

**NORTH CAROLINA**

**ENTERPRISE LEASING  
COMPANY-SOUTHEAST, LLC  
DBA NATIONAL/ALAMO  
RENTAL CAR LEASE AND  
CONCESSION AGREEMENT**

**CUMBERLAND COUNTY**

**THIS LEASE AND CONCESSION AGREEMENT** made and entered into as of this **1<sup>st</sup> day of July, 2022**, by and between the **CITY OF FAYETTEVILLE**, hereinafter called "**LESSOR**" and **ENTERPRISE LEASING COMPANY-SOUTHEAST, LLC. dba NATIONAL/ALAMO** having an office in Cumberland County, North Carolina, hereinafter called "**LESSEE**";

**WITNESSETH:**

**WHEREAS**, the City of Fayetteville through its City Council is duly empowered as the owner and operator of the Fayetteville Regional Airport and all facilities located thereon, under the authority of N.C.G.S. § 63-53(3) and Chapter 3 of the Code of Ordinances of the City of Fayetteville, North Carolina;

**AND WHEREAS**, automobile rental services are necessary and desirable for the proper accommodation of passengers arriving at and departing from the Fayetteville Regional Airport;

**AND WHEREAS**, LESSEE is engaged in the operation of an automobile rental business and is ready, willing and able to provide a sufficient number of late model automobiles to meet the needs of passengers using the Fayetteville Regional Airport at rates comparable to those generally prevailing in the area;

**NOW, THEREFORE**, the parties for and in consideration for the rents, covenants and agreements contained herein do hereby contract and agree as follows:

**ARTICLE I—SPACE AND FACILITIES**

LESSOR does hereby rent and let unto the LESSEE and the LESSEE does hereby hire and take from the LESSOR, subject to the terms and conditions herein stated, the following:

- (a) Space and facilities in the Fayetteville Regional Airport Terminal Building for the exclusive use by the LESSEE as office and ticket counter space, to wit:  
Approximately 200.77 square feet located in the Baggage Claim Area of the Fayetteville Regional Airport Terminal Building, and designated as a portion of Office C110A on a mechanical drawing attached hereto and labeled Exhibit "A" which is incorporated herein by reference and is further designated on said mechanical drawing as National.

- (b) The use, together with others holding car rental leases at the Fayetteville Regional Airport, a portion of the 250 available spaces now and hereafter designated by LESSOR as "Ready Car Space."
- (c) LESSOR reserves the right to relocate the office and ticket counter space and ready car spaces rented to LESSEE hereunder should relocation become necessary for the efficient and orderly operation of the Fayetteville Regional Airport; provided, however, that should relocation become necessary, the space provided LESSEE shall be as near as possible, equal to or better than, the space described herein. In the event that the replacement space is unsuitable for LESSEE's business, LESSEE, at its sole discretion, may cancel this Agreement upon thirty (30) days advance written notice.

## **ARTICLE II—TERM**

The term of this Concession Agreement shall be for FIVE (5) years beginning JULY 1, 2022 and ending on the JUNE 30, 2027. The term may be renewed for an additional FIVE (5) years, subject to an increase in fees to defray any additional expenses incurred by the LESSOR, and any adjustment to the terms hereof as may be appropriate at the time, which shall involve at a minimum increase in rent to reflect any increase in the Consumer Price Index (CPI) after the first THREE (3) years. Said adjustment shall be based on the average of the percent of change in Consumer Price Index (All Urban Consumers, all items, South Group, 50,000-450,000 population) for the previous three years. At the end of the three (3) year period which is June 30, 2024, and through any extension period(s), CPI adjustments shall continue to be made triennially. Lessee may exercise its right to renew the term of this Concession Agreement for the additional five (5) year term on not less than ninety (90) days prior written notice to the Lessor.

## **ARTICLE III—USE OF SPACE AND FACILITES**

- (a) LESSOR hereby grants to the LESSEE the following non-exclusive privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants hereinafter set forth, and the rules and regulations as may now or hereafter be promulgated by the City of Fayetteville or the Fayetteville Airport Commission:
  - (1) The right, license and privilege to operate an automobile rental service at the Fayetteville Regional Airport for the purpose of renting automobiles to passengers and such other persons who request such services at said airport;
  - (2) The right of ingress and egress to and from the Fayetteville Regional Airport by its agents, employees, patrons, customers and invitees; and

- (3) The right to install and display appropriate signs in the Terminal Building to advertise said auto rental concession, provided that such design, installation and display shall be subject to the prior approval of the Airport Commission.

- (b) LESSOR reserves the right to contract with other individuals, firms, or corporations to engage in like activities at the Fayetteville Regional Airport.

#### **ARTICLE IV—RENT**

- (a) Concession Fee. LESSEE shall pay to LESSOR for the rights and privileges herein granted as a concession fee a minimum annual guarantee (MAG) payment of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00), or ten percent (10%) of annual gross revenue as hereinafter defined, whichever sum is greater, payable monthly. On or before occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR a minimum of TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). On or before the first day of occupancy by LESSEE and on the same day monthly each and every month thereafter until the termination of this lease, LESSEE shall pay LESSOR, in addition to the minimum monthly payment of TWO THOUSAND EIGHTY THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33), an additional sum equal to ten percent (10%) of the monthly gross revenue for said previous month if ten percent (10%) of the monthly gross revenue for said previous month exceeds TWO THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-THREE CENTS (\$2083.33). The ten percent (10%) of gross (less \$2,083.33 if concession receipts exceed said amount) shall be remitted to the Lessor on or before the twentieth (20<sup>th</sup>) day of the calendar month immediately following the end of the calendar month during which the revenues were collected. Reconciliation of minimum annual guarantee (MAG) shall occur at the end of the LESSOR's fiscal year which is June 30<sup>th</sup> and additional payment/reimbursement shall be made to LESSOR or LESSEE, as applicable.
- (b) Gross Revenue. For all purposes hereof, the term "gross revenue" shall mean all revenue received from LESSEE's customers (after all discounts applied thereto) made by the LESSEE to its customers for those cars which the LESSEE shall have rented to them at or through any of the leased premises, less bad debts which become owing for the first time as of the close of the period for which the determination of gross receipts is made, plus payments received during said period on account of bad debts deducted in determining gross receipts for the last previous period for which a determination of gross receipts was made. A "bad debt" is any sum that is owed the LESSEE under a car rental agreement applicable to a car rented as aforesaid and which is four (4) months or more overdue at the close of any period for which gross receipts

are determined hereunder. By way of illustration, but not by way of limitation, gross revenue shall include:

- (1) All charges made by LESSEE to its customers for those vehicles rented at or through the leased premises, without regard to where the customer placed the order or the LESSEE received the order for said vehicle and without regard to whether said vehicle is returned to the leased premises or elsewhere;
- (2) All charges made by the LESSEE to its customers for exchanged vehicles regardless of where said exchange was made, when the vehicle originally rented to the customer was rented at or through the leased premises; and
- (3) All charges made by the LESSEE to its customers for accident insurance.

(c) Excluded from "gross revenue" for the purpose of this Agreement, shall be:

- (1) The amount of federal, state or local sales taxes which are separately stated and collected by LESSEE from customers;
- (2) All sums received by LESSEE as damages for the loss, conversion, abandonment, or destruction to vehicles leased by LESSEE under this Agreement;
- (3) All sums received by reason of LESSEE's sale of its capital assets;
- (4) Revenue arising out of or collected on amount of charges made by Lessee to its customers in return for which Lessee agrees to waive its rights to recover from said customers for loss or damage to rental automobiles, otherwise known as loss damage waiver (LDW), and/or collision damage waiver (CDW);
- (5) All sums received from customers for the purchase of fuel; and
- (6) Any amount collected from its customers as Customer Facility Charges (CFCs).

This definition of "gross revenue" shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

- (d) Ready Car Space. In addition to the above payments, LESSEE shall pay LESSOR rent of TWENTY DOLLARS AND NO CENTS (\$20.00) per month for each ready space allocated to LESSEE, payable monthly on or before JULY 1, 2022, and on or before the first day of each and every succeeding month thereafter during the term of this Agreement. LESSEE shall have the right to tow away any unauthorized vehicles parked in LESSEE's designated Ready Car space, provided each space is properly signed in accordance with North Carolina State law. Any vehicle towed shall be stored in the Airport parking lot and LESSEE shall notify and submit a storage report to Airport Firefighter personnel.

The location of LESSEE's spaces shall be based on the gross revenue received from the previous three (3) years, with the LESSEE having the highest revenue choosing the location of their ready spaces first, etc. The number of ready spaces LESSEE receives will be based on the gross revenue received from the previous twelve months.

The number of spaces will be increased or decreased on a triannual basis and the preceding year's revenues received from July 1<sup>st</sup> to June 30<sup>th</sup> will determine space allocations. The reallocation shall take place August 1<sup>st</sup> of each year.

The City reserves the right to contract with additional lessees during the term of this agreement, including any extensions. In the event a new lessee commences operation during the Term of this Agreement, that lessee shall receive ten (10) ready car spaces, with two (2) spaces being taken from each of the existing lease holders. On August 1<sup>st</sup> of the following year, all spaces will be reallocated based on previous year's market share (including any partial year market share of a new lessee), but in no event shall any lessee ever receive less than a minimum of ten (10) ready car spaces.

(e) Abatement of Minimum Guarantee. In no event shall payment of counter space, office space, ready car space and utilities abate. The minimum concession fee provided in Article IV (a) shall be suspended upon the occurrence of any of the following conditions:

- (1) A strike by employees of a commercial airline providing service to the Fayetteville Regional Airport that causes a total cessation of airline service for a period of fifteen (15) days or longer in any one calendar month. The continued service by a non-striking commercial airline so that there is not a total cessation of airline service to the Fayetteville Regional Airport shall not constitute an abatement of the minimum guarantee as defined herein;
- (2) In the event of the declaration of a national emergency by executive decree or legislative action, which causes a material, and substantial curtailment of the supply of fuel, tires, or parts for motor vehicles and airplanes for use by the general public; or
- (3) If, for any reason, the number of passengers deplaning from scheduled airline flights at Fayetteville Regional Airport during any two (2) consecutive calendar months shall be less than seventy percent (70%) of the number of such deplaning passengers for the same period of the preceding calendar year. The percentage of deplaning passengers shall be subject to renegotiation between the parties prior to any extension of this Concession Agreement becoming effective as provided by Article II of this Agreement.

If during this period, any of the foregoing conditions exist, LESSEE shall pay to the LESSOR for the rights, privileges, and facilities, rent based upon 10 percent of annual gross revenue.

(f) Late Fees: Any fee payable by Lessee under this agreement that is not paid when due shall bear a late payment fee at the rate of five percent (5%) per month from the due date until paid.”

(g) LESSEE shall pay to LESSOR for the use of the space at 2885 Hangar Road for the sum of One Thousand Seven Hundred Ninety-Eight Dollars & eleven cents (\$1,798.11) per month plus ten percent of any sublease rent, payable in advance on the first day of each month at the City of Fayetteville Collections Department, 433 Hay Street, Fayetteville, NC 28301.

(h) In addition to rent listed above, LESSEE agrees to remit to LESSOR in consideration of LESSEE’s use of 87,500 square feet of fenced and graveled area within Enterprise Service Annex and located at 3154 Doc Bennett Road, the sum of Two Thousand Dollars and no cents (\$2,000.00) per month payable in advance on the first day of each month at the City of Fayetteville Collections Department, 433 Hay Street, Fayetteville, NC 28301.

## **ARTICLE V—REPORTS AND RECORDS**

(a) LESSEE shall furnish LESSOR on or **before the 20<sup>th</sup> day of each calendar month a Certified and signed copy of its statement of operations for the previous month** which said statement shall show in detail a breakdown of LESSEE’s gross revenue for the previous month to enable LESSOR to verify the accuracy of LESSEE’s payment of percentage of gross revenue. LESSEE shall furnish LESSOR, upon demand, such additional detail and breakdown as LESSOR shall deem necessary to verify gross revenue.

(b) LESSOR shall have the right to inspect LESSEE’s books and records for a period of three (3) years, to determine the accuracy of the matters reports in said monthly report required above and LESSEE agrees to maintain all books and records upon leased premises, or to mail same to LESSOR within ten (10) days of LESSOR’s request therefore.

(c) At the end of the first lease year under this Agreement, which is June 30, 2023, and at the end of each lease year thereafter during the term of this Agreement, or not more than sixty (60) days thereafter, LESSEE shall furnish to LESSOR a certified copy of an audit of LESSEE’s operations hereunder by LESSEE’s certified public accountant. LESSOR shall have the right to conduct its own audit to verify LESSEE’s certified audit and in the event LESSOR’s audit to verify LESSEE’s payments of rent to LESSOR is as much as two and one-half percent (2 ½%) less than the amount LESSEE is required to pay LESSOR

under the terms of this Agreement, then LESSEE shall pay to LESSOR all costs and expenses incurred by LESSOR in conducting said audit, including transportation, food and lodging expenses.

(d) LESSEE shall submit to LESSOR no later than the 1<sup>st</sup> of November each year, a Concession Activities Report listing the following:

- (1) Names and types of Disadvantaged Business Enterprise (DBE) firms that supported operations at the Fayetteville Regional Airport, to include whether a DBE firm arrangement is a sublease or joint venture;
- (2) Payments to DBE (s) per (1) above;
- (3) Rental annual gross income for business conducted at Fayetteville Regional Airport; and
- (4) Percentage of DBE participation for the current October 1<sup>st</sup> to September 30<sup>th</sup> timeframe bases on (2) and (3) above.

## **ARTICLE VI—OBLIGATIONS OF LESSEE**

The LESSEE covenants and agrees:

- (a) To promptly pay all charges, rents and fees by delivering same to the City of Fayetteville, PO Drawer D, Fayetteville, NC 28302.
- (b) The LESSEE shall take out or obtain all licenses or permits as required by federal, state or local law. The LESSEE shall pay any and all lawful taxes and assessments (including but not limited to ad valorem and inventory taxes) which, during the term of this Lease Agreement, or any part thereof, may become a lien upon or which may be levied by state, county, city or any other tax levying body, upon any and all of the leased premises of this Agreement. And upon any and all taxable interest of the LESSEE acquired in this Lease Agreement, as well as all taxes on taxable property, real or personal, owned by the LESSEE in or about said leased premises, but deferment of payment of any tax by the LESSEE shall not constitute a default or breach of this Lease Agreement during the time the LESSEE is contesting in good faith the payment of said tax before any duly constituted authority, and pending the final determination of such contest.
- (c) To furnish, install, operate and maintain the space and facilities provided herein and keep the same, as well as other premises made available to the LESSEE, and the furniture, fixtures and equipment installed therein in good working condition and repair, and upon termination or the expiration of this Agreement, to deliver the premises to LESSOR in good order, condition and repair, reasonable wear and tear excepted.
- (d) To provide and have available at all times for use by patrons at the Fayetteville Regional Airport, a sufficient number of rental automobiles to meet the normal demands and needs of the public for automobile rental services. Service shall be available for all scheduled commercial flights. Rental automobiles shall be in good working condition and free from known

- mechanical defects and in a clean, neat and attractive condition both inside and out and shall be no more than two years older than current year models.
- (e) Solicitation of business shall be restricted to the space allotted LESSEE in the Airport Terminal Building.
  - (f) LESSEE shall not maintain in a position of public interaction any person reasonably objectionable to Airport Management on account of said person's reputation, appearance, dress or conduct; provided that termination of any such employee shall be subject to such due process rights, if any, as may be extended to said employee by LESSEE.
  - (g) LESSEE covenants and agrees to at all times observe, obey and comply fully with all laws, assurances, ordinances, rules, regulations, and requirements now in effect and hereafter promulgated by the LESSOR, City, State, Federal, or other governmental entity having jurisdiction over the leased premises or activities of LESSEE.
  - (h) Maintenance of vehicles, including cleaning and washing, shall not be performed on Airport property without prior written permission of Airport Management.

## **ARTICLE VII—INDEMNIFICATION & INSURANCE**

- (a) Indemnification. It is agreed that LESSEE is, and shall be deemed to be an independent contractor, and that LESSOR shall in no way be responsible to any person, firm or corporation for the LESSEE, its invitees, agents, officers, servants or employees acts or omissions. It is further agreed that in the exercise or enjoyment of the privileges herein granted, the LESSEE shall indemnify, defend, and save and hold harmless the LESSOR and all of its elected officials, employees, officers agents, successors and assigns from any and all claims, demands, suits, judgments, costs, expenses (including attorney fees) and liability to persons and/or property that may result from or grow out of any act, omission, or negligence on the part of the LESSEE or the LESSEE's invitees, agents, servants, employees, or officers. Indemnification of the LESSOR by LESSEE does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law.
- (b) Commercial General Liability. LESSEE shall procure and maintain in full force and effect at all times and at its sole expense, Commercial General Liability insurance covering premises operations, independent contractors and contractual liability, with single limits coverage of one million dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, take out and maintain continuously in effect at all times during the term of this Agreement, in addition to insurance required by law, automobile liability insurance in the sum of ONE HUNDRED THOUSAND & NO/100 DOLLARS (\$100,000.00) for each person injured and THREE HUNDRED THOUSAND & NO/100 DOLLARS



(\$300,000.00) for each accident, and FIFTY THOUSAND & NO/100 DOLLARS (\$50,000.00) for property damage. The LESSEE shall maintain such insurance with insurance underwriters authorized to do business in the State of North Carolina satisfactory to the LESSOR. The LESSEE shall, prior to commencing its operations pursuant to the terms of this Lease Agreement, furnish the LESSOR with a certificate of insurance from the LESSEE's carrier indicating there is such insurance coverage as herein before provided. Said Certificate of Insurance shall provide that the policy cannot be canceled or materially changed except after giving notice by registered mail to LESSOR at least thirty (30) days before the effective date of such cancellation or change.

- (d) The insurance coverage's and limits required of the LESSEE under this agreement are designed to meet the minimum requirements for the LESSOR. They are not designed as a recommended insurance program. LESSEE alone is responsible for the sufficiency of its own insurance program(s). If LESSEE has any questions concerning exposures and/or coverage issues, professional insurance assistance should be obtained by LESSEE.
- (e) All insurances shall be placed with an insurance company licensed to do business in the State of North Carolina.

#### **ARTICLE VIII-ASSIGNMENT OF LEASE**

LESSEE shall not assign this Agreement or any part thereof nor sublet the leased premises or any part thereof, without prior written consent of LESSOR, except to an affiliate of the LESSEE. For all purposes hereof, an "affiliate" is any person, firm or corporation controlled by, under common control with, or controlling the LESSEE. "Control" is the power to direct the management and policies of another, whether arising by virtue of stock ownership, contract, or otherwise.

#### **ARTICLE IX—CANCELLATION OR TERMINATION**

- (a) Termination by Airport. This agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon written notice to LESSEE upon LESSEE's default in the payment of any sums when due hereunder and failure to cure said default within 10 days after said written notice. The acceptance of any monies by LESSOR, after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
- (b) Except as provided in (a) above, this agreement and all rights and privileges and interests created hereunder may be terminated by LESSOR upon ten (10)

days written notice to LESSEE upon the occurrence of any of the following events:

- (1) The LESSEE defaults in the performance of any term, covenant, or condition hereunder and such default shall continue for thirty (30) days after written notice of such default from LESSOR to LESSEE; provided, however, that no such default shall continue for more than twenty-four (24) hours after written notice of such default if it presents a hazard to the safety of Airport personnel or the general public. The acceptance of any monies by LESSOR after default shall not be deemed to be a waiver of the right of termination by LESSOR, nor shall LESSOR be stopped from evicting LESSEE from its premises and re-letting said premises to other parties.
  - (2) The LESSEE shall become insolvent or take the benefit of any present or future insolvency statute or make any assignment for the benefit of creditors or file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property.
  - (3) By order or decree of a court that LESSEE is adjudged bankrupt.
  - (4) A petition under any part of the Federal Bankruptcy Law is filed by any person, firm, or corporation against LESSEE and such petition is not vacated or discharged within ninety (90) days thereafter.
  - (5) LESSEE shall voluntarily abandon and discontinue its rental service at the Fayetteville Regional Airport for a period of ten (10) consecutive days. LESSOR shall be deemed to have not waived any of its rights or privileges due to its failure to notify LESSEE of any default or violation of any of the terms of this Agreement. Within thirty (30) days of the termination or cancellation of this Agreement, LESSEE shall remove all of its property from LESSOR's premises and leave the same in substantially the same condition as prior to LESSEE's entry thereon, ordinary wear and tear excepted. Any item or property not removed by LESSEE within thirty (30) days following the cancellation or termination of this Agreement shall be deemed to have been abandoned by LESSEE and shall become the property of the LESSOR without compensation and LESSOR shall be entitled to remove and dispose of same in any manner it deems fit.
- (c) Termination by LESSEE. LESSEE shall have the right to terminate this Agreement by giving 30 days' written notice, unless another notice period is identified, to LESSOR upon the occurrence of any of the following events, provided said event or events shall then be continuing:
- (1) The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by LESSEE of any part of the Fayetteville Regional Airport which is necessary for LESSEE's operations hereunder, which Order remain in force for a period of at least one hundred twenty (120) days.
  - (2) The LESSOR's default in fulfilling any of the terms, covenants, and conditions required under this Agreement and fails to cure said default

within forty-five (45) days following receipt of written notice thereof from LESSEE.

- (3) The destruction by fire, explosion, earthquake, the public enemy or other acts of God of a substantial or material part of the Fayetteville Regional Airport which substantially interferes with or disrupts LESSEE's use of said premises.
- (4) The United States Government or any of its agencies shall occupy the Fayetteville Regional Airport or any substantial part thereof to such an extent as to materially interfere with LESSEE's operations for a period of sixty (60) consecutive days, or more.

#### **ARTICLE X—COVENANT NOT TO GRANT MORE FAVORABLE TERMS**

LESSOR covenants and agrees not to enter into any concession agreement or contract with any other rental car agency that contains more favorable terms or conditions than contained herein.

#### **ARTICLE XI—AFFIRMATIVE ACTION**

LESSEE agrees that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. LESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. LESSEE agrees that it will require that its covered sub-organizations provide assurances to the LESSOR that they similarly will undertake affirmative action programs and that they will require assurances from said sub organizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

#### **ARTICLE XII – CUSTOMER FACILITY CHARGE (CFC)**

LESSOR approved the imposition of a Customer Facility Charge (CFC) on April 29, 2014 to be collected by LESSEE from rental car customers at the Airport effective July 15, 2014. The CFC remains in effect and continues at the current rate of Four Dollars (\$4.00) for the full Agreement period.

- (a) LESSEE agrees to continue imposition of the CFC fee as specified by the LESSOR in Section (b) below for each customer entering into a rental contract with LESSEE at the Fayetteville Regional Airport for the purpose of securing or recovering LESSOR's costs associated with certain Airport rental car facility related improvements that may be made at the Airport by

the LESSOR at its sole discretion, including but not limited to, a parking deck and new service area facilities as contemplated by LESSOR.

- (b) The proceeds of all CFCs shall be used solely for payment of costs relating to rental car facilities and parking areas at the Airport and which are deemed necessary by the LESSOR from time to time. The CFC shall be charged to LESSEE's customers for each day, or portion thereof for which a late fee or rental is charged to the customer, and a rental contract is in effect between LESSEE and its customers, up to a maximum of ten (10) CFCs per single rental contract. The amount of the CFC shall be FOUR DOLLARS (\$4.00) per contract day, or portion thereof and shall apply to, and be collected by LESSEE on, all rental contracts reserved, issued or written on or after July 1, 2021. Notwithstanding any of the other terms in the Agreement, the LESSOR reserves the right to adjust the amount of the CFC from time to time as the LESSOR deems necessary in its sole discretion. LESSOR shall provide LESSEE at least sixty (60) days prior notice of an adjustment in the CFC.
- (c) LESSEE shall collect the CFC from each customer with which LESSEE enters into an automobile rental contract at the Airport. The CFC shall be identified on a separate line on all rental car customer contracts, after taxes, and shall be described as the "Airport Customer Facility Charge". All Customer Facility Charges collected and/or held by LESSEE shall: (i) be collected from all customers, including without limitation all customers receiving complimentary or discounted car rentals under the LESSEE's bona fide marketing plans; and (ii) be held in trust by LESSEE for the LESSOR's benefit. All CFCs so collected shall be remitted to the LESSOR on or before the twentieth (20<sup>th</sup>) day of the calendar month immediately following the end of the calendar month during which such CFCs were collected. Failure by the LESSEE to collect and remit the CFCs to the LESSOR as provided for in this Concession Agreement shall result in termination of the AGREEMENT between LESSOR and LESSEE.
- (d) The method of calculating the CFC and the amount of such Customer Facility Charge shall be determined by the LESSOR at its sole discretion. LESSEE shall maintain records and controls, as prescribed by the LESSOR, which are sufficient to demonstrate the correctness of any such Customer Facility Charges collected by LESSEE and the amount of Customer Facility Charges remitted to the LESSOR. Said records shall be made available for inspection and examination by the LESSOR or its duly authorized representatives. The LESSOR reserves the right to audit LESSEE's records which are required to be maintained by LESSEE as provided for in *Article V – Reports and Records* of the AGREEMENT, for the purpose of verifying the Gross Revenue and Customer Facility Charges reported by LESSEE. Gross revenue shall specifically exclude any amounts collected from its customers as Customer Facility Charges.

### **ARTICLE XIII – N.C. IRAN DIVESTMENT ACT**

As mandated by N.C.G.S. 143C-6A-5(a), LESSEE certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143C-6A-4. LESSEE further certifies that in accordance with N.C.G.S. 143C-6A-5(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. LESSEE certifies that the signatory to this Agreement is authorized by the LESSEE to make the foregoing statement.

### **ARTICLE XIV - E-VERIFY**

LESSEE hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. LESSEE further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). LESSEE hereby pledges, attests and warrants through execution of this contract that LESSEE complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by LESSEE shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Amendment.

### **ARTICLE XV - SEVERABILITY**

The parties agree that if any provision of this contract shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this contract and the requirements of applicable law.

### **ARTICLE XVI – COMPLIANCE WITH LAWS, GOVERNING LAW, & VENUE AND FORUM**

LESSEE agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government. Except to the extent a federal law, rule or order may apply, this Agreement shall be governed by the laws of the State of North Carolina (without resort to the choice of law rules thereof). If any action or proceeding is brought by either party to enforce the provisions hereof, the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees incurred in such action or proceeding, including those on appeal, in such amounts as the court may determine without a jury. The Parties expressly agree that if litigation is brought in connection with this contract and (1) the litigation proceeds in the Courts of the

State of North Carolina, the parties agree that the appropriate venue shall be in Cumberland County (Twelfth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

#### **ARTICLE XVII- MORALITY CLAUSE**

If, in the sole opinion of the City of Fayetteville, at any time LESSEE or any of its owner(s) or employee(s) or agent(s) (collectively referenced as an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by the City of Fayetteville or are scandalous or inconsistent with community standards or good citizenship or may adversely affect the City of Fayetteville's finances, public standing, image, or reputation or are embarrassing or offensive to the City of Fayetteville or may reflect unfavorably on the City of Fayetteville or are derogatory or offensive to one or more employee(s) or customer(s) of the City of Fayetteville, the City of Fayetteville may immediately upon written notice to LESSOR terminate this Contract, in addition to any other rights and remedies that the City of Fayetteville may have hereunder or at law or in equity.

#### **ARTICLE XVIII—NOTICES**

All notices required or permitted to be given hereunder to LESSOR shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **City of Fayetteville, 433 Hay Street, Fayetteville, NC 28301**. All notices required or permitted to be given hereunder to LESSEE shall be sufficient if sent by registered mail, postage prepaid, and addressed to: **Enterprise Leasing Company-Southeast, LLC dba National/Alamo**\_\_\_\_\_

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**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their duly authorized officers, as of the day and year first above written.

CITY OF FAYETTEVILLE

BY: \_\_\_\_\_  
Douglas J. Hewett, ICMA-CM, City Manager

ATTEST:

\_\_\_\_\_  
Pamela Megill, City Clerk  
(Corporate Seal)

ENTERPRISE LEASING COMPANY-  
SOUTHEAST, LLC dba NATIONAL/ALAMO

BY: \_\_\_\_\_  
\_\_\_\_\_  
Vice President  
Properties and Concession

ATTEST:

\_\_\_\_\_  
Secretary

**STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND**

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**STATE OF \_\_\_\_\_**  
**COUNTY OF \_\_\_\_\_**

I, \_\_\_\_\_, a notary public of said County and State hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is \_\_\_\_\_ of Enterprise Leasing Company-Southeast, LLC dba National/Alamo, a limited liability company, and that by authority duly given and as the act of Enterprise Leasing Company-Southeast, LLC dba National/Alamo, and in such representative capacity voluntarily signed and acknowledged the due execution of the foregoing instrument.

Witness my hand and notaries seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



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