palm Coast, Florida 32164 (hereinafter, “Flagler Executive Airport”), as a tenant at sufferance, after County terminated Pilot’s lease of T-hangar Unit 13 on said property.

**COUNT I
TENANT EVICTION**

5. Paragraphs 1-4 above are incorporated herein.

6. County is a non-charter county and has such power of self-government as provided by law. Art. VIII, Section 1(f), Florida Constitution.

7. County has broad governmental and proprietary power and the authority to exercise all powers and privileges not specifically prohibited by law. See Sections 125.01(1)(w) and 125.01(3)(a), Florida Statutes.

8. County seeks to lease its airport facilities to responsible tenants and is exempted from leasing real property at the Flagler Executive Airport through a competitive bidding procedure and may lease airport property under terms and conditions that it negotiates within its discretion. Section 125.35(1)(b)1., Florida Statutes.

9. On March 13, 2018, County and Pilot executed an Aircraft Storage Hangar Rental Agreement (hereinafter, "Lease Agreement") whereby County leased to Pilot the T-hangar Unit 13 at the Flagler Executive Airport for airplane storage. See Exhibit A, attached hereto.

10. Section 13 of the Lease Agreement, a standalone provision, states in its entirety, "Either party to this Agreement shall have the right, with or without cause, to terminate the Agreement by giving thirty (30) days prior written notice." (Emphasis supplied.)

11. On September 26, 2022, the County declared a state of local emergency in anticipation of the impact of Hurricane Ian, in accordance with Chapter 12 of the County Code and Section 252.38(3), Florida Statutes, so that timely precautions could be made to protect life and property.

12. On September 29, 2022, as part of the recovery efforts after Hurricane Ian, approximately 1,500 electrical power restoration workers, vegetative debris contractors, and

support personnel (hereinafter collectively, “Recovery Workers”) established a staging area at the Flagler Executive Airport that amounted to an instant makeshift city, including sleeping quarters, dining and showering facilities, in addition to trucks, heavy equipment, and fueling stations.

13. The Airport Director and approximately six employees of Florida Power and Light oversaw and managed the setting up and operations of the staging area so that electric power could be restored to over forty thousand county residents and businesses as expeditiously as possible, as well as thousands of other customers outside of the county.

14. Notwithstanding the major presence of Recovery Workers at the Flagler Executive Airport during the state of emergency in the immediate aftermath and recovery from Hurricane Ian, Mr. Les Abend, vice president and registered agent of Pilot, attempted to direct the FPL site manager to move equipment of the Recovery Workers’ so that Pilot could remove its plane from its leased T-hangar and get it to a runway.

15. On November 21, 2022, the County transmitted a Notice of Termination to Pilot, prompting Pilot to request the County Administrator to reconsider or alternatively to extend the date of termination. The County Administrator responded to Pilot’s inquiries and denied Pilot’s requests. See Composite Exhibit B.

17. Despite having received the Notice of Termination and having actual knowledge of the termination, Defendant’s counsel advised the undersigned that notice was not transmitted by certified mail as required by the Lease Agreement.

18. In response, on December 7, 2022, County sent Pilot a notice of termination of the Lease Agreement via certified mail in accordance with the notice provisions of Section 17 of the Lease Agreement (hereinafter, the “Final Notice of Termination”) See Exhibit C, attached hereto.

19. The Final Notice of Termination required Pilot to vacate the leased premises by January 13, 2023, thus providing over three additional weeks to vacate than otherwise would have been available under the original termination notice.

20. The County's decision to terminate the Lease Agreement in strict accordance with its terms is an executive function of county government, within the scope of the public duties of County administration, and is not subject to judicial review. See *De Groot v. Sheffield*, 95 So. 2d 912, 914 - 915 (Fla. 1957)(finding that executive decisions of agencies done without notice or the opportunity to be heard are beyond the reach of the courts); accord *Fisher Island Holdings, LLC v. Miami-Dade County Commission on Ethics & Public Trust*, 748 So. 2d 381 (Fla. 3rd DCA 2000); see also *Lee County v. Harsh*, 44 So. 3d 239 (Fla. 2nd DCA 2010)(finding that decisions entirely within the sole discretion of a public official are executive, not quasi-judicial, in nature and therefore not subject to judicial review).

21. The termination clause in the Lease Agreement at issue is a bilateral obligation, supported by consideration, equally binding on, and equally benefitting, both Pilot and the County, providing either party the right to terminate the tenancy with or without cause by providing thirty days written notice and which termination cannot be appealed.

22. On January 10, 2023, Pilot, through Pilot's counsel, communicated to the undersigned counsel for the County that Pilot intended to dispute the Notice of Termination by refusing to vacate the T-hangar and that Pilot's counsel was authorized to accept service of process in an eviction proceeding.

23. On January 11, 2023, the undersigned transmitted a Notice of Default to Pilot and Pilot's counsel in accordance with Section 12(b) of the Lease Agreement (hereinafter, the "Notice of Default"). See Exhibit D, attached hereto. The Notice of Default advised that holding over

after January 13, 2023, is a default of the covenant to vacate upon termination of the Lease Agreement and would result in a tenancy at sufferance.

24. More than five days have elapsed since the termination of the Lease Agreement, and Pilot has not cured the default by vacating the leased T-hangar after receiving notice of the default, as required by Section 6.i of the Lease Agreement.

26. County is entitled to recovery of possession of the premises and an award of costs pursuant to Sections 83.231 and 83.251, Florida Statutes.

Unofficial Copy

PRAYER FOR RELIEF

WHEREFORE, County respectfully requests this Court:

- A. Enter judgment for the County to recover possession of the premises in accordance with Section 83.231, Florida Statutes;
- B. Award costs to the County pursuant to Section 83.251, Florida Statutes; and
- C. Award such other relief as this Court deems just and appropriate.

Respectfully submitted,

Sean S. Moylan Digitally signed by Sean S. Moylan
Date: 2023.01.30 10:26:18 -05'00'

Sean S. Moylan
Deputy County Attorney
Fla. Bar. No.: 0076251
Albert J. Hadeed
County Attorney
Fla. Bar. No.: 0180906

1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110
(386) 313-4005

ATTORNEYS FOR PLAINTIFF

**FLAGLER COUNTY AIRPORT
AIRCRAFT STORAGE HANGAR RENTAL AGREEMENT**

This HANGAR RENTAL AGREEMENT (the "Agreement") entered into this **March 13, 2018** by and between Flagler County, by and through Flagler Executive Airport ("Landlord") and Les Abend ("Tenant"). In consideration of the mutual covenants and agreements contained herein to be performed by the respective parties, and in consideration of the rental hereinafter designated to be paid, Landlord hereby rents the described premises unto Tenant, its successors, grantees and assigns, and Tenant does hereby hire and rent the below described property:

1. Description of the Hangar and Aircraft:

Landlord hereby rents to Tenant Hangar #13 (the "Hangar") located at Flagler Executive Airport, 201 Airport Road, Palm Coast, FL, 32164 (the "Airport"). The Hangar shall be used and occupied by Tenant for the storage/parking of the following described aircraft:

Make/Model/Color Piper Arrow, PA28R-200, Blue & White

FAA Registration No. N272LC

(the "Aircraft"), or any other similar aircraft owned or leased by Tenant (the "Substitute Aircraft"), provided Tenant has registered and obtained the written consent of Landlord to store the Substitute Aircraft in the Hangar, all provisions of this Agreement applicable to the Aircraft shall also be applicable to the Substitute Aircraft. For the purpose of this Agreement, "ownership" shall mean the named party on the current aircraft FAA registration. "Lease", or "Leased", shall mean the status of a written and active, exclusive right to operate the aircraft for a minimum of one year.

2. Term:

The term of this Agreement shall commence on **March 13, 2018** and shall continue in effect from month to month, being automatically renewed each month, unless terminated under the terms of this Agreement. However, the Landlord shall have the unilateral right to reevaluate the Agreement every ninety (90) days to assess the Tenants compliance with the Agreement.

3. Rent:

For the use of the Hangar, Tenant shall pay the Landlord the rental amount of is **Three hundred dollars and no cents (\$300.00)** plus 7% tax per month, payable in advance before the first day of each month. This rate shall be reviewed periodically by the Flagler County Board of County Commissioners and rental rates, plus all applicable taxes, shall be adjusted so as to maintain a fair rental rate based on change in the Consumer Price Index, all products as published by the United States Department of Commerce, an appraisal, or other means designated by the Flagler County Board of County Commissioners. Subsequent to such review, the monthly rental rate may be changed upon thirty (30) days notice to the Tenant. The Tenant shall also pay to the Landlord any sales tax and ad valorem taxes that may apply to the property. The Landlord shall forward any such tax funds to the appropriate taxing authority.

If Tenant makes any monthly payments more than ten (10) days after the payment is due and owing, Landlord reserves the right to assess five percent (5%) charge per month beginning with the eleventh (11th) day after payment is due. In the event that this Agreement is terminated on any date other than the first day or last day of a calendar month, the applicable rentals, fees and charges for that month shall be paid for said month on a pro-rata basis according to the number of days in that month during which the premises were enjoyed by the Tenant. Monthly rental checks shall be made payable to the Flagler Executive Airport and mailed or delivered to "Flagler Executive Airport, 201 Airport Road, Palm Coast, FL, 32164."

4. Security Deposit:

The amount of the security deposit to be held subject to the provisions of Section 6 is **Three hundred dollars and no cents (\$300.00)**.

5. Obligations of Landlord:

Landlord will maintain the structural components of the Hangar, including doors and door mechanisms, and Landlord will provide light, electricity and normal building maintenance without additional cost to Tenant, provided, however, that Landlord reserves the right to assess an additional fee for extra-ordinary consumption of utilities by the Tenant as shall be determined by Landlord.

Tenant shall have at all times the right of ingress to and egress from the rented premises. To ensure this right Landlord shall make all reasonable efforts to keep adjacent areas to the rented premises free and clear of all hazards and obstructions, natural or manmade.

6. Obligations of the Tenant:

a. Storage: The Hangar shall be used only for storage/parking of the above identified Aircraft unless otherwise approved in writing by the Landlord or his/her designated representative.

b. Building Maintenance and Repair: The Tenant shall maintain the Hangar in a neat and orderly condition, and shall keep the Hangar floor clean and clear of oil, grease, and or toxic chemicals. No hazardous or flammable materials will be stored within or about the Hangar unless stored within an EPA or local fire marshal approved container/cabinet. No boxes, crates, rubbish, paper or other litter that could cause or support combustion shall be permitted to accumulate within or about the Hangar. The Tenant shall be responsible for all damage to the leased premises caused by the Tenant's negligence or abuse. The Tenant shall be responsible for all damage to property, real or personal, located on or about the leased premises damaged as a result of the Tenant's negligence or abuse. In the event the Tenant does not promptly repair any damaged premises, or property, for which the Tenant is responsible, the Landlord reserves the right to make such repairs, at the Tenant's expense, which shall become due and payable as part of the Tenant's next monthly rental payment. Any and all repairs, maintenance, or improvements made by Tenant shall be accomplished in accordance with the Flagler County Building/Fire Codes. Tenant shall make no structural, electrical, or other modification to the premises without first obtaining Landlord's written permission and obtaining permit(s), if required.

c. Use of Hangar. The hangar is for storage of Tenant's aircraft, and is not to be used as a commercial repair shop or maintenance shop. Painting, other than minor touch up of aircraft by the tenant, and major aircraft repairs are prohibited within the Hangar unless otherwise approved by the landlord and the local fire marshal. Storage of boats, campers, or other non-aviation items on the premises may be only allowed with the written permission of the Airport Director or his/her designated representative except that the Tenant will be allowed to park his or her car in/on the rented premises during such time that the Tenant is using the aircraft. Maintenance activities, including those provided by Federal Aviation Regulations, may be permitted subject to approval by the Landlord and the appropriate Fire Official.

d. Commercial Activity: Tenant shall conduct no commercial activity of any kind whatsoever in, from or around the Hangar.

e. Compliance with Laws: Tenant agrees to and shall comply with all applicable ordinances, rules, and regulations established by Federal, State, or Local government agency or by Landlord. Tenant further expressly represents, covenants, warrants, guarantees, and agrees that it shall fully comply with all Federal, State and local laws, ordinances, rules, and regulations protecting the environment. Tenants agree to keep themselves informed of future changes in the existing environmental laws.

f. **Indemnification:** Tenant hereby expressly agrees to indemnify and hold Landlord harmless from and against any and all liability for fines and physical damage to property or injury or deaths to persons, including reasonable expenses and attorney's fees, arising from or resulting out of, or in any way caused by, Tenant's, or Tenant's agents, employees or invitees, negligence or failure to comply with any and all applicable Federal, State, and local laws, ordinances, regulations, rulings, orders and standards, now or hereafter promulgated. Tenant agrees to cooperate with any investigation or inquiry by any governmental agency regarding possible violation of any environmental, FAA, or other law or regulation.

g. **Fire Extinguisher.** Other applicable guidance is contained in NFPA 409 and the Florida Building Codes which can be viewed in the Airport office. The Tenant shall maintain at all times, in the Hangar, an approved five pound dry chemical fire extinguisher suitable for use on Type "A", "B", and "C" fires with current inspection certificate from an approved fire equipment company or the local Fire Inspector affixed.

h. **Access.** The Landlord, local fire official or on-site airport director, designated by the Landlord reserves the right at any time to request entry into the hangar for security, fire, or other inspections. The Landlord reserves the right to attain immediate access into the hangar by whatever means may be necessary in the event of an emergency, or suspected emergency (fire, smoke, fumes, etc.). Landlord shall have the right to enter into the Hangar for any reason with twenty-four (24) hours prior notice to the Tenant. If any deficiency in compliance with this Agreement is found, including any fire or accident hazard, Tenant shall be so informed, and shall within five (5) days of notice rectify the hazard.

i. **Termination.** On the termination of this Agreement, by expiration or otherwise, Tenant shall immediately surrender possession of the Hangar and shall remove the Aircraft and all other property therein, leaving the Hangar in the same condition as when received, ordinary wear and tear excepted. Tenant shall be liable for any and all damage to the Hangar caused by Tenant's use, including, but not limited to, bent or broken interior walls, damage to unsealed floors due to fuel oil spillage, or doors damaged due to improper use or negligence by Tenant.

j. **Regulatory Review.** Copies of airport rules and pertinent regulations can be viewed at the Flagler County Airport office.

7. Sub-Lease/Assignments:

Tenant agrees not to sub-lease the Hangar or to assign this Agreement without prior written approval of Landlord. The parking of aircraft not owned or leased by Tenant in the Hangar shall constitute a sub-lease.

8. Condition of Premises:

Tenant shall accept the Hangar in its present condition without any liability or obligation on the part of Landlord to make any alterations, improvements or repairs of any kind on or about said Hangar.

9. Alterations:

Tenant covenants and agrees not to install any fixtures or make any alterations, additions or improvements to the Hangar without the prior written approval of Landlord. All fixtures installed or additions and improvements made to the Hangar shall become Landlord's property and shall remain in the Hangar at the termination of this Agreement without compensation or payment to Tenant.

10. Insurance:

Tenant agrees to maintain, at its own expense, for the benefit of itself and Landlord, as a named additional insured, insuring against liability for damage or loss to the Aircraft or other property, and against liability for personal injury or death, arising from acts or omissions of Tenant, its agents and employees. Such policy or policies shall contain a provision whereby Landlord must receive at least thirty (30) days' prior written notice of any cancellation of Tenant's insurance coverage. Prior to the commencement of this Agreement, Tenant shall deliver to Landlord certificates or binders evidencing the existence of the insurance required herein. Failure to provide proof of the insurance at any time, to the satisfaction of Landlord shall be grounds for termination of the Rental Agreement. Every aircraft owned or operated by any Tenant and stored in the Hangar shall have insurance coverage in amounts not less than the following:

- (a) Bodily Injury – \$1,000,000 and
- (b) Property Damage – \$300,000 per accident.

11. Casualty:

In the event the Hangar or the means of access thereto, shall be damaged by fire or any other cause, the rent payable hereunder shall abate if the Hangar is rendered unusable by such damage. If the Hangar is rendered unusable and Landlord elects to repair the Hangar, the rent shall abate for the period during which such repairs are being made, provided the damage was not caused by the acts or omissions of Tenant, its employees, agents or invitees. If such damage was caused by the Tenant, its employees, agents or invitees the rent shall not abate. If the Hangar is rendered unusable and Landlord elects not to repair the Hangar, this Agreement shall terminate.

12. Default:

The Tenant shall be in default of this Agreement if:

- (a) Tenant shall default in the payment of any rental payment hereunder;
- (b) Tenant shall default in the performance of any other covenant herein if such default continued for five (5) days after notice from Landlord;
- (c) A petition is filed by or against Tenant under the Bankruptcy Act or any amendment thereto (including a petition for reorganization);
- (d) Tenant assigns his/her property for the benefit of creditors; or
- (e) Landlord determines after a reevaluation the Tenant is not in compliance with the terms of the Agreement on a routine/consistent basis.

In the event of any breach of this Agreement by the Tenant, Landlord shall, at its option and without further notice have the right to terminate this Agreement and to remove the Aircraft and any other property of Tenant from the Hangar using such force as may be necessary, without being deemed guilty of trespass, breach of peace or forcible entry and detainer, and Tenant expressly waives the service of any notice. Exercise by Landlord of either or both of the rights specified above shall not prejudice Landlord's right to pursue any other legal remedy available to Landlord in law or equity including but not limited to court costs and attorneys fees for bringing legal action against the Tenant.

13. Thirty (30) Day Termination:

Either party to this Agreement shall have the right, with or without cause, to terminate the Agreement by giving thirty (30) days prior written notice.

14. Nonexclusive Rights (Optional):

Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Agreement are nonexclusive and the Landlord herein reserves the right to grant similar privileges to another Tenant or other Tenants on other parts of the airport.

15. Governing Law/Venue:

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any action shall be Flagler County, Florida.

16. Relationship of Parties:

Tenant shall never at any time during the term of this Agreement become the agent of Landlord, and Landlord shall not be responsible for the acts or omissions of Tenant or its employees, agents or invitees.

17. Notice:

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by certified mail, return receipt requested:

- (a) If to Landlord, addressed to: Airport Director
Flagler Executive Airport
201 Airport Road
Palm Coast, FL 32164
- (b) If to Tenant, addressed to: Pen and Pilot, Inc
18 Candlewood Hts.
New Milford, CT 06776
Phone Number: 203-482-4454
Email: lesabend@sbcglobal.com

(For purposes of twenty-four (24) hour notice, this number shall be kept current by Tenant.)

Notices shall be deemed to have been received on the date of receipt as shown on the return receipt.

18. Integration:

This Agreement constitutes the entire Agreement between the parties, and as of its effective date supersedes all prior independent agreements between the parties related to the renting of the Hangar. Any change or modification hereof must be in writing signed by both parties.

19. Waiver:

The waiver by either party of any covenant or condition of this Agreement shall not thereafter preclude such party from demanding performance in accordance with the terms hereof.

20. Severability:

If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect nearly as possible in accordance with the original intent of the parties.


21. Successors Bound:


This Agreement shall be binding on and shall insure to benefit of the heirs, legal representatives, and successors of the parties hereto.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

22. Radon Gas Disclosure:

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

Unofficial Copy!

LANDLORD SIGNATURE: 
NAME (PRINTED): Roy Sieger
TITLE: Airport Director

TENANT SIGNATURE: 
NAME (PRINTED): Les Abend, Vice President
DATE: 03/19/2018

Flagler Executive Airport
201 Airport Road
Palm Coast, FL 32164



www.flaglercountyairport.com

Phone: (386) 313-4220

Fax: (386) 437-7459

November 21, 2022

Pen and Pilot, Inc.
Attn: Les Abend
114 Seaside Landings Drive
Flagler Beach, FL 32164

Re: NOTICE OF TERMINATION OF AIRCRAFT STORAGE HANGAR RENTAL
AGREEMENT

Mr. Abend,

Flagler County, by and through the Flagler Executive Airport, entered into an Aircraft Storage Hangar Rental Agreement with you on March 13, 2018. Pursuant to Section 13 of the Agreement, this letter is to notify you that the Agreement shall terminate effective December 21, 2022. Please remove your aircraft and all contents from Hangar #13 by COB on December 21, 2022. After inspection, your deposit will be returned to the address above.

We remain available to discuss any questions you may have regarding the vacating of the premises. Please feel free to contact me at 386-313-4220 or rsieger@flaglercounty.gov.

Sincerely,



LeRoy W. Sieger, Jr.
Airport Director

c: Heidi Petito, County Administrator
Sean Moylan, Deputy County Attorney

Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien Jr.
District 5

From: Heidi Petito <hpetito@flaglercounty.gov>
Sent: Monday, December 5, 2022 4:27:34 PM
To: Les Abend <lesabend@sbcglobal.net>
Cc: Luci Dance <ldance@flaglercounty.gov>; Jorge Salinas <jsalinas@flaglercounty.gov>
Subject: RE: Hangar termination

Good afternoon Mr. Abend,

Thank you for your patience and for allowing me the time to review the issues you've raised. I have had an opportunity to consult with the Airport Director and our Legal Department and will attempt to address your points.

First and foremost, I have examined your lease, and it clearly states in a standalone provision that the lease may be terminated by either party without cause upon thirty (30) days written notice. It is important to note, that this is a mutual agreement benefiting both yourself and the County equally. It exists so that T-hangar tenants are not locked into a lease they don't want and are free to terminate the lease at any time without cause upon thirty days' notice. In contrast, non-T-hangar tenants at the Airport who enter long term (and more expensive) space use agreements, are locked in for a term even after the usefulness of the lease has ended. So, this is not a situation where you are being deprived of a right. Your rights are being honored by the County adhering to the terms of the lease, this is an agreement that you entered freely and benefited from.

I gather from your last email that you feel Mr. Sieger has little oversight or too much discretion. Please understand, I am aware of the issues he faces and how he addresses them as we meet on a regular basis. As you know, he is also bound by Airport rules and regs, FAA rules, and the conditions of the many grant agreements he's been able to obtain. With that being said, I and the commissioners have full confidence in Mr. Sieger's operation of the Airport, I don't typically involve myself in his daily affairs or any other department heads for that matter, and only involve myself when needed.

In addition, the now-disbanded Airport Advisory Board never had any role in determining the termination of leases as you suggested in your email yesterday afternoon. Even if that board still existed, it would not have the authority to change the terms of your lease. You also refer to Section 6(h) of your lease which provides five days' time to cure problems, but as you can see when you read that provision, it applies to emergency safety situations such as fire hazards. It does not alter or amend the termination without cause provision.

I realize this is not the response you had hoped for from me, but I am certain that we have honored your lease and have now provided you this explanation. You have had the termination notice for nearly two weeks now. Please abide by the notice in accordance with the agreed upon lease terms and remove your property from the Airport premises by the date indicated in the notice.

Regards,

Heidi

Heidi Petito
County Administrator

E: hpetito@flaglercounty.gov | V: 386-313-4125 | W: www.flaglercounty.gov



Flagler County Board of County Commissioners
1769 E. Moody Blvd., Bldg 2
Jennett, FL 32110



The mission of Flagler County is to provide high-quality services through a responsive workforce committed to excellence, integrity, in collaboration with the cities and to act as a fiscally responsible steward.

From: Les Abend <lesabend@sbcglobal.net>
Sent: Monday, December 5, 2022 11:57 AM
To: Heidi Petito <hpetito@flaglercounty.gov>
Cc: Luci Dance <ldance@flaglercounty.gov>
Subject: Hangar termination

Ms. Petito,

Hope you had a pleasant weekend. I noticed that you may have attempted to call on Friday night; perhaps it was accidental since no message was left. In any case, I was wondering if you've had additional time to further consider my situation. Early in our phone conversation on November 23rd, you did mention the possibility of delaying the termination, especially since the Holidays are almost upon us. An additional 90 days would help resource alternatives for other hangars if a resolution at Flagler Executive Airport is not attained.

Thanks again for your time.

Sincerely,

Les
lesabend@sbcglobal.net
386-264-8318

Flagler Executive Airport
201 Airport Road
Palm Coast, FL 32164



www.flaglercountyairport.com

Phone: (386) 313-4220

Fax: (386) 437-7459

December 7, 2022

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Pen and Pilot, Inc.
Attn: Mr. Les Abend
18 Candlewood Hts.
New Milford, CT 06776

Pen and Pilot, Inc.
Attn: Mr. Les Abend
114 Seaside Landings Drive North
Flagler Beach, FL 32164

Dennis K. Bayer, Esq.
Attn: Mr. Dennis Bayer
109 South 6th Street, Suite 200
Flagler Beach, FL 32136

**Re: NOTICE OF TERMINATION OF AIRCRAFT STORAGE HANGAR RENTAL
AGREEMENT**

Mr. Abend,

Flagler County, by and through the Flagler Executive Airport, entered into an Aircraft Storage Hangar Rental Agreement with you on March 13, 2018. Pursuant to Section 13 of the Agreement, this letter is to notify you that the Agreement shall terminate effective January 13, 2023. Please remove your aircraft and all contents from the Airport premises by COB on January 13, 2023. After inspection, your deposit will be returned to your local address above.

We remain available to discuss any questions you may have regarding the vacating of the premises. Please feel free to contact me at 386-313-4220 or rsieger@flaglercounty.gov.

Sincerely,

LeRoy W. Sieger, Jr.
Airport Director

c: Heidi Petito, County Administrator
Sean Moylan, Deputy County Attorney

Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien Jr.
District 5

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Dennis H. Bayer, Esq.
 Attn: Dennis Bayer
 109 South 6th St., Suite 200
 Taylor Beach, FL 32136



9590 9402 7470 2055 2859 77

2. Article Number (Transfer from carrier label)
 7020 1290 0000 2698 4859

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 Karen 12/9

D. Is delivery address different from Item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | |
| <input type="checkbox"/> Mail Restricted Delivery | |
- (over \$500)

Unofficial Copy

County Attorney
1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



Plaintiff Exhibit D
www.flaglercounty.gov
Phone: (386) 313-4005
Fax: (386) 313-4105

January 11, 2022

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Les Abend, Pen and Pilot, Inc.
c/o Dennis K. Bayer, Esq.
109 South 6th Street, Suite 200
Flagler Beach, FL 32136

Re: NOTICE OF DEFAULT

Dear Mr. Bayer:

I am in receipt of your communication advising the County of Mr. Abend's intent to *not* vacate his leased T-Hangar by January 13, 2023, as required by the County's notice of termination dated December 7, 2022. The lease could not be more clear:

"Either party to this Agreement shall have the right, with or without cause, to terminate the Agreement by giving thirty (30) days prior written notice."

Flagler County entered into this lease agreement with your client in good faith. The termination clause is a mutual covenant. Had Mr. Abend availed himself of this termination provision, the County would have no choice but to honor it and could not force his continued tenancy. The same is true for your client in regard to the County's termination. Nothing in the lease agreement provides for a challenge to the 30-day termination, much less to do so by wrongfully retaining possession of public property. Mr. Abend's indication of his intent to breach the agreement and follow whatever unwritten terms he unilaterally conjures demonstrates a haughty disdain for the Airport and for fair dealing. I hope he reconsiders and honors what he previously agreed to in writing. However, if he follows through on the threat against the Airport, be aware that the County reserves the right to all legal remedies including collecting double rent without consenting to Mr. Abend's possession of the premises and suing for eviction.

This correspondence constitutes notice pursuant to Section 12(b) of the lease agreement. Any holding over and remaining on the leased premises after January 13 amounts to a tenancy at sufferance and is a flagrant default of Mr. Abend's covenant to vacate the premises upon termination of the lease.

Sincerely,

Sean S. Moylan
Deputy County Attorney

cc: Heidi Petito, County Administrator
Roy Sieger, Airport Director
Les Abend, Pen and Pilot, Inc.

Andy Dance
District 1

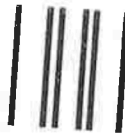
Greg Hansen
District 2

David Sullivan
District 3

Leann Pennington
District 4

Donald O'Brien Jr.
District 5

UNITED STATES POSTAL SERVICE

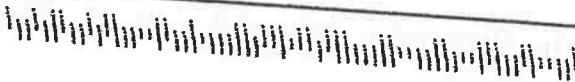


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Sean Moylan
Deputy County Attorney
Flagler County Board of
County Commissioners
1769 E. Moody Blvd, Bldg 2
Bunnell, FL 32110

Unofficial Copy



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. Les Abend, Pen and
Pilot, Inc
c/o Dennis K. Bayer, Esq
109 S. 10th St, Ste 200
Flagler Beach, FL
32136

2. Article Number
(Transfer from service label)

7015 0640 0004 5024 8000

COMPLETE THIS SECTION ON DELIVERY

A. Signature *D. Prentiss* Agent
 Addressee

B. Received by (Printed Name) *D. Prentiss* C. Date of Delivery *1/13*

D. Is delivery address different from item 1? Yes
 No
If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes