

**FIRST AMENDMENT TO  
LEASE BETWEEN CONTRA COSTA COUNTY  
AND  
EXCELSIOR J D CO, LLC**

This First Amendment to Lease (the **"First Amendment"**) is dated February 1, 2016, and is between the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (**"Lessor"**), and EXCELSIOR J D Co, LLC, a California limited liability company (**"Tenant"**).

Recitals

A. Lessor and Tenant are parties to a lease dated October 1, 2010, under which Tenant is leasing from Lessor land located at Buchanan Field Airport commonly known as 2301 Meridian Park Boulevard (the **"Lease"**).

B. In 2015, Tenant made approximately \$80,420 in capital improvements to the building that is located on the Premises (as defined in the Lease).

C. In consideration for the improvements to the building made by Tenant, the parties desire to amend the Lease to modify the term of the Lease and the rent payable during the term.

The parties therefore agree as follows:

Agreement

1. Section 3. Term is deleted in its entirety and replaced with the following:

A. The **"Term"** of this lease is comprised of an initial term and, with the concurrence of the Director of Airports, an extension term. The initial term is thirteen (13) years, commencing February 23, 2010, (the **"Commencement Date"**), and ending February 28, 2023.

B. Optional Extension: Tenant has one (1) option to extend this lease for a term of five (5) years (upon all the terms, covenants and conditions set forth herein, provided (i) Tenant is not in default beyond any applicable cure period as of the commencement of the Extension Period, and (ii) Tenant is not in default on the day an Extension Request, as defined below, is given.

No earlier than February 1, 2021, and no later than February 1, 2022, Tenant may request that this lease be extended for five (5) years (the **"Extension Period"**) by giving the County written notice of its desire to

extend the Term (an "Extension Request"). The Extension Request will be deemed received by the County upon the Director of Airport's execution of an acknowledgment of receipt of the Extension Request. The Director of Airports, in his or her sole discretion may, but is not required to, approve the Extension Request, which will not be unreasonably withheld. The Director of Airports will respond in writing to Tenant within sixty (60) days after receipt of the Extension Request. Failure of the Director of Airports to respond in writing within sixty (60) days constitutes a denial of the Extension Request.

Failure to deliver an Extension Request within the timeframe set forth above constitutes a waiver of Tenant's right to request an extension.

Upon commencement of the Extension Period, all references to the Term of this lease will be deemed to mean the Term as extended pursuant to this Section.

1. Section 5. Rent is deleted in its entirety and replaced with the following:

Tenant shall pay rent to Lessor without offset or demand on or before the first day of each month. Rent for any partial month will be prorated at the rate of 1/30<sup>th</sup> of the applicable monthly rent per day.

A. Rent:

<u>Beginning</u>	<u>Monthly Rent</u>
February 1, 2010	\$3,528.30
February 1, 2011	\$3,750.00
February 1, 2012	\$3,970.00
February 1, 2013	\$4,190.00
February 1, 2014	\$4,410.00
February 1, 2016	\$2,600.00
February 1, 2017	\$2,600.00
February 1, 2018	\$3,600.00
February 1, 2019	\$3,800.00
February 1, 2020	\$4,000.00

B. Adjustment to Rent: Beginning February 1, 2021, and annually on each February 1 thereafter throughout the Term and any hold over period, Lessor, without prior notice to Tenant, may revise the rent then in effect based on the CPI Factor, as defined below. Any such adjustment may not increase rent by more than five percent (5%) per annum. The CPI Factor may not be applied to reduce rent below the then existing rent. If there is a decrease in the CPI, rent for the year in question will be the same as rent for the preceding year.

The "**CPI Factor**" means the percentage by which the "Index" (as defined below) as of any adjustment date has increased over the Index in effect as of the immediately preceding adjustment date, calculated to the nearest one-tenth of one percent. The term "**Index**" means the Consumer Price Index, all Urban Consumers and San Francisco, Oakland, San Jose, CPI Index. All Items (1982-84 = 100), published by the United States Department of Labor, Bureau of Labor statistics, or any successor or substitute index published as a replacement for that Index by said Department or by any other United States governmental agency.

Lessor will notify Tenant of any increase in monthly rent when Lessor completes the calculation of increased rent. If such notice is given after the effective date of the increase, Tenant will pay any increased monthly rent retroactively to the effective date of the increase.

[Remainder of Page Intentionally Left Blank]

2. Miscellaneous. This First Amendment constitutes the entire agreement between the parties hereto relating to the subject matter hereof. Except for the amendments agreed to herein, the Lease remains in full force and effect.

The parties are executing this First Amendment as of the date first set forth above.

**LESSOR**

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

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

**TENANT**

**Excelsior J D Co, LLC**, a  
California limited liability company

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

**RECOMMENDED FOR APPROVAL:**

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

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

**APPROVED AS TO FORM:**

Sharon L. Anderson,  
County Counsel

By: \_\_\_\_\_  
Kathleen Andrus,  
Deputy County Counsel