

SECOND AMENDMENT TO LEASE AND CONCESSION AGREEMENT

THIS SECOND AMENDMENT to Lease and Concession Agreement (this “Second Amendment”) is made this ___ day of _____, 2019 by and between the PORT OF SEATTLE, a Washington municipal corporation (“Port”) and ATZ INC., a Washington corporation (“Lessee”).

RECITALS

WHEREAS, the Port and Lessee entered into a Lease and Concession Agreement dated July 30, 2013 (the “Agreement”) covering Lessee’s occupancy of certain described Premises at Seattle-Tacoma International Airport for the operation of a paid public parking lot for automobiles and other related activities;

WHEREAS, the Port and Lessee entered into that certain First Amendment to Lease and Concession Agreement on June 11, 2015 (the “First Amendment”);

WHEREAS, Section 3.2 of the Agreement and Section 6 of the First Amendment contain provisions regarding two possible extensions of the term of the Agreement for five (5) years each;

WHEREAS, Lessee has expressed its desire to extend the term of the Agreement, proposed revised financial terms for such extension term and proposed other revisions to the Agreement; and

WHEREAS, the Port and Lessee have negotiated in good faith and reached mutually agreeable terms for the extension of the term of the Agreement and other revisions to the Agreement.

NOW, THEREFORE, in consideration of their mutual promises, the parties agree as follows:

1. Capitalized Terms. Unless otherwise defined herein, capitalized terms used in this Second Amendment shall have the meanings given to them in the Agreement and First Amendment.
2. Effective Date. The effective date of this Second Amendment shall be 12:00 am, July 1, 2019 (the “Effective Date”), except that the provisions with respect to the Marketing Cost Exclusion shall be effective as of May 1, 2019, as provided in Section 7 below.
3. Extension Term and Option Periods.
 - a. Extension Term. Unless terminated earlier pursuant to the terms of the Agreement, as amended by this Second Amendment, effective as of the Effective Date, the term of the Agreement is hereby extended for three (3) years (the “Extension Term”), such that the Extension Term expires at 11:59:59 p.m. on June 30, 2022.

b. Option Years. Provided Lessee is and remains in full compliance with the terms and conditions of this Agreement, Lessee shall have the option to extend the Extension Term for two (2) additional consecutive one (1) year terms, referred to herein, respectively, as the “First Option Year” and the “Second Option Year.” The term of this Agreement shall automatically extend for the First Option Year unless Lessee provides written notice to the Port at least one hundred twenty (120) days prior to expiration of the Extension Term that Lessee declines the First Option Year, in which event the term of this Agreement shall expire upon expiration of the Extension Term. The term of this Agreement shall automatically extend for the Second Option Year unless Lessee provides written notice to the Port at least one hundred twenty (120) days prior to expiration of the First Option Term that Lessee declines the Second Option Year, in which event the term of this Agreement shall expire upon expiration of First Option Year. The First Option Year and the Second Option Year are from time to time referred to herein each as an “Option Year” and, collectively, as the “Option Years.”

c. Section 3.2 of the Agreement and Section 6 of the First Amendment are each deleted in their entirety.

4. Minimum Annual Guarantee. Beginning on the Effective Date, the Minimum Annual Guarantee for each Agreement Year of the Extension Term and, unless declined by Lessee pursuant to Section 3.b above, the Option Years, shall be as follows:

| Agreement Year | Minimum Annual Guarantee |
|-------------------------------|---------------------------------|
| First Year of Extension Term | \$2,000,000 |
| Second Year of Extension Term | \$2,000,000 |
| Third Year of Extension Term | \$2,000,000 |
| Option Year 1 | \$1,500,000 |
| Option Year 2 | \$1,500,000 |

5. Percentage Fees. Beginning on the Effective Date, the Percentage Fee on Gross Receipts from Parking, for each Agreement Year of the Extension Term and, unless declined by Lessee pursuant to Section 3.b above, the Option Years, shall be as follows:

| Agreement Year | Percentage Fee on Gross Receipts from Parking |
|-------------------------------|--|
| First Year of Extension Term | 58% |
| Second Year of Extension Term | 58% |
| Third Year of Extension Term | 58% |
| Option Year 1 | 57% |
| Option Year 2 | 56% |

6. Agreement Year. Section 1.2 of the Agreement is deleted and replaced in its entirety, as follows:

1.2 Agreement Year. As used this Agreement, the term “Agreement Year” means each successive year during the term of this Agreement, beginning on July 1, 2019 through the Extension Term and, as applicable, each Option Year.

7. Exclusion from Gross Receipts. Effective as of May 1, 2019, a new Section 4.3 is added to the Agreement, as follows:

4.3 Marketing Cost Exclusion. Subject to the procedures and Port approvals described in this Section 4.3, Lessee may exclude from the calculation of Gross Receipts from Parking, up to a maximum of \$120,000 per Lessee Advertising Year (as defined below), an amount equal to Lessee’s actual out-of-pocket expenditures paid to third parties for print, radio, television, and internet and other digital advertising and associated marketing efforts (“Marketing Costs”) specifically designed and targeted to maximize Gross Receipts from Parking (the “Marketing Cost Exclusion”).

4.3.1 Lessee Advertising Year. As used in this Section 4.3, the term “Lessee Advertising Year” shall mean each successive year during the term of this Agreement, beginning on May 1, 2019, through the Extension Term and, if applicable, each Option Year.

4.3.2 Marketing Plan Submittal. On or before May 15, 2019, and thereafter at least 30 days prior to beginning of each successive Lessee Advertising Year, Lessee shall provide the Port with Lessee’s annual marketing plan (the “Annual Marketing Plan”) which shall describe Lessee’s overall marketing strategy for the Lessee Advertising Year, a comprehensive marketing schedule detailing monthly advertising medium and marketing activities, the budgeted Marketing Costs for each medium/activity by month, and the metrics to be utilized to determine the success of each medium/activity towards increasing Gross Receipts from Parking. Subject to the other conditions set forth in this Section 4.3, no Marketing Cost Exclusion will be permitted or applicable unless the Port approves the Annual Marketing Plan.

4.3.3 Monthly Reporting. Throughout each Lessee Advertising Year, Lessee shall include in its monthly concession reports to the Port a detailed accounting of Marketing Costs paid in the previous month, payment receipts for such Marketing Costs, the portion of the Marketing Cost Exclusion to be applied for that month based on such Marketing Cost expenditures, and a report summarizing the metrics demonstrating the success (or lack of success) of each marketing activity/medium.

4.3.4 Briefing to the Port. Within thirty (30) days following the first seven (7) months of each Lessee Advertising Year, Lessee shall provide a briefing to appropriate Port staff summarizing Lessee’s execution of the Annual Marketing Plan, for each medium/activity, and the specific financial results attributable to the Annual Marketing Plan, including any demonstrable increase in Gross Receipts from Parking resulting from Lessee’s expenditure of the Marketing Cost Exclusion funds. The Port shall have the right to request additional briefings as it deems necessary.

4.3.5 Port Determination re: Continuance of the Exclusion. On an annual basis, the Port will evaluate the success of the Annual Marketing Plan and Lessee's Marketing Cost expenditures, including expenditure of the Marketing Cost Exclusion funds. Within thirty (30) days following Lessee's briefing to the Port pursuant to Section 4.3.4, based on its evaluation, the Port will determine, in its sole and absolute discretion (i) whether Lessee's expenditure of the Marketing Cost Exclusion funds, specifically, have resulted in a demonstrable increase in Gross Receipts from Parking and (ii) whether the Marketing Cost Exclusion will continue for the subsequent Lessee Advertising Year. If the Port determines that the Marketing Cost Exclusion should be continued, the Port reserves the right, in its sole and absolute discretion, to decrease the amount of the maximum Marketing Cost Exclusion for the subsequent Lessee Advertising Year based on the Port's evaluation of the Annual Marketing Plan, Lessee's proposed Marketing Cost expenditures, and whether Lessee's expenditure of the Marketing Cost Exclusion funds will result in a demonstrable increase in Gross Receipts from Parking. The Port shall provide Lessee with written notice of whether the Marketing Cost Exclusion will continue or discontinue; if the Port indicates that the Marketing Cost Exclusion shall discontinue, the Marketing Cost Exclusion will no longer be applicable under this Agreement.

4.3.6 Partial Lessee Advertising Year. For any partial Lessee Advertising Year, including at the end of the term (or due to earlier termination) of this Agreement, the amount of any Marketing Cost Exclusion approved by the Port shall be adjusted pro rata.

8. Early Termination by the Port. Section 30.2 of the Agreement is deleted in its entirety and replaced with the following:

30.2 In the event the Port requires the Premises for a capital improvement of the Airport (including, without limitation, any project relating to implementation of the Sustainable Airport Master Plan), or for safety or security reasons, the Port may terminate this Agreement by delivering not less than four (4) months advance written notice to Lessee pursuant to this provision.

9. Lessee Winding Down Period.

a. In the event the Port invokes its early termination right under Section 30.2 of the Agreement, then during the final four (4) months prior to termination of the Agreement (the "Lessee Winding Down Period"), the following terms shall apply:

- (1) Lessee shall commence winding down of its operations at the Premises to ensure timely surrender the Premises pursuant to Section 32 of the Agreement;
- (2) The Minimum Annual Guarantee shall not apply during the four (4) months comprising the Lessee Winding Down Period; and

- (3) The Percentage Fee on Gross Receipts from Parking shall be 45%, 30%, 10%, and 10%, respectively, for each of the four (4) months comprising the Lessee Winding Down Period.

b. Further, during the last four (4) months of the Extension Term (if Lessee timely provides notice that it declines the First Option Year); or during the last four (4) months of the First Option Year (if Lessee timely provides notice that it declines the Second Option Year); or during the last four (4) months of the Second Option Year, such 4-month period, as applicable, shall also be deemed a “Lessee Winding Down Period,” and during such period the provisions of Section 9.a.(1) through (3) above shall apply.

10. Access Disruption Event. The following provisions shall apply in the event of an Access Disruption Event (as defined below):

a. As used herein, an “Access Disruption Event” shall mean the occurrence of ten (10) Ramp Closure Days in any thirty (30) day period. “Ramp Closure Day” shall mean any 24 hour day (midnight to midnight) during which Lessee’s shuttle buses or customers are unable to utilize (i) the on-ramp to southbound Airport Expressway from Air Cargo Road or (ii) the off-ramp from southbound Airport Expressway to South 170th Street (each a “Ramp”) for more than ten (10) hours in such 24-hour day as a result of a closure or obstruction of the Ramp, excluding any unplanned closures or obstructions, including those due to traffic accidents, malfunctioning traffic signals, storm drain backup, broken water mains or similar fortuitous events requiring repair, emergency response or otherwise resulting in obstruction of the Ramp or access thereto.

b. Lessee shall be responsible for documenting any such Ramp Closure Days. If Lessee determines that five (5) Ramp Closure Days have occurred within a 30-day period, Lessee shall provide the Port written notice and documentation thereof, for the Port to verify. If thereafter Lessee believes that an additional five (5) Ramp Closure Days have occurred within such 30-day period, such that an Access Disruption Event has occurred, Lessee shall promptly provide the Port with written notice and documentation thereof. If the Port concurs that an Access Disruption Event has occurred, it will provide written notice to Lessee verifying same. For avoidance of doubt, as referenced herein, the applicable 30-day period shall be calculated commencing on the date of the first Ramp Closure Day of the five (5) Ramp Closure Dates reported by Lessee to the Port and ending on the date 30 days thereafter; if less than ten (10) Ramp Closure Days occur within said 30-day period such 30-day period will expire, and the next 30-day period, if any, shall commence and be calculated as of the date that a subsequent Ramp Closure Day occurs

c. Upon mutual verification that an Access Disruption Event has occurred, Lessee and the Port will promptly begin negotiations for relief or mitigation during the subsequent one hundred twenty (120) day period commencing on the date of the Port’s verification notice. During this 120-day negotiation period, the Minimum Annual Guarantee shall be suspended, and the Percentage Fee on Gross Receipts from Parking shall be reduced by fifty percent (50%) from its then applicable rate.

d. If the Port and Lessee have not executed an amendment to the Agreement addressing the Access Disruption Event to the satisfaction of both parties prior to expiration of said 120-day negotiation period, then the Agreement shall automatically terminate on the last day of the third full calendar month following expiration of the 120-day negotiation period, and during this final 3-month period, the Minimum Annual Guarantee shall not apply and the Percentage Fee on Gross Receipts from Parking shall be 30%, 10%, and 10%, respectively, for each of the final 3 months

11. No Further Amendment. Except as amended by this Second Amendment, all other terms, covenants and conditions of the Agreement shall remain in full force and effect.

12. Counterparts. This Second Amendment may be executed in one or more counterparts and all such counterparts shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the day and year first set forth above.

Port:

PORT OF SEATTLE
a Washington municipal corporation

By: _____
Its: _____

Lessee:

ATZ, INC.
a Washington corporation

By: Darin Lang
Its: President

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that DARIN LANG is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the President of the ATZ, INC., a corporation of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of _____,
residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of the PORT OF SEATTLE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington, residing
at _____
My Commission Expires: _____