

**AMENDMENT NUMBER THREE TO ON-AIRPORT
RENTAL CAR CONCESSION LEASE**

THIS THIRD AMENDMENT TO ON-AIRPORT RENTAL CAR CONCESSION LEASE ("Third Amendment") is made and entered into as of July _____, 2024 by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("County") and ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC, D/B/A NATIONAL CAR RENTAL ("Tenant"). County and Tenant may sometimes hereinafter individually be referred to as "Party" or jointly as "Parties."

RECITALS

WHEREAS, County and Tenant entered into an On-Airport Rental Car Concession Lease, dated December 1, 2019 ("Existing Lease"); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, due to the COVID-19 pandemic, County and Tenant executed the First Amendment to adjust the square footage of the Ready Car Parking Area used for rent calculation ("First Amendment"); and

WHEREAS, due to the COVID-19 pandemic, County and Tenant executed the Second Amendment, to abate the Minimum Annual Guarantee ("MAG") for the months of June, July, August, and September 2021 ("Second Amendment"); and

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment and Second Amendment, to remove the Rental Car Radius requirement, modify the Overflow Parking procedure, revise the Revision of Rent calculation, revise the Charge for Late Payment, remove the Midterm Refurbishment requirement, and update the Americans with Disabilities Act requirements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COUNTY and TENANT hereby agree as follows:

AGREEMENTS

1. **Rental Car Radius.** Section 1.16 shall be deleted in its entirety.
2. **RAC Improvement Project.** Section 1.19 shall be added and read as follows:

“SECTION 1.19 RAC IMPROVEMENT PROJECT

“RAC Improvement Project” shall mean all TENANT improvements, including Common Area Improvements and Capital Improvements, funded in advance and completed by the COUNTY.”

3. **Tenant Share of RAC Improvement Project Cost.** Section 1.21 shall be added and read as follows:

“SECTION 1.20 TENANT SHARE OF RAC TENANT IMPROVEMENT PROJECT COST

“Tenant Share of RAC Improvement Project Cost” shall mean the share of cost attributed to TENANT for the RAC Improvement Project. The total Tenant Share of RAC Improvement Project shall be is \$614,741.70.”

4. **Term of Lease.** Section 2.01 shall be deleted and replaced with the following:

“SECTION 2.01 TERM OF LEASE

The term of this Lease is hereby extended two (2) years and shall terminate on November 30, 2031.”

5. **Overflow Parking.** Section 3.01(C)(1) is hereby deleted and replaced with the following:

“1) Overflow Parking Rent. Rental car brands may request Overflow Parking as needed by way of COUNTY’s Overflow Parking Request Form for approval by the Airport Director, or designee, at their sole discretion. Twenty-five (25) parking lot access cards will be provided at no cost to TENANT, however, the replacement fee for lost cards shall be twenty-five dollars (\$25.00) each. Overflow Parking may be terminated upon seven (7) days written notice to either Party.

6. **Percentage Rent.** Section 4.01(A)(2) shall be deleted and replaced with the following:

“2) Percentage Rent (“Percentage Rent”). Percentage Rent shall be ten percent (10%) of gross receipts from business operations conducted on or from the Airport and on or from an FBO leasehold in accordance with Section 4.03 in the Lease entitled “DEFINITION OF GROSS RECEIPTS.””

7. **Rent.** Effective December 1, 2023, Section 4.01(B), (C), and (D) shall be deleted and replaced with the following:

- “B. Ready Car Parking Area Rent. TENANT shall pay to COUNTY on the first of each month, fifty-seven cents (\$0.57) per month per square foot of Ready Car Parking Area assigned to TENANT in accordance with the provisions of Article III, LEASED PREMISES.
- C. Overflow Parking Rent. In the event TENANT elects to utilize Overflow Parking, TENANT shall submit COUNTY’s Overflow Parking Request Form fifteen (15) calendar days before the date required. The rental rate for Overflow Parking shall be fifty-five (\$0.55) per month per square foot of Overflow Parking Rent assigned to Tenant in accordance with the provisions of Article III, LEASED PREMISES and is subject to annual adjustment pursuant to Section 4.02(A) REVISION OF RENT. TENANT shall pay COUNTY the prior month’s Overflow Parking Rent in arrears, on or before the twentieth day of each month. In the event the obligation to pay the Overflow Parking Rent begins or terminates on some other day other than the first or last day of the month, the fee shall be prorated to reflect the actual period of use based on a thirty (30) day month.
- D. Common Area Rent. TENANT shall pay to COUNTY on the first of each month fifty-seven cents (\$0.57) per month per square foot for its use of the portion of Common Area assigned to TENANT in accordance with the provisions of Article III, LEASED PREMISES.”

8. Revision of Rent. Section 4.02(A) shall be deleted and replaced with the following:

- “A. On December 1, 2024, and annually thereafter, the Ready Car Parking Area Rent, Common Area Rent and Overflow Parking Rent, if applicable, shall be automatically adjusted in proportion to changes in the Consumer Price Index for Los Angeles-Long Beach-Anaheim (All Urban Consumers – All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$X = A \times B/C$$

Where:

X = Adjusted Ready Car Parking Area Rent, Common Area Rent, or Overflow Parking Rent.

A = Ready Car Parking Area Rent, Common Area Rent or Overflow Parking Rent identified in Section 4.01 (B)(C)(D) and thereafter the adjusted Ready Car Parking Area Rent, Common Area Rent or Overflow Parking Rent for the prior Annual Period.

B = Monthly index for the fourth month prior to the month in which each rent adjustment is to become effective.

C = Monthly index for the month and year in which this Third Amendment is signed by COUNTY and thereafter the monthly index for each successive anniversary of the date the Third Amendment was signed.

In the event that the CPI ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the CPI in effect at the date of this Lease not been altered.

In the event that the Consumer Price Index is not issued or published for the period for which such Ready Car Parking Rent, Common Area Rent, Overflow Parking Rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by COUNTY shall be used and if none is so published, then another index generally recognized as authoritative shall be substituted by COUNTY.

Notwithstanding the foregoing, in no event shall the Ready Car Parking Rent, Common Area Rent, or Overflow Parking Rent be reduced by reason of any such adjustment or be reduced below the initial amount as set forth in Section 4.01."

Section 4.02(B) shall be deleted and replaced with the following:

- "B. The Minimum Annual Guarantee ("MAG") for the Annual Period beginning December 2023 through November 2024 shall be \$2,246,475.00.

The Minimum Annual Guarantee for the Annual Period beginning December 2024 thru November 2025 will be adjusted on a one-time basis to establish a new Base MAG (the "Adjusted Base MAG"), which will equal 95% of the prior year's MAG. This Adjusted Base MAG will be the basis for all future MAG adjustments. The Adjusted Base MAG for this Lease shall be \$2,134,152.00.

- C. For the Annual Period beginning December 2025 through November 2026, and continuing with each subsequent Annual Period, the Minimum Annual Guarantee shall be adjusted on the first day of the Annual Period (the “MAG Adjustment Date”), to an amount that is the greater of a) eighty-five percent (85%) of the Percentage Rent for the preceding Annual Period ending four months prior to the rent adjustment date OR; b) the Adjusted Base MAG as referenced above.

Notwithstanding the foregoing, in no event shall the Annual Rent be reduced by reason of any subsequent adjustment or be reduced to an amount below the December 1, 2024, Adjusted Base MAG.”

9. **Payment Procedure.** Section 4.04(B) shall be deleted and replaced with the following:

“B. Payment of Ready Car Parking Area Rent, Common Area Rent and Overflow Parking Rent.

- 1) TENANT shall submit on or before the first day of each month, payable monthly in advance, payment of Ready Car Parking Area Rent and Common Area Rent, as provided in Section 4.01 (RENT).
- 2) TENANT shall submit on or before the twentieth day of each month, payable monthly in arrears, payment of Overflow Parking Rent, as provided in Section 4.01 (RENT).”

10. **Charge for Late Payment.** Section 4.05 shall be deleted and replaced with the following:

“SECTION 4.05 CHARGE FOR LATE PAYMENT

TENANT hereby acknowledges that the late payment of rents or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, and lost interest income.

Accordingly, if any payment of rent as specified in Section 4.01 (RENT) or of any other sum due COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and the total sum shall become immediately due and payable to COUNTY. An additional charge of one

and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

TENANT and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of TENANT's default with respect to such overdue payment or prevent COUNTY from exercising any of the other rights and remedies granted hereunder."

11. **Concession Midterm Refurbishment.** Section 7.03 shall be deleted in its entirety.
12. **Americans with Disabilities Act.** Section 7.10 shall be deleted and replaced with the following:

“SECTION 7.10 AMERICANS WITH DISABILITIES ACT

TENANT shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 (“ADA”) in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, TENANT's furnishings, trade fixtures and equipment and the concession improvements; (b) removing physical barriers from the Concession Area; (c) providing auxiliary aids and services for use of the Concession Improvements and TENANT's furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. TENANT shall develop a work plan to correct or avoid any violations or non-compliance with the ADA, and to address the processing of disability complaints. TENANT shall deliver to the COUNTY, upon COUNTY's request, a copy of each report and work plan. COUNTY's approval of or acceptance of any aspect of TENANT's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. TENANT agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by COUNTY with respect to TENANT's failure to comply with the ADA.

TENANT shall enter into an agreement with a wheelchair service provider used by the airlines and said agreement shall become effective by the first day Effective Date of this Third Amendment. TENANT's agreement with the wheelchair service provider shall ensure that wheelchair service is provided between the rental car areas and the Terminal for any guest with a disability or mobility impairment. TENANT shall establish a procedure for ensuring wheelchair assistance and responding to any other reasonable accommodation request under the ADA and TENANT's employees shall be trained on the procedure.”

13. **RAC Consortium.** Section 12.15 shall be deleted and replaced with the following:

“SECTION 12.15 RAC CONSORTIUM

TENANT, together with the on-airport rental car companies, shall establish a RAC consortium (“RAC Consortium”). The RAC Consortium must meet quarterly with meeting minutes supplied to JWA within 30 days of the meeting. The RAC Consortium shall govern and implement the following:

- i. Maintenance of improvements to Parking Structure Level Zero Common Area (“Common Area Improvements”) including but not limited to a minimum of nine (9) stop signs, a minimum of six (6) smart lighted crosswalks, a minimum of nine (9) speed bumps, a minimum of two (2) radar speed signs in close proximity to the elevators, security including cameras, and painted ceilings;
- ii. Compliance with ADA requirements;
- iii. Compliance with all other applicable federal, State, and local laws and regulations; and
- iv. Maintenance, to the satisfaction of JWA and in manner compatible with other first-class airports.”

14. Tenant Share of RAC Improvement Project Cost Repayment Terms. Upon 30 days’ notice from COUNTY of completion of the RAC Improvement Project, TENANT shall commence paying COUNTY its Tenant Share of RAC Improvement Project Cost in 48 equal monthly installment payments with no interest of twelve thousand eight hundred seven and twelve cents (\$12,807.12). TENANT shall commence making payments concurrently with the rendering of each monthly statement and in accordance with Section 4.04 of the Lease.

15. Effective Date. This Third Amendment shall become effective September 1, 2024.

16. Right of First Refusal. Within 60 days after the full execution of this Third Amendment, the RAC Consortium shall have the right of first refusal to lease unallocated parking space in Parking Structure Level Zero upon the submission of allocation plan approved by the Airport Director. If no allocation plan is submitted by the RAC Consortium and approved by the Airport Director within 60 days after the full execution of this Third Amendment, the RAC Consortium’s right of first refusal shall terminate and the Airport Director shall have the sole discretion to determine and approve the use of any unallocated parking space. Any approved allocation plan shall be incorporated into this Lease by way of an amendment approved by the Airport Director.

17. No Other Amendments; This Third Amendment Governs and Controls. Except as expressly modified by this Third Amendment, the Existing Lease, as amended by the First Amendment and Second Amendment shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Third Amendment are inconsistent with any of the provisions set forth in the Existing Lease, First Amendment and Second Amendment the provisions of this Third Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, Second Amendment and this Third Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease,

First Amendment, Second Amendment and the provisions of this Third Amendment shall be read and interpreted as if it was one agreement.

18. Authority. Each Party represents to the other Party or Parties that the individual executing this Third Amendment on behalf of such Party has the capacity and authority to execute and deliver this Third Amendment on behalf of such Party, and that this Third Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

19. Governing Law. This Third Amendment and the Existing Lease, as previously amended, shall be governed by and construed in accordance with the laws of the State of California.

20. Counterparts and Execution. This Third Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Third Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

21. Severability. If any provision of this Third Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Third Amendment shall nonetheless remain in full force and effect.

22. Contractual Obligations. Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through August 31, 2024, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

[Signatures appear on following pages]

IN WITNESS WHEREOF, County and Tenant have executed this Third Amendment as of the day and year first above written.

***TENANT:**
ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC, D/B/A NATIONAL CAR RENTAL

DocuSigned by:
By: Thomas Klingler
Its: Vice President of Finance
Name: Thomas Klingler

By: _____
Its: _____
Name: _____

APPROVED AS TO FORM:

County Counsel
DocuSigned by:
By: Mark Sanchez
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APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller
DocuSigned by:
By: Vivian Canton
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RECOMMENDED FOR APPROVAL:

John Wayne Airport
DocuSigned by:
By: Charlene Reynolds
A1A526A921AF49F...
Charlene V. Reynolds
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

County

COUNTY OF ORANGE

By: _____
Chairman, Board of Supervisors

Clerk of the Board of Supervisors
Orange County, California