

**AMENDMENT NO. 1**  
**to**  
**LEASE AGREEMENT**  
**for**  
**THE ATLANTA PERISHABLES COMPLEX**

**WITNESSETH THAT:**

**WHEREAS**, the City of Atlanta (“City”) is the owner and operator of Hartsfield-Jackson Atlanta International Airport (“Airport”); and

**WHEREAS**, the Airport is responsible for the leasing and operation of the Atlanta Perishables Complex located on the north side of the Airport; and

**WHEREAS**, Perishables Group International JV LLC (“PGI”), an entity jointly owned by Airport Service International Inc. (“ASII”) and Pan American Logistics LLC (“PAL”) entered into the Lease Agreement for the Atlanta Perishables Complex on October 1, 2004; and

**WHEREAS**, as of June 30, 2008, ASII agreed to transfer to PAL via a Bill of Transfer and Assignment, certain assets to include the Lease Agreement for the Atlanta Perishables Complex; and

**WHEREAS**, PAL is now the sole Lessee and operator of the Atlanta Perishables Complex; and

**WHEREAS**, the Lease Agreement was amended by an Amendment No. 1 dated July 31, 2006 which provided for an extension of the lease term through October 31, 2014 and provided for certain improvements to the Atlanta Perishables Complex and contained terms and conditions under which the improvements would be constructed and financed; and

**WHEREAS**, the term of the lease was extended as called for in Amendment No. 1 but the improvements were never constructed and the City and PAL now desire to cancel Amendment No. 1 in its entirety and replace it with a new Amendment No. 1 with terms, conditions and provisions contained herein; and

**WHEREAS**, this new Amendment No. 1 will provide for an extension of the Lease Agreement through June 30, 2016.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS** hereinafter set forth, the parties hereto do hereby agree that the said Lease Amendment shall stand amended, a follows:

- A. Subsection 1.01 is deleted in its entirety and replaced as follows:

Subsection 1.01 – Description of Leased Premises. The Leased Premises herein demised shall be reduced from 5.21 acres of land to the Lease Premises depicted on Exhibit XX attached hereto (“Revised Lease Premises”).

B. Subsection 3.01 is deleted in its entirety and replaced as follows:

Subsection 3.01 – Term. The Term of the Lease shall be extended for the period beginning November 1, 2014 through June 30, 2016.

C. Subsection 5.01 is deleted in its entirety and replaced as follows:

Subsection 5.01 – Rentals. Commencing November 1, 2014, PAL shall pay to the City without demand, Rentals as outlined in Exhibit XX attached hereto (“Revised Rentals”).

D. SECTION 13 is deleted in its entirety and replaced as follows:

## **SECTION 13 – INDEMNITY AND INSURANCE**

**City Not Responsible for Acts of Others.** , City shall not be liable to Tenant, nor to those claiming by, through or under Tenant, for any loss, theft, injury, liability or damage of, for or to Tenant's business and/or property which may result from: (a) any act, omission, fault or negligence of other Tenants or licensees, their agents, employees or contractors, or any other persons (including occupants of adjoining or contiguous buildings, owners of adjacent or contiguous property, or the public), (b) the breaking, bursting, backup, stoppage or leaking of electrical or phone/internet cables and wires, or water, gas, sewer, HVAC or steam pipes or ducts serving the Premises, and/or (c) water, snow or ice being upon or coming into the Premises. Tenant acknowledges that its use of the Premises is at its own risk.

a. Tenant agrees to defend, indemnify and hold harmless the City, its officers, agents, officials and employees (hereinafter, collectively referred to as the “Indemnified Parties”) from and against all liability for bodily injuries to or deaths of persons or damage to property to the extent arising from the Use, or from Tenant’s occupation of the Premises, or otherwise from Tenant’s operations under this Agreement. Tenant also agrees to indemnify and hold harmless the Indemnified Parties from any and all losses, expenses, demands and claims against the Indemnified Parties to the extent sustained or alleged to have been sustained in connection with or to the extent arisen out of or resulting from the performance pursuant to this Agreement by Tenant, or any of its agents, contractors, subcontractors, officers or employees. Tenant further agrees that its obligation to indemnify and hold harmless the Indemnified Parties shall not be limited to the limits or terms of the liability insurance, required pursuant to this Agreement. However, nothing contained in this Section shall be construed as a release or indemnity by Tenant of an Indemnified Party from or against any loss, liability or claim to the

extent arising from the negligence or willful misconduct of that Indemnified Party. Each party hereto shall give to the other prompt and timely written notice of any claim made or suit instituted coming to its knowledge which in any way directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest. This Indemnity Section shall survive the termination or expiration of this Agreement

b. Any and all companies providing insurance required pursuant to this Agreement must meet certain minimum financial security requirements as set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key rating Guide-Property-Casualty. Each of the companies providing insurance pursuant to this must have current, the following:

- i) Best's Rating of not less than A-.
- ii) Best's Financial Size Category, of not less than Class IX.

If the issuing company does not meet these minimum requirements written notification shall be mailed by City to Tenant, which shall promptly obtain a new policy issued by an insurer meeting such minimum requirements, and shall submit evidence of the same to the Aviation General Manager as required herein.

c. Upon failure of Tenant to furnish, deliver and maintain such insurance as herein provided, Tenant shall be in default and, in addition to City's other remedies, this Agreement, at the election of City, may be terminated. Failure of Tenant to obtain and/or to maintain any required insurance shall not relieve Tenant from any liability pursuant to this Agreement, nor shall these requirements be construed to conflict with Tenant's indemnification obligations.

d. Any and all insurance required pursuant to this Agreement shall be maintained during the Term, including any extension, thereto. City shall have the right to inquire into the adequacy of the insurance coverages set forth in this Agreement and to require reasonable adjustments as necessary. Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this Agreement shall warrant when signing the certificate of insurance that specific authorization has been granted by companies for the agent to bind coverage as required and to execute the certificate of insurance as evidence of such coverage. Each agent, contractor and/or subcontractor must meet the same insurance requirements.

e. City shall, without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any insurance required by this Agreement. Non-payment of premium shall require ten (10) days notice of cancellation. Confirmation of this mandatory thirty (30)-day notice of cancellation shall appear on the certificate of insurance and on any and all insurance

policies required pursuant to this Agreement.

f. Tenant hereby agrees to provide the insurance coverages in the manner and form specified in this Section 12, including without limitation, those coverages provided for in Subsections 12g, 12h, 12i, 12j and 12k below. City shall be covered as an additional insured, as its interest may appear, under any and all insurance required pursuant to this Agreement, and such insurance shall be primary with respect to the additional insured. Confirmation of this shall appear on the certificate of insurance, and on any and all applicable insurance policies. However, this requirement does not apply to workers' compensation or professional liability insurance.

g. Worker's Compensation and Employer's Liability.

Tenant shall maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each employee who is or may be engaged in work under the Lease:

<u>Worker's Compensation Employer's Liability</u>	<u>Statutory</u>
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 each policy

Waiver of subrogation in favor of the City of Atlanta.

h. General Liability.

Tenant shall maintain coverage for Bodily Injury and Property Damage in an amount not less than \$25,000,000 combined single limit. The following specific extensions of coverage shall be provided by Tenant and indicated on the Certificate of Insurance:

- (1) Commercial General Liability (CGL)
- (2) Contractual Insurance (Blanket or specific to this Lease)
- (3) Personal Injury
- (4) Broad form Property Damage
- (5) Premises-Operations
- (6) Tenant shall carry Independent Contractors Contractual on a blanket basis or Contractual Liabilities specifically covering this Lease.
- (7) Terrorism Coverage for Certified and Non-Certified Acts.

The above required Liability limits can be a combination of Primary Limits and Excess Liability/ Umbrella limits.

i. Auto Liability.

Tenant shall carry Auto Liability coverage as follows:

- (1) Auto Liability Limits: Bodily Injury and Property Damage - \$10,000,000 combined-single limit.

The following specific extensions of coverage shall be provided by Tenant and indicated on the Certificate of Insurance:

- (1) Owned, hired, leased and non-owned vehicles to be covered
- (2) Specific liability for vehicles operated on the Airfield
- (3) Commercial Auto Broadened Pollution Liability coverage, endorsement (CA9948) and the MCS-90 endorsement.

The above required Liability limits can be a combination of Primary Limits and Excess Liability/ Umbrella limits.

j. Aircraft Liability.

Tenant shall carry Aircraft Liability coverage as follows:

- (1) Aircraft Liability Limits: Bodily Injury and Property Damages - \$100,000,000 combined single limit.

The above required Liability limits can be a combination of Primary Limits and Excess Liability/ Umbrella limits.

k. Pollution Legal Liability.

Tenant shall maintain Pollution Legal Liability coverage for Bodily Injury and Property Damage in an amount not less than \$10,000,000 Each Incident and \$10,000,000 Aggregate.

The following specific extensions of coverage shall be provided and indicated on the Certificate of Insurance.

- (1) Policy Form to be written on Claims Made Form for the term of the lease. If Lease is not renewed, must obtain a 5 Year Extended Reporting Provision Endorsement
- (2) On & off site clean-up coverage for new conditions, i.e., underground storage tanks (standard coverage in PLL policy). Third Party claims for on and off site Bodily Injury and Property Damage.
- (3) "Natural Resources Damage" included in the definition of Property Damage. Provides coverage for damage to water, land and wildlife.
- (4) Terrorism Coverage for Certified and Non-Certified Acts
- (5) Transportation and Disposal Site Endorsement
- (6) Waste Broker Disposal Site Endorsement

E. SECTION 14 is deleted in its entirety.

F. SECTION 50 is added to the Lease Agreement as follows:

**SECTION 50 – TENANT OBLIGATION with RESPECT to ENVIRONMENTAL MATTERS**

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a. During the Term of this Agreement: (i) Tenant shall at its own cost comply with all federal, state, and local Environmental Laws and regulations applicable to its use of the Premises; (ii) except as required in the ordinary course of business and in compliance with applicable Environmental Laws, Tenant shall not take any action that would subject the Premises to requirements under any applicable Environmental Laws for storage, treatment or disposal of Hazardous Materials. As used herein, the term “Hazardous Materials” means any hazardous or toxic substance, material, or waste, which is or becomes regulated by any local governmental authority or the United States Government. Hazardous Materials include, without limitation, any material or substance that is (i) defined as a “hazardous waste” “extremely hazardous waste,” or “restricted hazardous waste,” or similar term under any applicable laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (ii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), or (iii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resources Conservation and Recovery Act, 42 U.S.C. § 6911 *et seq.* (42 U.S.C. § 903) or (iv) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601 *et seq.*) (42 U.S.C. § 9601).

b. Except in strict compliance with all applicable Environmental Laws (as defined herein) and any other applicable requirements, Tenant shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and storm water drainage system serving the Airport. Other than those materials necessary for the operation of an air cargo facility, including Tenant’s equipment maintenance, Tenant shall not cause or permit any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or at the Leased Premises. Tenant hereby indemnifies the City from and against any breach by Tenant of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against the Tenant or the City, diminution in value of the Airport, damages for the loss or restriction on use of rentable or usable space or of any amenity on the Airport, damages arising from any adverse impact on leasing of space on the Airport, and sums paid in settlement of claims, reasonable attorneys' fees, consultant fees, and expert fees) which arise during or after the Term (as defined in Section 3 herein) to the extent resulting from such breach. This indemnification of the City by the Tenant also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision, in accordance with applicable Environmental Laws, because of Hazardous Material present in the soil or ground water on or under the Airport which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on the Airport caused or permitted by the Tenant results in any contamination of the Airport, the Tenant shall promptly take all actions at its sole expense as are reasonably necessary to return the

Airport to the condition existing prior to the introduction of such Hazardous Material to the Airport or as are reasonably necessary to comply with applicable Environmental Laws; provided that the City's approval of such actions, and the contractors to be used by the Tenant in connection therewith, shall first be obtained.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 et seq. (42 U.S.C. § 903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601).

As used herein, the term "Environmental Laws" shall mean all federal, state and local statutes, laws, codes, rules, regulations, ordinances, orders, standards, permits, licenses or requirements (including consent decrees, judicial decisions and administrative orders), currently in force, as amended or re-authorized, pertaining to the protection, preservation, conservation, or regulation of the environment, or imposing requirements relating to public or employee health and safety, including, without limitation, the FWPCA, RCRA, CERCLA, the Emergency Planning and Community Right to Know Act, 42 U.S.C. sec. 11001 et. seq., the Clean Air Act, 42 U.S.C. sec. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. sec. 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. sec. 300F et seq., and the Occupational Safety and Health Act, 29 U.S.C. sec. 651 et seq., each as amended or re-authorized.

c. The City and its employees, representatives and agents shall have access to the Leased Premises during reasonable hours and upon reasonable notice to the Tenant in order to conduct periodic environmental inspections and tests of Hazardous Material contamination on or at the Leased Premises. Such periodic environmental inspections shall not be performed in a manner which will disrupt the operations of the Tenant.

G. SECTION 51 is added to the Lease Agreement as follows:

**SECTION 51 – PROHIBITION on KICKBACKS and GRATUITIES**

As required by Section 2-1484(d) of Chapter 2, Code of Ordinances of the City of Atlanta, Tenant hereby acknowledges the following prohibitions on kickbacks and gratuities: It is unethical for any person, including Tenant, to offer, give or agree to give any employee or former employee of City a gratuity or an offer of employment in connection with any decision,



approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase or leasing request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a lease, contract, sublease or subcontract or to any solicitation or proposal therefor. It is unethical for any employee or former employee of City to solicit, demand, accept or agree to accept from another person, including Tenant, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a lease, contract, sublease or subcontract or to any solicitation or proposal therefor. It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract or to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

H. SECTION 52 is added to the Lease Agreement as follows:

#### **SECTION 52 – DISPUTE RESOLUTION**

Except in respect to proceedings in unlawful detainer, in the event of any dispute, claim or controversy arising out of or relating to this Agreement (references in this Section to “Agreement” are deemed to also include the underlying Airport Use License Agreement as well as this Hartsfield-Jackson Atlanta International Airport Lease) or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this commitment to arbitrate, the parties shall use good faith efforts to settle the dispute by negotiation. If they do not reach a resolution within 60 days of written notice by either party of the existence of a dispute, then, upon written notice by either party to the other, all disputes shall be finally settled by arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (“JAMS Rules”) before a single arbitrator. In addition to any discovery permitted under the JAMS Rules and agreed to by the parties, each party to the arbitration may serve written interrogatories and requests for production on the other parties and each party may take up to five (5) depositions. To the extent the JAMS Rules conflict with anything in this provision, this provision governs. The hearing shall be held within six (6) months of JAMS’ receipt of written notice of a dispute arising under this provision. The parties intend that a decision be issued within 30 days after the close of the hearing. The place of arbitration shall be Atlanta, Georgia. This Agreement is governed by and all disputes arising under or in connection with this Agreement shall be resolved in accordance with the laws of the State of Georgia. The parties acknowledge that this agreement evidences a transaction involving interstate commerce. The United States Arbitration Act shall govern the interpretation, enforcement and proceedings pursuant to this agreement to arbitrate. The federal courts of the Northern District of Georgia shall have exclusive jurisdiction over any proceedings relating to the arbitration, including entry of judgment on the Award; provided, however, if said court does not have or exercise jurisdiction thereover, then relief may be sought in any other court of



competent jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from the Northern District of Georgia (or from any other court of competent jurisdiction if the Northern District does not have or exercise jurisdiction).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

ATTEST: **PAN AMERICAN LOGISTICS LLC.:** (seal)

\_\_\_\_\_  
Secretary By: \_\_\_\_\_

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ATTEST: **CITY OF ATLANTA:** (seal)

\_\_\_\_\_  
Municipal Clerk By: \_\_\_\_\_  
Mayor

APPROVED: APPROVED:

\_\_\_\_\_  
Aviation General Manager Chief Procurement Officer

APPROVED AS TO FORM:

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Senior Assistant City Attorney