

PATIO SHELTER HANGAR
ANNUAL LEASE AGREEMENT

THIS PATIO SHELTER HANGAR LEASE AGREEMENT, is entered into and effective this **Date** and will automatically terminate effective **Date** by and between the **BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO**, a political subdivision of the State of Colorado (“BOCC”) and **Name or Business Name** (“Lessee”).

RECITALS

A. The BOCC owns and operates the Aspen/Pitkin County Airport, located in Pitkin County, Colorado (“Airport”).

B. Lessee, **Name or Business Name**, wishes to lease a patio shelter hangar number _____, located on the Airport, as shown on Exhibit A, and to park the aircraft with tail number **Tail Number** owned or leased by the Lessee in that hangar.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises and representations set forth below, the parties hereby agree as follows:

ARTICLE I. LEASED PREMISES

A. The BOCC hereby leases to Lessee, and Lessee hereby leases from the BOCC, a patio shelter hangar on the Airport designated as Patio Hangar Space No. ____ of the following described size ____, pricing to be as shown as **Exhibit A** and incorporated herein by this reference when completed by the BOCC, and any and all rights, privileges and appurtenances herein described as belonging to said space, subject, however, to all restrictions, Federal regulations and Airport regulations as may be promulgated from time to time. The Patio Hangar Space shall hereinafter be referred to as the “Leased Premises”.

B. Lessee is also granted the nonexclusive right to utilize such Airport runways, taxiways, and public use aprons (“airfield areas”), and such other rights of way and access across the Airport (“Airport rights of way”), as necessary for ingress and egress to its Leased Premises, and to the extent necessary to enable Lessee to utilize the Leased Premises for the purposes discussed herein. Lessee's use of said airfield areas and other Airport rights of way shall be on a nonexclusive, non-preferential basis with other authorized users thereof. Lessee shall abide by all directives of the BOCC, the Federal Aviation Administration (“FAA”) and any other governmental entity having jurisdiction over the Airport, governing their use of said airfield areas and other Airport rights of way, either alone or in conjunction with other authorized users thereof. Furthermore, the BOCC may from time to time increase or decrease the size or capacity of any airfield areas and other Airport rights of way or facilities (other than the Leased

Premises), make alterations thereto, reconstruct or relocate them, modify the design and type of construction thereof, or close them, or any portion or portions of them, either temporarily or permanently, without being liable for any damages that may be caused Lessee thereby, and without being deemed to have terminated this Agreement as a result thereof.

C. BOCC reserves the right to subordinate the provisions of this Lease to the provisions of any future agreement between the BOCC and the United States Government relative to the operation, maintenance or development of the Airport which agreement may be required as a condition precedent to the expenditure of Federal Funds for the development, maintenance or operation of the Airport, if such an Agreement is entered into between the County and the United States Government, the parties agree to execute an amendment to this Lease so as to remove any material inconsistencies between this document and any agreement with the United States Government. Furthermore, in the event that by reason of any such agreement with the United States Government as aforesaid, it becomes necessary to modify, relocate or remove any improvements or other structures situated on the Leases Premises, or to move the Leased Premises itself, Lessee agrees to modify, relocate or remove any such improvements or structures, or to move to a new location for the Leased Premises, as directed by BOCC. If, due to the conditions of any agreement between the BOCC and the United States government, the Leased Premises cannot be relocated at the Airport, the BOCC has the right to terminate this lease upon sixty (60) days notice to the Lessee by paying to the Lessee the then unamortized cost of the Lease as of the date of termination.

ARTICLE II. GRANT OF USE

A. The BOCC hereby grants Lessee the exclusive right to use the Leased Premises to park aircraft owned or leased by Lessee, or by any entity in which the Lessee has a bona fide ownership interest, and Lessee's automobile when the aircraft is in use. The Lessee understands that restrictions, including any prohibition required by County, state or federal law, may apply to the parking of automobiles. The restrictions will be at the discretion of the Airport Director. All uses by the Lessee shall be in compliance with the rules and regulations of the Airport and with all FAA regulations. The Lessee shall always keep the BOCC advised of the type of aircraft stored in the Leased Premises, and the tail number of that aircraft.

B. Lessee shall not use, nor permit others to use, the Leased Premises, and any improvements thereon, to store automobiles or equipment unrelated to Lessee's use of the Leased Premises under this Agreement; to fuel any aircraft or vehicles in any manner that would violate the regulations of the Airport, or for any other purpose than Lessee's aeronautical services and activities authorized by Subparagraph A above, unless the BOCC authorizes Lessee, in writing, to use the Leased Premises, and any improvements thereon, for said additional purposes.

ARTICLE III. TERM

The term of this Patio Shelter Hangar Lease Agreement shall be deemed to commence at 12:01 a.m. on **Date** and shall terminate at midnight on **Date**. The Lessee may terminate the Lease

upon sixty (60) days notice to the BOCC, provided that in that event, the Lessee shall not be entitled to the return of any prepaid unamortized cost of the Lease.

ARTICLE IV. RENT AND OTHER FEES

A. Rent.

1. The monthly rent for the Leased Premises shall be: **Dollar Amount**. The initial payment shall consist of the first month's rent, the last month's rent and a security deposit equivalent to one month's rent. Rent will be paid in advance and will be due monthly on the first of the month. The Lessor may increase the monthly rent once per calendar year. Any changes made in the monthly rent will be noticed prior to January 1st of each calendar year and shall be in effect for the remainder of that calendar year.

B. Payment of Fees.

1. All billing for monthly payments for ground rent and other costs will be made by Atlantic Aviation, on behalf of the BOCC. Payment will be made to Atlantic Aviation, who will forward the collected payments to the BOCC.

C. Interest. Any ground rental or other monies owed to the BOCC under this Lease Agreement which are not received when due, or any monies paid by the BOCC on Lessee's behalf which were Lessee's responsibility under this Lease Agreement, shall accrue interest at the rate of one and one-half percent (1½%) per month compounded monthly from the due date or date when the BOCC made payment on Lessee's behalf, until receipt of full payment from Lessee. Any payments received shall be applied first to accrued interest, and then to the reduction of the actual amounts owed by Lessee. The BOCC has the option to draw money from security deposit to satisfy past due payments or reimbursements. If the security deposit is drawn down then it must be made whole by the first of the next calendar month.

ARTICLE V. IMPROVEMENTS

During the term of this Lease, Lessee shall have no right to construct any improvements, alterations, or additions to the Leased Premises, or to any improvements presently located thereon, in furtherance of Lessee's authorized use of the Leased Premises without the written consent of the Airport Director, which may be withheld at the discretion of the Airport Director.

ARTICLE VI. MAINTENANCE AND UTILITIES

A. During the term of this Lease, Lessor shall, at its own expense, maintain and keep all portions of the Leased Premises, and any improvements, fixtures and equipment which are part of the Leased Premises, in good operating physical condition and repair.

B. During the term of this Lease, Lessee agrees to keep Leased Premises in a safe and clean condition, and to not permit any unsightly accumulation of wreckage, debris, or trash where visible to the general public visiting or using the Airport.

ARTICLE VII. DAMAGE TO AIRPORT

Lessee shall be liable for any damage to the Airport and to any improvements thereon caused by Lessee, its officers, agents, employees, contractors, subcontractors, assigns, guests, invitees, or anyone acting under its direction and control; ordinary wear and tear excepted. All repairs for which Lessee is liable will be conducted under the direction of the BOCC.

ARTICLE VIII. DEFAULT AND REMEDIES

A. Events of Default. The following shall constitute defaults by Lessee:

1. Failure to pay monthly operational fees or electrical engine heating fees, or any other monies owed hereunder, or under any other agreements between the parties, when such monies are due;
2. Any other failure in the performance of any obligation required herein;
3. Lessee's general assignment of its rights, title and interest hereunder for the benefit of creditors; or the appointment of a receiver for Lessee's property if the appointment is not vacated within ninety (90) days;
4. Filing by or against Lessee in any court pursuant to any statute either of the United States or of any state, of a petition of bankruptcy or insolvency, or reorganization, or the appointment of a receiver or trustee, of all or a portion of Lessee's property if, within sixty (60) days after commencement of any such proceedings involving Lessee, such petition shall not have been dismissed;
5. Failure to comply with all statutes, rules, regulations and directives promulgated by the BOCC and other appropriate local, state and federal entities having jurisdiction over the Airport, including the Federal Aviation Administration ("FAA") and the Environmental Protection Agency. Without limiting the foregoing, Lessee agrees to utilize its Leased Premises, and the common areas of the Airport, and all improvements thereon, in compliance with the Federal Aviation Regulations, including all amendments hereafter made, embodied in 49 C.F.R. Parts 107 and 108, which are specifically incorporated and made a part of this Lease Agreement. Lessee further agrees to perform all of its operations authorized hereunder in accordance with all of the terms and conditions of the rules and regulations for the Airport as the same may be amended from time to time.

B. Remedies Upon Default. Upon the occurrence of any of the events of default set forth in Subparagraph A above, the BOCC may exercise any one or more of the following remedies. These remedies shall be cumulative and not alternative:

1. The BOCC may sue for specific performance;
2. The BOCC may sue for recovery of all damages incurred by the BOCC, including incidental damages, consequential damages, if any, and reasonable attorneys' fees;
3. The BOCC may terminate this Lease Agreement and, at the option of the BOCC, any other agreement in effect between the parties. The termination of these agreements, however, shall only be effective upon written notice of same provided by the BOCC to Lessee. In no event shall this Lease be construed to be terminated unless and until such notice is provided. The termination may be effective immediately upon provision of said notice, or at any other time specified in the notice. If this Lease is terminated, Lessee shall continue to be liable for:
(a) the performance of all terms and conditions, including the payment of all monthly ground rent and all other monies due or accrued hereunder prior to the effective date of said termination; and
(b) all damages, including attorneys' fees and other expenses of collection, incurred as a result of any default.
4. Without terminating the Lease by so doing, and without further notice to Lessee, BOCC may re-enter the Leased Premises with or without process of law, repossess the Leased Premises and all fixtures and improvements thereon, and remove Lessee and any third parties who may be occupying or within the Leased Premises and all of their respective personal property, by using either such reasonable force as may be necessary, summary proceedings, ejectment, or any other means, the BOCC, in its sole discretion, deems appropriate without being deemed guilty of any trespass, eviction, or forcible entry and detainer by so doing. In such case, the BOCC shall be obligated to attempt, in good faith, to negotiate the reletting of the Leased Premises, and any improvements thereon, or any portion thereof, on behalf of Lessee, for such period of time and upon such terms and conditions as the BOCC deems appropriate. The BOCC shall in no way be obligated under the terms of this subparagraph to relet all or any portion of the Leased Premises, or any improvement thereon, to any third party, or upon terms and conditions, that are not acceptable to the BOCC, or which the BOCC, in its sole discretion, does not feel to be in the best interests of the Airport. Lessee hereby expressly authorizes BOCC to make any reasonable repairs or renovations necessary to relet the Leased Premises, or any improvements thereon, on Lessee's behalf. Assuming BOCC attempts to relet the Leased Premises, in good faith, whether or not BOCC is able to relet the Leased Premises, Lessee shall remain liable for the performance of all terms and conditions of the Lease and the payment of all monies due under the Lease for the remainder of the leasehold term, although Lessee shall receive credit for any monies paid or conditions performed as a result of reletting. Lessee shall also be responsible for reimbursing the BOCC for all costs and expenses the BOCC incurs in reletting or attempting to relet the Leased Premises, including reasonable repair and renovation costs. Finally, if, as a result

of such reletting, BOCC becomes entitled to receive excess rentals or other benefits over and above what BOCC would have been entitled to receive under this Lease Agreement, BOCC shall be entitled to retain all such surplus rentals and other benefits, and Lessee shall have no rights or interest therein.

5. The BOCC may utilize any other remedy provided by law or equity as a result of any events of default.

C. Force Majeure. Any defaults by either of the parties in the performance of any of the terms and conditions contained herein shall be excused where due to force majeure, which, among other things, shall include natural catastrophes such as hurricanes, tornadoes, or floods, acts of God, acts of war, and governmental statutes, regulations, directives, or contracts governing the operation of the Airport, with which the BOCC or Lessee must comply.

ARTICLE IX. COMPLIANCE WITH STATUTES, RULES, REGULATIONS, DIRECTIVES

A. Lessee shall observe and obey all statutes, rules, regulations and directives promulgated by the BOCC and other appropriate local, state and federal entities having jurisdiction over the Airport, including the Federal Aviation Administration ("FAA") and the Environmental Protection Agency. Without limiting the foregoing, Lessee agrees to utilize its Leased Premises, and the common areas of the Airport, and all improvements thereon, in compliance with the Federal Aviation Regulations, including all amendments hereafter made, embodied in 49 C.F.R. Parts 107 and 108, which are specifically incorporated and made a part of this Lease Agreement. Lessee further agrees to perform all of its operations authorized hereunder in accordance with all of the terms and conditions of the rules and regulations for the Airport as the same may be amended from time to time. If there is any inconsistency between the terms of this Agreement, and the rules and regulations for the Airport, the terms of this Agreement shall control. Lessee further agrees to comply with all verbal and written directives of the Airport Director regarding Lessee's use of the Leased Premises, the Airport's airfields and ramps, and other common areas elsewhere on the Airport.

B. Should Lessee, its officers, agents, employees, customers, guests, invitees, assigns, contractors or subcontractors violate any local, state or federal law, rule or regulation applicable to the Airport, and should said violation result in a damage award, citation or fine against the BOCC, then Lessee shall fully reimburse the BOCC for said damage award, citation or fine and for all costs and expenses, including reasonable attorneys' fees, incurred by BOCC in defending against or satisfying the award, citation or fine.

ARTICLE X. INSPECTION

At any time, the BOCC may inspect the Leased Premises, and any improvements, fixtures or equipment thereon.

ARTICLE XI. QUIET ENJOYMENT

The BOCC expressly covenants and represents that upon payment of fees when due and upon performance of all other conditions required herein, Lessee shall peaceably have, possess and enjoy the Leased Premises and other rights herein granted, without hindrance or disturbance from the BOCC, subject to the BOCC's various rights contained elsewhere in this Agreement.

ARTICLE XII. REPRESENTATIONS

The BOCC expressly covenants and represents that it is the owner of the Leased Premises, and has the right and authority to enter into this Lease Agreement and grant the rights contained herein to Lessee.

With respect to Lessee, the undersigned warrants and represents that he is authorized to execute this Lease on Lessee's behalf and shall be bound as a signatory to this Lease by his execution of this Lease.

ARTICLE XIII. WAIVER

Should Lessee breach any of its obligations hereunder, the BOCC nevertheless may thereafter accept from Lessee any payment or payments due hereunder, and continue this Lease Agreement in effect, without in any way waiving the BOCC's right to exercise and enforce all available default rights hereunder, or any other remedies provided by law, for said breach. In addition, any waiver by either party of any default, breach or omission of the other under this Lease Agreement shall not be construed as a waiver of any subsequent or different default, breach, or omission.

ARTICLE XIV. NOTICE

Any notice required or permitted under this Agreement shall be in writing and shall be provided by electronic delivery to the e-mail addresses set forth below *and* by one of the following methods 1) hand-delivery or 2) registered or certified mail, postage pre-paid to the mailing addresses set forth below. Each party by notice sent under this paragraph may change the address to which future notices should be sent. Electronic delivery of notices shall be considered delivered upon receipt of confirmation of delivery on the part of the sender. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

To Pitkin County:
Aspen/Pitkin County Airport
0233 East Airport Road
Aspen, CO. 81611
procurement@aspensairport.com

With Copies to:
Pitkin County Attorney's Office
530 E. Main Street, Suite 301
Aspen, CO 81611
attorney@pitkincounty.com

To Lessee:

Name or Business Name

Address

City, State, Zip

e-mail address

ARTICLE XV. RELATIONSHIP OF PARTIES

It is understood that the BOCC is not in any way or for any purpose partner or joint venturer with, or agent of, Lessee in its use of the Leased Premises or any improvements thereon.

ARTICLE XVI. SEVERABILITY

If any term or condition of this Lease Agreement or the application thereof to any person or event shall to any extent be invalid and unenforceable, the remainder of this Lease Agreement and the application of such term, covenant or condition to persons or events other than those to which it is held invalid or unenforceable shall not be affected and each term, covenant and condition of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law, the intention being that the various sections and provisions hereof are severable.

ARTICLE XVII. SUCCESSORS

The provisions, covenants and conditions of this Lease Agreement shall bind, and inure to the benefit of, the legal representatives, successors and assigns of the parties hereto.

ARTICLE XVIII. ATTORNEYS' FEES, COSTS AND EXPENSES OF LITIGATION

In the event of any action, including court proceedings, mediation, arbitration or other, is commenced or undertaken to enforce or construe, interpret this Lease Agreement, the substantially prevailing party shall be entitled to its reasonable attorneys fees, costs and expenses.

ARTICLE XIX. ASSIGNMENT AND SUBLEASE

Lessee shall not assign its interest nor sublease the Leased Premises.

ARTICLE XX. SURRENDER UPON TERMINATION

Upon the expiration or sooner termination of this Lease Agreement, for any reason whatsoever, Lessee shall peaceably surrender to the BOCC possession of the Leased Premises, together with any improvements, fixtures or personal property of the BOCC thereon, in as good a

condition as the Leased Premises, and improvements, fixtures and personal property were initially provided to Lessee, ordinary wear and tear excepted, without any compensation whatsoever, and free and clear of any claims of interest of Lessee or any other third party whomsoever. Lessee shall restore the Leased Premises, and other improvements from which the fixtures or property were taken (if the improvement involved is not also being removed from the Leased Premises), to good condition and repair.

ARTICLE XXI. HAZARDOUS WASTE/ENVIRONMENTAL POLLUTION

Lessee shall be solely responsible for the prevention, control and cleanup of all fuel, gas and oil leaks and spills, hazardous waste, lavatory waste and other environmental pollution caused by Lessee's operations in the Leased Premises, in accordance with applicable local, state and federal laws and regulations, and it shall hold the BOCC harmless from said prevention, control and cleanup costs and obligations. The parties each reserve their various claims and defenses against one another for the cleanup of any environmental pollution that occurred on the Leased Premises prior to the commencement date of Lessee's leasehold term hereunder. It is noted that in the ordinary course of storing and parking aircraft that some minor fuel and oil spillage shall occur and that Lessee shall have no extraordinary obligation for clean up of such spills.

ARTICLE XXII. EMINENT DOMAIN

In the event that all or any portion of the Leased Premises is taken for any public or quasi-public purpose by any lawful condemning authority, including the BOCC, exercising its powers of eminent domain (or in the event that all or any portion of the Leased Premises is conveyed to such a condemning authority in settlement and acceptance of such condemning authority's offer to purchase all or any portion of the Leased Premises in connection with its threat to take said areas under power of condemnation or eminent domain), the proceeds, if any, from such taking or conveyance shall be allocated between the BOCC and Lessee according to the applicable Colorado law of eminent domain; provided, however, that in the event of condemnation, the Lessee shall be compensated no less than the unamortized cost of the Lease as of the date of condemnation. If a portion of the Leased Premises is so taken or sold, and as a result thereof, the remaining part cannot be used reasonably to continue the authorized purposes contemplated by this Lease Agreement as set forth in Article II in an economically viable manner, then this Lease Agreement shall be deemed terminated at the end of a period of sixty (60) days following said taking or conveyance. In that event and at that time, Lessee shall surrender the Leased Premises to the BOCC and all of the BOCC's fixtures and personal property thereon, and Lessee may remove its improvements, fixtures and personal property located upon the Leased Premises, in accordance with the provisions of Article XX above.

ARTICLE XXIII. RENEWAL

Lessee has no guaranteed or preferential right, as against other third parties, of reletting the Leased Premises, or any improvements thereon, following termination of this Lease. Should Lessee desire to relet the Leased Premises following the expiration or sooner termination of this

Lease, Lessee shall submit an application for lease. Lessee's application will be reviewed by the BOCC, along with all other applications, if any, in accordance with then applicable Airport leasing rules and regulations.

ARTICLE XXIV. GOVERNING LAW AND VENUE

This Lease shall be interpreted in accordance with the laws of the State of Colorado. Lessee further agrees that should either party believe it necessary to file suit to interpret or enforce any provisions of this Agreement, the exclusive venue and jurisdiction for said lawsuit shall be in the Pitkin County, Colorado District Court.

ARTICLE XXV. HOLDING OVER

If Lessee remains in possession of the Leased Premises after the expiration of this Lease Agreement such holding over shall not be deemed as a renewal or extension of this Lease Agreement. In the event of a hold over by Lessee, BOCC shall be entitled to liquidated damages in the amount of treble the daily rent prorated upon the rental obligation existing at the end of the lease term until possession of the Leased Premises is surrendered or otherwise returned to the BOCC.

ARTICLE XXVI. ENTIRE AGREEMENT

This writing, together with the exhibits attached hereto, is the entire agreement of the parties regarding the establishment of their leasehold arrangements. No representations, warranties, inducements or oral agreements previously made between the parties regarding the establishment of their leasehold arrangements shall continue unless stated therein. This Lease Agreement shall not be changed or modified, except in writing, signed by both parties.

DONE AND EXECUTED on the date first above written.

ASPEN/PITKIN COUNTY AIRPORT

LESSEE

By: _____
Jennifer Mitchley
Contracts Specialist
Aspen Airport

By: _____