

## CONSENT TO ASSIGNMENT OF LEASE

This consent to assignment of lease ("Consent") is dated \_\_\_\_\_, 2015 and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("County"), PACIFIC WHOLE FOODS CORPORATION, a California corporation ("Assignor"), and EXCELSIOR J D CO, a California limited liability company ("Assignee").

### RECITALS

- A. The County owns and operates Buchanan Field, a public airport located at Concord, California (the "Airport"), as shown on the Airport Layout Plan, which plan is on file in the office of the County Director of Airports (the "Director of Airports").
- B. The County leased that portion of the Airport commonly known as 2301 Meridian Park Boulevard (the "Premises") to Caffino Express LLC ("Caffino") pursuant to a lease dated October 1, 2010 (the "Lease"). Caffino assigned its rights and obligations under the Lease (the "Leasehold Estate") to Rhone, LLC on October 23, 2012, pursuant to an Asset Purchase Agreement between Caffino and Rhone, LLC.
- C. Rhone, LLC and Assignor were parties to a Merger Agreement dated March 4, 2014. As a result of the merger, the separate corporate existence of Rhone, LLC ceased and Assignor became the surviving business. As a result, Rhone, LLC assigned its rights and obligations under the Lease to Assignor on June 24, 2014.
- D. Assignor now desires to assign all of its right, title, interest, and obligations, in, to and under the Lease and the Leasehold Estate to Assignee (the "Assignment"). Assignee desires to accept the Assignment.
- E. In consideration of all of the terms and conditions contained herein, County agrees to consent to the Assignment.

County, Assignor, and Assignee therefore agree as follows:

### **Agreement**

1. Definitions. Defined terms used but not defined in this Consent have the meaning ascribed to them in the Lease.
2. Security Deposit. The County will continue to hold the security deposit previously paid to the County under the Lease in accordance with the terms of the Lease.
3. Representations and Warranties of Assignor and Assignee. Each of Assignor and Assignee hereby represents and warrants that:
  - a. Assignee's intended use of the Premises is consistent with Assignor's use of the Premises and is not inconsistent with the use permitted under the Lease and will not require alteration of the Premises.
  - b. Assignee is a California corporation in good standing.
  - c. Assignee has a good reputation in the business community in which it conducts its businesses and has a business reputation and business credit history that is consistent with other business conducted on the Premises.
  - d. Assignee is capable of operating a gourmet coffee/espresso business on the Premises as contemplated by the terms of the Lease and has business experience and management ability that is equal to or greater than that of Assignor.
  - e. Assignee's intended use of the Premises will not increase the use or storage of hazardous substances on the Premises (as compared with such use or storage by Assignor) and will not otherwise adversely affect the County's interest in the Premises.
  - f. Assignee's financial condition is sufficient to support the obligations of Tenant under the Lease.
  - g. The Assignment will not result in a reduction in the Rent paid under the Lease.
  - h. Assignor and Assignee have the legal right and authority to enter into this Agreement and each has received all necessary approvals to do so.
4. Assignment and Assumption Agreement. Assignor and Assignee are entering into an Asset Purchase Agreement under which the Assignment will be effected.
5. Conditions Precedent to Execution of Consent. County's consent to the Assignment is subject to the satisfaction of the following conditions:

- a. The Director of Airports must review and approve the form of the Asset Purchase Agreement.
  - b. The Director of Airports must receive an executed copy of the Asset Purchase Agreement.
  - c. The Director of Airports must receive (i) a copy of the Notice of Bulk Sale that relates to the sale of the business located at the Premises by Assignor to Assignee, and (ii) a copy of any notices pursuant to Section 6106.4 of the Uniform Commercial Code.
  - d. On or prior to the effective date of the Assignment, the Assignor shall pay all outstanding rent and fees that have become due under the Lease, including late fees and interest, and shall cure any existing default. As of January 29, 2015, the amount of outstanding rent and fees is \$0. Payment of all outstanding rent and fees is a condition precedent to the effectiveness of this Consent. At County's discretion, payment of any portion of such amounts may be deemed to have been made through the application of the Security Deposit in accordance with the terms of the Lease.
  - e. On or prior to the effective date of the Assignment, Assignor or Assignee shall pay County a Transaction Fee of \$2,500.00; the County acknowledges receipt of the \$2,500.00 Transaction Fee.
  - f. Unless a later date is agreed to by County, the Assignment must occur on or before March 4, 2015.
6. Consent of County. In reliance on the representations and warranties of Assignor and Assignee and upon satisfaction of the terms and conditions set forth herein, the County consents to the Assignment.
7. Consent to Assignment Only. This Consent does not amend the Lease. If there is any confusion or contradiction between any term of the Lease and this Consent, the terms of the Lease will prevail.
8. Governing Law. The laws of the State of California govern all matters arising out of this Consent, with venue in the Superior Court of the County of Contra Costa, California.
9. Survival. The provisions of this Consent shall survive both the execution and delivery of this Consent.
10. Recitals. The Recitals are true and correct and are incorporated herein by reference.

11. Notice. From and after the effective date of the Assignment, all notices given to Tenant under the Lease will be mailed to:

Excelsior J D Co., LLC  
dba Java Detour  
Attn: Mark Naify  
172 Golden Gate Avenue  
San Francisco, CA 84102

The parties are signing this Consent as of the date set forth in the introductory paragraph.

**COUNTY**

CONTRA COSTA COUNTY, a political  
Subdivision of the State of California

By \_\_\_\_\_  
Keith Freitas  
Director of Airports

**RECOMMENDED FOR APPROVAL:**

By \_\_\_\_\_  
Karen Laws  
Principal Real Property Agent

By \_\_\_\_\_  
Beth Lee  
Assistant Director of Airports

**APPROVED AS TO FORM:**

By Sharon L. Anderson, County Counsel

By \_\_\_\_\_  
Kathleen M. Andrus,  
Deputy County Counsel

**ASSIGNOR**

Pacific Whole Foods Co.

By \_\_\_\_\_  
Hector Escquivel  
President

By \_\_\_\_\_  
Name:  
Its:

**ASSIGNEE**

Excelsior J D Co., LLC

By \_\_\_\_\_  
Mark Naify  
President

By \_\_\_\_\_  
Name:  
Title: