

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date: June 18, 2019	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing

Submitted By: Department of Airports

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: Consent to Sublease, consenting to a Fuel Facilities Access Agreement (Access Agreement) between Aircraft Service International, Inc., a Delaware corporation, d/b/a Menzies Aviation (Menzies) and FSM Group, LLC, a Nevada limited liability company (FSM), at the Palm Beach International Airport (PBI).

Summary: Menzies operates the fuel farm at PBI under the Fuel Farm Facilities Lease Agreement (Fuel Farm Lease) (R-99-2004D, as amended). On April 1, 2019, the County approved an Into-Plane Fueling Services Permit with FSM that enables FSM to fuel commercial airlines at PBI. The Access Agreement addresses the terms and conditions whereby FSM may enter Menzies' leasehold interest at the fuel farm to obtain fuel. The Fuel Farm Lease enables Menzies to sublease an interest under the Fuel Farm Lease, subject to the County's consent. Delegation of authority for execution of the standard form consent to sublease was approved by the Board in R-94-1453. Countywide (AH)

Background and Justification: N/A

Attachments: One (1) Consent to Sublease

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Recommended By: EW Laura Burke 5-16-19
Department Director Date

Approved By: JB Baker 6/3/19
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>	<u>\$-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

Does this item include the use of federal funds? Yes _____ No X

Budget Account No: Fund 4100 Department 120 Unit _____ RSource _____
Reporting Category _____



B. Recommended Sources of Funds/Summary of Fiscal Impact:

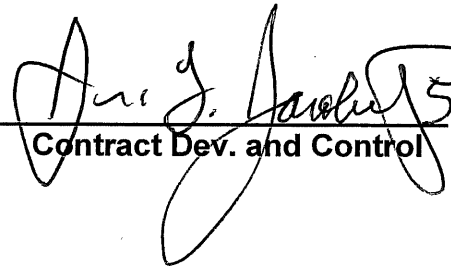
There is no fiscal impact associated with this Consent to Sublease.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 5/23/19
OFMB  5/23/19

 5/30/19
Contract Dev. and Control

B. Legal Sufficiency:

Anne Delgado 5-31-19
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

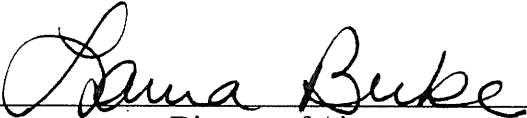
CONSENT TO SUBLEASE

PALM BEACH COUNTY, a political subdivision of the State of Florida, the "COUNTY", by and through its Department of Airports, under that certain Fuel Farm Facilities Lease Agreement with Aircraft Service International, Inc., a Delaware corporation, d/b/a Menzies Aviation (the "LESSEE"), dated October 19, 1999 (R-99-2004D), as amended (the "Lease Agreement"), hereby consents to LESSEE entering into that certain Fuel Facilities Access Agreement dated March 25, 2019, (hereinafter, the "SUBLEASE") with FSM Group, LLC, a Nevada limited liability company (the "SUBLESSEE") for the sublease of certain premises contained within the leasehold of LESSEE under the Lease Agreement.

Notwithstanding any provision of the Sublease to the contrary, the COUNTY hereby rejects any such provision in the Sublease, if any, which gives a greater right to the SUBLESSEE than that which the LESSEE has and, further, the COUNTY rejects any provision of the Sublease which purports to give the SUBLESSEE a right or interest in the premises independent of the LESSEE's Lease Agreement with the COUNTY. It is the express intent of the COUNTY in giving its consent that any forfeiture, loss, or termination of the LESSEE's Lease Agreement shall automatically terminate any sublease of the premises. In giving its consent to sublease the premises, Palm Beach County does not in any manner adopt, accept, or approve the terms of the Sublease or alter the terms of the Sublease.

It is the COUNTY's intent that the LESSEE shall remain liable to COUNTY for all rights and obligations contained in its Lease Agreement with the COUNTY.

APPROVED this 16th day of April 2019, by the County Administrator or the Director of the Department of Airports on behalf of and pursuant to the authority granted by the Board of County Commissioners.

By: 
Title: Director of Airports

Approved as to Form and Legal
Sufficiency:

By: 
County Attorney

FUEL FACILITIES ACCESS AGREEMENT

This FUEL FACILITIES ACCESS AGREEMENT (this "Agreement") is made and entered into and effective as of March 25, 2019, by and between AIRCRAFT SERVICE INTERNATIONAL, INC. D/B/A MENZIES AVIATION, a Delaware corporation ("ASII") as Lessee and Facilities Operator and, FSM GROUP LLC a Nevada limited liability company (the "Into-Plane Operator").

WHEREAS, ASII is the Lessee and Operator of the Facilities; and

WHEREAS, ASII has provided for the regulation of the Facilities, the proration and payment of operating and other costs among Users of the Facilities and the establishment of rates chargeable to Users of the Facilities, including Users contracting with Into-Plane Operator;

WHEREAS, Into-Plane Operator has been authorized by the County (as defined below) to provide fueling services at the Airport (as defined below), and, in connection with its performance of such fueling services, Into-Plane Operator needs access to the Facilities to withdraw Fuel (as defined below).

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the ASII and Into-Plane Operator hereby agree as follows:

ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms shall have the meaning set forth below:

"Agreement" has the meaning set forth in the first paragraph hereof.

"Air Carrier" means any air carrier engaged in the transportation of passengers or cargo, or both, that is certified by the FAA and that operates at the Airport.

"Airport" means Palm Beach International Airport, West Palm Beach, Florida, USA.

"AOA" has the meaning set forth in Section 5.2(b) hereof.

"Aviation/General Liability Insurance" has the meaning set forth in Section 6.2 hereof.

"ASII" has the meaning set forth in the first paragraph hereof.

"County" means the Palm Beach County, a political subdivision of the State of Florida.

"Duty" has the meaning set forth in Section 5.2(b) hereof.

"Event of Default" has the meaning set forth in Section 9.2 hereof.

"Fuel" means, collectively, Jet Fuel and/or any Other Products, lubricants and propellants which shall be for self-use or sale and into-plane delivery stored in the Facilities, fuel which

Initials: FSM

ASII

complies with the quality specifications established by ASII from time to time; such specification is Kerosene Based Fuel ASTM D1655-Jet A/A1, latest revision, and will remain such until changed by ASII upon written notice to Into-Plane Operator.

"Facilities" means, collectively, all Fuel receipt, storage, transmission, delivery and dispensing systems and related facilities, fixtures, equipment and other real and personal property that is leased, subleased, acquired, or controlled by ASII pursuant to the Fuel Farm Facilities Lease or a related agreement.

"Fuel Facilities Access Agreement" means an agreement between ASII and a Person to allow certain defined privileges and limited access to the Facilities by the Person for the purpose of providing services to a User (as defined below).

"Fuel Farm Facilities Lease" means all leases, easements, rights-of-way, and other agreements, as amended from time to time, by which the County grants possession and right of use of the Fuel Facilities to ASII.

"Gallon" means a U.S. gallon.

"Indemnitees" has the meaning set forth in Section 5.1 hereof.

"Into-Plane Operator" has the meaning set forth in the first paragraph hereof.

"Into-Plane Service Provider" means any Person that: (i) executes a Facilities Access Agreement; and (ii) obtains all necessary approvals and permits from the County or relevant airport authority to perform into-plane fueling services for Users or other Persons at the Airport.

"Laws" means all laws, ordinances, rules, regulations, regulatory agency guidance documents and policies, and applicable court and administrative decisions, as well as airport guidance documents, directives, and policies generally applicable to tenants or invitees at the Airport, enacted by any local, state or federal governmental authority now in effect or hereafter.

"Lease" means the Fuel Farms Facilities Lease Agreement between Palm Beach International Airport and Aircraft Services International, Inc., dated October 19, 1999, as amended from time to time.

"Lines and Rules" has the meaning set forth in Section 5.2(b) hereof.

"Other Products" means any material other than Jet Fuel stored in or put through the Facilities for use in connection with the operation of aircraft or airport service vehicles.

"Person" or "person" includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, governmental body, or other legal entity or organization.

"User" means any Air Carrier or general aviation aircraft owner or operator.



"Vehicles" has the meaning set forth in Section 5.2(b) hereof.

ARTICLE 2 RIGHT TO ACCESS FACILITIES

2.1 Subject to the terms and conditions set forth herein and subject to any rules now or hereafter established by ASII or the County, including but not limited to, any rules or conditions established pursuant to the Fuel Farm Facilities Lease, ASII Operating Rules applicable to all of the storage of aviation fuels, lubricants and propellants which shall be for self-use or sale and Into-Plane Service Providers, including Into-Plane Operator. Into-Plane Operator shall have the right to use such vehicles as necessary for the delivery of said fuels, lubricants and propellants, in connection with its performance of fueling services at the Airport, to withdraw Fuel from the Facilities at locations designated by the ASII and consistent with and subject to the appropriate agreement between Into-Plane Operator and such Users with which it has contracted to perform fueling services. Prior to the use of and access to the Facilities, Into-Plane Operator shall (a) execute this Agreement, and (b) furnish evidence of insurance in accordance with Article 6 herein.

2.2 Into-Plane Operator shall be entitled to withdraw Fuel from the Facilities equal to that amount previously authorized by the owner of the Fuel to be withdrawn.

2.3 In its use of the Facilities, Into-Plane Operator shall not interfere with the maintenance, operation and management of the Facilities by ASII, any User, the County, or any other Into-Plane Service Provider.

2.4 ASII may, subject to the Fuel Farm Facilities Lease, modify or replace portions of the Facilities and may change the designation of locations to be used by Into-Plane Operator for its Fuel-related services from time to time. To the extent practicable, Into-Plane Operator shall be given at fourteen (14) days prior written notice thereof. Into-Plane Operator's access rights are expressly conditioned upon its strict adherence to all rules, regulations and directions of ASII and the County.

2.5 Into-Plane Operator represents, covenants, warrants and guarantees to ASII, and its successors and assigns, that Into-Plane Operator shall duly and timely observe, perform and discharge all of its duties, obligations, agreements, covenants, conditions and liabilities on its part to be observed, performed and discharged pursuant to this Agreement, and any renewal, successor or replacement agreements.

2.6 This Agreement is not intended to provide Into-Plane Operator with any right or entitlement to any office, storage space or overnight delivery or any other rights not expressly set forth herein.

2.7 Hours of operation – 0400-0030 Daily and may change with 30 day notice to Into-plane operator

ARTICLE 3 CHARGES

Into-Plane Operator shall promptly remit any amounts payable by it under this Agreement in accordance with Article 4 hereof.

ARTICLE 4 BILLS AND ACCOUNTS, DEFAULT

ASII will render or cause to be rendered an itemized invoice for any amounts due and payable by Into-Plane Operator under this Agreement. Such invoice shall be due and payable upon receipt and shall be delinquent ten (10) days thereafter. Any failure by ASII to so render or cause to be rendered an itemized invoice will not affect the obligation for payment of any amounts due from Into-Plane Operator hereunder. The amount from any delinquent invoice shall bear interest at two percent (2%) per month (or at the maximum rate permitted by law, whichever is higher), from the date such amount is due. In the event of the continued failure of Into-Plane Operator to pay any required charges including an interest, ASII may pursue any and all available legal and equitable remedies, including without limitation, suspension and/or termination of the right to access the Facilities.

ARTICLE 5 INDEMNIFICATION

5.1 Into-Plane Operator agrees to fully defend, indemnify and hold harmless ASII the County, and their respective members, shareholders, officers, directors, employees, agents, representatives, contractors and subcontractors, successors and assigns ("Indemnitees"), from and against all suits, claims, liabilities, damages, losses, judgments, obligations, costs, expenses, penalties and fines (including attorneys' fees, costs of investigation and court costs) that may be suffered by, accrued against, charged to or recoverable from each Indemnatee by reason of any damage to property or injury to or death of any person arising out of, by reason of or with respect to: (a) any alleged or actual action, inaction, performance, failure of performance, conduct or omission of any nature of Into-Plane Operator, its employees, officers, directors, agents, invitees, successors, assigns, representatives, contractors or subcontractors, or any of them, under or in connection with this Agreement, in connection with their use of the Facilities, or in connection with the services provided or conducted by Into-Plane Operator, or (b) any breach of or default under this Agreement by Into-Plane Operator. Into-Plane Operator need not release, save harmless or indemnify any Indemnatee under this Agreement against damage to or loss of property, or injury to or death of persons caused by the sole or gross negligence or willful misconduct of such Indemnatee.

5.2 Without limiting the generality of any other provisions hereof:

(a) Into-Plane Operator's obligations to indemnify, defend and hold harmless as set forth in this Article 5 shall include all suits, claims, liabilities, damages, losses, judgments, obligations, costs, expenses (including attorneys' fees, costs of investigation and court costs), penalties and fines made or incurred because of any alleged or actual violation of any federal,



state, local or other environmental Laws, including but not limited to, the Federal Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act of 1980, and all rules and regulations promulgated or adopted thereunder, regardless of whether the same are made by private parties or governmental agencies, with respect to or arising out of use of the Facilities by or on behalf of Into-Plane Operator. Into-Plane Operator need not release, save harmless or indemnify any Indemnitee under this Agreement against damage to or loss of property, or injury to or death of persons caused by the sole or gross negligence or willful misconduct of such Indemnitee.

(b) Into-Plane Operator hereby agrees and undertakes to indemnify the Indemnitees against any and all suits, claims, liabilities, damages, losses, judgments, obligations, costs, expenses (including reasonable attorneys' fees, costs of investigation and court costs), penalties and fines for violations of FAA rules and regulations or other applicable federal Laws caused by Into-Plane Operator's act or omission, except where and to the extent such violation results solely and directly from the Indemnitees' negligence or willful misconduct.

(c) Into-Plane Operator acknowledges that sums due under this Article 5 may become due both during and after the term of this Agreement. Any sums that are owed pursuant to this Article 5 shall be due and payable immediately upon demand from ASII or other Indemnitee. Into-Plane Operator agrees that in no event will the payment of any indemnity under this Article 5 or deductions from amounts owed to Into-Plane Operator pursuant to this Article 5 release or excuse Into-Plane Operator from its duties and obligations under this Agreement.

5.3 The obligations and agreements provided in this Article 5 shall survive and continue after the termination of this Agreement for any reason whatsoever.

ARTICLE 6 INSURANCE

6.1 Into-Plane Operator shall insure its liability under Article 5 of this Agreement, as part of the insurance provided for in this Article 6, to the extent of such insurance. Certificates of insurance furnished pursuant to Article 6 of this Agreement shall state that such liability is so insured.

6.2 Into-Plane Operator shall, at its own cost and expense, obtain and cause the types of insurance set forth herein to be kept in force, with reasonable deductibles approved by ASII and in not less than the amounts set forth herein. Such insurance shall be issued by insurers of recognized financial responsibility acceptable to ASII and the County and insure, among others, ASII the County against all liabilities, damages, claims and expenses for accidents arising out of or in connection with Into-Plane Operator's use of the Facilities. Such insurance coverage shall be primary, without any right of contribution from any insurance that is carried by ASII or the County and shall extend to loss of or damage to aircraft.

Into-Plane Operator shall cause a certificate of insurance to be furnished to ASII and the County evidencing such insurance and naming such parties as additional insureds, and providing

that such insurance shall not be cancelable or the coverage thereof modified except after thirty (30) days' written notice to ASII and the County of such proposed cancellation or modification, and shall, during said thirty (30) day period, obtain and provide ASII and the County with replacement certificates from qualified companies acceptable to ASII and the County evidencing such insurance coverage as required herein. Each certificate shall certify that the insurance evidenced thereby fully satisfies the insurance requirements of this Agreement. Each certificate of insurance and the policy described therein shall name ASII and the County as additional insureds. The required insurance and minimum limits of coverage are as follows:

(a) Comprehensive aviation liability insurance ("Aviation/General Liability Insurance") providing for specific perils associated with and fueling operations:

(i) (including automobile, contractual, completed operations, bodily injury, property damage and products hazards) -- \$1,000,000 One Million Dollars per occurrence, combined single limit.

(b) Workers Compensation and Employers' Liability Insurance:

(i) Coverage A -- Statutory limits.

(c) Commercial Automobile Liability Insurance -- \$1,000,000 per Combined Single Limit per occurrence per occurrence, combined single limit, for bodily injury and property damage for owned, non-owned and hired automobiles. However if the scope and conduct of the Into-Plane Operator operations under this Agreement require vehicle access to areas designated for parking and maneuvering of aircraft (ramp area) said liability shall be in an amount not less than \$5,000,000 per combined single limit per occurrence for bodily injury and property damage for owned, non-owned and hired automobiles (inside of AOA)

(d) Environmental Impairment (Pollution) Insurance for bodily injury and property damage liability subject to not more than a \$500,000.00 deductible each claim, for which Into-Plane Operator shall be fully responsible. Coverage shall include all remediation and clean-up costs and expenses. The limits of coverage shall not be less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate, per policy year providing coverage for damage against bodily injury and property damage including Contamination, Clean-Up costs and Corrective Action damages.

ASII reserves the right to change the minimum limits set forth herein specified during the term of this Agreement, but in so doing will give Into-Plane Operator at six (6) months prior written notice. Notwithstanding the foregoing, Into-Plane Operator shall at all times comply with and maintain any and all insurance requirements and limits imposed by the County.

6.3 Into-Plane Operator shall secure an appropriate clause in, or endorsement upon, each insurance policy obtained by it and required hereunder pursuant to which the insurance company waives subrogation or permits the insured, prior to any loss, to agree with any third party or among themselves to waive any claim it or any of them may have against any of the others or such third party without invalidating the coverage under the insurance policy. The

waiver of subrogation or permission for waiver of any claim shall extend to ASII, and the County, and their respective members, shareholders, officers, directors, employees, agents, representatives, contractors and subcontractors, successors and assigns. Into-Plane Operator hereby releases each of ASII and the County, and their respective members, shareholders, officers, directors, employees, agents, representatives, contractors and subcontractors, successors and assigns, from any claim (including, without limitation, a claim for negligence) which it might otherwise have against the ASII or the County, and any of their respective members shareholders, officers, directors, employees, agents, representatives, contractors and subcontractors, successors and assigns, for any loss, damage, or other casualty occurring during the term of this Agreement and covered under any insurance policy carried by Into-Plane Operator.

ARTICLE 7 RULES AND REGULATIONS; STANDARDS OF OPERATION

7.1 In connection with this Agreement and the use of the Facilities, Into-Plane Operator shall comply with all applicable rules and procedures established by ASII and the County, and any other federal, state or local agency or body with jurisdiction or other authority over the safety and operation of the Facilities.

7.2 Without limiting the generality of Section 7.1 of this Article 7, Into-Plane Operator shall comply with all applicable Laws, including, but not limited to, all rules and regulations of the County or any political subdivision thereof or any agency, official or commission of the County, relating to the Airport and all applicable security regulations promulgated by the FAA or any successor agency thereto.

7.3 Into-Plane Operator shall be solely liable for and shall be financially responsible for the cleanup of any spills of Fuel or damage to the Facilities caused in any manner by Into-Plane Operator, its officers, directors, employees, invitees, agents, representatives, contractors and subcontractors, successors and assigns. Into-Plane Operator shall immediately notify ASII and the County of any such spill or damage, regardless of size or extent. ASII or subject to the terms of the Fuel Farm Facilities Lease, the County, may perform all cleanup and repair work and Into-Plane Operator shall reimburse ASII or the County, as the case may be, for the cost thereof plus 15% or ASII may, at its election, instruct Into-Plane Operator to perform such work. If ASII elects to require Into-Plane Operator to perform such work ASII and/or, subject to the terms of the Fuel Farm Facilities Lease, the County shall have the right to approve all clean up and repair plans (including the persons or entities who will perform such work) and to exercise general supervision over such work. Into-Plane Operator agrees to commence cleanup and repair work promptly and to diligently continue such work in a manner that will minimize interference to any operations at the Airport until such work is completed to the satisfaction of ASII.

7.4 Any damage to the Facilities or property of any User, Into-Plane Service Provider, ASII or the County caused by Into-Plane Operator or any of its officers, directors, employees, invitees, agents, representatives, contractors and subcontractors, successors and assigns that is not covered by the insurance required to be carried under the provisions of this Agreement, or

that is in excess of the limits of such insurance or subject to deductible amounts, will be repaired and/or paid for immediately by Into-Plane Operator.

7.5 The County or ASII, shall have the right to perform periodic inspections of all equipment that interfaces with the Facilities to verify compatibility and safety and, as respects any metering device, the accuracy of such device by use of a prover. Into-Plane Operator shall deliver for inspection any equipment that interfaces with the Facilities and is designated by ASII to the location designated by the ASII at the time designated by the ASII.

7.6 Into-Plane Operator understands and agrees that all withdrawals of Fuel from the Facilities and all Jet Fuel delivered into aircraft shall be recorded and such records shall be delivered to ASII by noon on the following business day. Fuel received by Into-Plane Operator from an aircraft defueling at the Airport is not permitted to be delivered into the Facilities.

ARTICLE 8 TERMS AND TERMINATION

8.1 This Agreement shall become effective on the date first written above and shall continue in effect until terminated by either party upon at least sixty (60) days advance written notice.

8.2 Notwithstanding the foregoing, this Agreement may be terminated immediately by ASII by written notice to Into-Plane Operator upon the occurrence of any one of the following events (each, an "Event of Default"):

- (a) Into-Plane Operator fails to pay when due any amount required to be paid hereunder;
- (b) Into-Plane Operator fails to observe any Laws as provided in Article 7 of this Agreement;
- (c) Into-Plane Operator's use, conduct or activities involving the Facilities disrupts or interferes with the use, enjoyment or operation of the Facilities by any User, any other Into-Plane Service Provider or ASII;
- (d) Into-Plane Operator otherwise fails to comply with any term, covenant or condition required to be complied with by Into-Plane Operator under this Agreement;
- (e) Termination of ASII's right to use or possess the Facilities;
- (f) Into-Plane Operator shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future Law, or shall file an answer admitting or shall fail timely to contest the material allegations of a petition filed against it in any of the above-described proceedings, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Into-Plane Operator or any material part of its properties;



(g) Thirty (30) days after the commencement of any proceeding against Into-Plane Operator seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed or within thirty (30) days after the appointment without the consent or acquiescence of Into-Plane Operator of any trustee, receiver or liquidator of Into-Plane Operator or of any material part of its properties, such appointment shall not have been vacated;

(h) The damage or destruction of the Facilities or of such portion of the Facilities that ASII determines, in its sole discretion, that further satisfaction of ASII's obligations to Into-Plane Operator under this Agreement is no longer practicable;

(i) The termination of all of Into-Plane Operator's aircraft operations at the Airport and/or all contracts for providing fueling services with all Users; or

8.3 The termination of this Agreement for any reason whatsoever shall not affect any rights, liabilities, or obligations of either ASII or Into-Plane Operator which have accrued in connection with this Agreement prior to the date of such termination and, without limiting the generality of the foregoing, shall not affect any right of any Indemnitee to indemnity as provided in this Agreement.

ARTICLE 9 REMEDIES AND PAYMENT PROVISIONS

9.1 Upon the occurrence of an Event of Default, ASII will have the right to immediately terminate this Agreement or to pursue any remedy whatsoever provided by law or equity, or both. If payment is not made when due of any amount payable by Into-Plane Operator to ASII under this Agreement, such amount shall bear interest at the rate of two percent (2%) per month (or at the maximum rate permitted by law, whichever is lower) from the date such amount is due.

9.2 In the event Into-Plane Operator fails or refuses to pay when due any amount owed by Into-Plane Operator to ASII under this Agreement, ASII may enforce such payment by:

(a) Suspending or terminating Into-Plane Operator's rights under this Agreement to use the Facilities to provide into-plane fueling services or otherwise; and/or

(b) Pursuing any and all other legal or equitable remedies available to ASII.

9.3 In addition to any other provision contained herein, Into-Plane Operator may be put on a cash or prepayment basis for its failure to make payment when due.

ARTICLE 10 EXCUSABLE DELAY



It is agreed between the parties to this Agreement that, except for the indemnity and insurance obligations and for any obligation to make payments of money hereunder, ASII and Into-Plane Operator shall be excused from, and shall not be liable with respect to, any failure of performance under this Agreement due to causes beyond its reasonable control; provided, however, the parties hereto shall in good faith and to the extent reasonably practicable attempt to continue, despite the occurrence of such causes, the performance of services under this Agreement. Additionally, without limiting the generality of the foregoing, ASII shall have no liability to Into-Plane Operator for any costs or damages resulting from a delay in scheduled or nonscheduled arrivals or departures of aircraft caused by any failure of performance by ASII under, or with respect to the services contemplated by, this Agreement. Under no circumstances shall the County or the ASII, or their respective members, shareholders, officers, directors, employees, agents, representatives, contractors and subcontractors, successors and assigns, be liable for any special or consequential damages, regardless of the cause or any foreknowledge of such damages.

ARTICLE 11 NOTICES

11.1 All notices required or permitted to be given under this Agreement shall be in writing addressed to the party to receive notice as follows, or to such other address as the party to receive notice shall hereinafter designate in accordance with the procedure set forth herein. Such notice shall be deemed given when sent certified mail, return receipt requested, or overnight express delivery, or by facsimile, electronic mail or telegram, or personally delivered to the following:

If to Into-Plane Operator:

FSM Group LLC
201 E. Pine Street
Suite 210
Orlando, FL 32801
Attention: Keith P. Ryan

If to the ASII: Aircraft Service International, Inc.

d/b/a Menzies Aviation
4900 Diplomacy Road
Fort Worth, Texas 76155
Fax: 469-281-8299
Email: paul.walton@menziesaviation.com



ARTICLE 12
NONDISCRIMINATION, SAFETY AND ENVIRONMENTAL REQUIREMENTS

The undersigned parties acknowledge that ASII has an obligation to satisfy certain nondiscrimination, occupational safety and environmental requirements pursuant to the Fuel Farm Facilities Lease. ASII and Into-Plane Operator agree to conduct its business hereunder in a manner which complies with all requirements imposed by or pursuant to 49 CFR Part 21, "Nondiscrimination in Federally Assisted Programs" of the U.S. Department of Transportation; 14 CFR Part 152 and Title VI of the Civil Rights Act of 1964; 14 CFR Part 152, Subject E; by standards adopted pursuant to the Occupational Safety and Health Act of 1970, and by the Federal Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, the Resource Conservation Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and other applicable Laws protecting the environment, and as these or related statutes or regulations may be amended or supplemented. ASII and Into-Plane Operator shall not discriminate against any worker, employee or applicant or any member of the public because of race, creed, color, religion, sex or national origin, nor otherwise commit an unfair employment practice. ASII and Into-Plane Operator will take affirmative action to ensure that the applicants are employed and that employees are dealt with during employment without regard to their race, creed, color, religion, sex or national origin.

ARTICLE 13
INTO-PLANE OPERATOR'S WARRANTIES

Into-Plane Operator represents and warrants to ASII as follows:

13.1 Into-Plane Operator has full power and authority to execute and deliver this Agreement and to perform and carry out all covenants and obligations to be performed and carried out by Into-Plane Operator hereunder.

13.2 This Agreement is the legal, valid, and binding obligation of Into-Plane Operator, enforceable in accordance with its terms.

13.3 Into-Plane Operator has obtained all requisite approvals and consents, if any, necessary or appropriate to enter into this Agreement and to perform its obligations hereunder.

13.4 Into-Plane Operator represents that it is in good standing and not in default under all other agreements and contracts with the County and/or relating to the Airport.

ARTICLE 14
ADDITIONAL PROVISIONS

14.1 This Agreement may not be assigned by Into-Plane Operator, by operation of law or otherwise, without the prior written consent of ASII, and any attempted assignment or transfer in violation of the foregoing shall be null and void and of no effect.

14.2 The parties hereto agree to execute any documents and take any action reasonably necessary to effectuate the terms and intent of this Agreement.



14.3 The failure of ASII or Into-Plane Operator to exercise any power or right under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any power or right preclude other or future exercise thereof, or the exercise of any other power or right.

14.4 Should any provision of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid or unenforceable any other provision in this Agreement.

14.5 This Agreement may be amended or modified only by a written agreement signed by the parties hereto.

14.6 The article headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provision of this Agreement.

14.7 This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida.

14.8 The parties agree that sole jurisdiction for any suit or action to enforce compliance with the terms of this Agreement, to collect any amount due under this Agreement or for damages for breach of this Agreement, or for a declaration of rights hereunder, shall be in Palm Beach County, Florida or in the Federal District Court for the District of Florida. No such suit or action may be commenced or prosecuted in any other State, country, or district of a Federal Court, or in any other county within the State of Florida.

14.9 This Agreement shall be binding upon and inure to the benefit of both ASII and Into-Plane Operator and their respective successors and permitted assigns.

14.10 In case suit or action is instituted to enforce compliance with any of the terms, covenants or conditions of this Agreement, to collect any amount due under this Agreement or for damages for breach of this Agreement, or for a declaration of rights hereunder, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action and in the event any appeal or review is taken from any judgment or decree in any such suit or action, the losing party agrees to pay such further sum as the appellate or reviewing court shall adjudge reasonable as the prevailing party's attorneys' fees on such appeal or review.

14.11 This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements or promises, written or oral, incorporated herein except as specifically set forth in this Agreement.

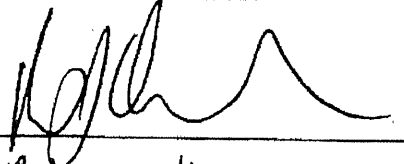
[Signature page follows]



IN WITNESS WHEREOF, the parties hereto have caused this Fuel Facilities Access Agreement to be duly executed effective as of the day and year first written above.

ASII:

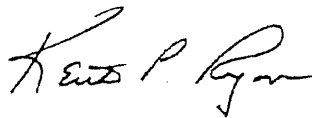
AIRCRAFT SERVICE INTERNATIONAL, INC.
D/B/A MENZIES AVIATION

By: 

Name: Phillip Brandon

Title: Senior Vice President, Corporate Services

Into-Plane Operator:
FSM GROUP, LLC

By: 

Name (Print): Keith P. Ryan

Title: President & CEO

Fuel Farm SOP

1. **Position Truck on the load rack adjacent to the refilling hose.**
2. **Apply the brake and ensure the vehicle is in either park or neutral.**
3. **Shut down the engine.**
4. **Locate the emergency Shut Down Switch. Push the switch in the event of an emergency.**
5. **Connect the static ground cable to the vehicle.**
6. **Connect the loading hose to the vehicle.**
7. **To ensure an overflow does not occur, the fueler is required to monitor the fueling throughout the process**
8. **Start the flow of fuel by activating the dead man. During this process, a pre-check function is to be performed checking for high level activation.**
9. **When the loading is complete, release the dead man to stop the fuel flow.**
10. **Disconnect the loading hose.**
11. **Disconnect the static ground cable.**
12. **Perform a walk around.**
13. **Report all equipment problems immediately.**
14. **Into-Plane Operator will provide load tickets. Truck load tickets, at the time of loading, will be left in the mailbox located at each load rack.**
15. **Daily Fueling: deliver fuel tickets to the daily paperwork mailbox located outside the Administration Building.**
16. **Sump Fuel: sump fuel is entered into the sump fuel tank in the Truck Parking location. Contact a Fuel Farm attendant or GSE personnel to log the sump fuel.**

Emergency Procedures

1. **Stop the flow**
2. **Locate the emergency shut-down switch and push the switch in.**
3. **Contact the fire Department by calling Dept of Airports 561-471-7420**
4. **Contain spill as outlined by spill Plan Procedure.**

