



# Arlington Airport Commission Agenda Bill

Item: A

<b>COMMISSION MEETING DATE:</b>	
November 8, 2016	
<b>SUBJECT:</b>	
Lease Assignment Lot 112 A	
<b>ATTACHMENTS:</b>	
Lease Assignment, Disclaimer, and Exhibit	
<b>DEPARTMENT OF ORIGIN</b>	
Airport	
<b>EXPENDITURES REQUESTED:</b>	Legal Review
<b>BUDGET CATEGORY:</b>	Professional Services
<b>LEGAL REVIEW:</b>	Yes
<b>DESCRIPTION:</b>	
<p>The lease of Lot 112A is currently held by 63<sup>rd</sup> LLC (Paul Tschetter) and is a 502 operation. The building is being purchased by 19417 63R LLC, for the same purpose. They wish the Commission to approve a lease assignment for the land portion of this property to 19417 63R LLC. There are approx. 7 years remaining on this lease.</p>	
<b>HISTORY:</b>	
<p>This lease was last held by Steve Gohl and was assigned to 63<sup>rd</sup> LLC in 2014. It is currently a 502 operation. The new lease assignment will also be a 502 operation, however, airport staff had City Legal draft an "Acknowledgment Recital" stating that as airport property is subject to grant assurances, if federal agencies determine that this type of operation is found to be in disagreement with those grant obligations, the lease will become void. (See attached Acknowledgement and Lease Assignment).</p>	
<b>ALTERNATIVES</b>	
<p>Approve the Lease Assignment Deny the lease assignment Table this item for a future meeting</p>	
<b>RECOMMENDED MOTION:</b>	
<p>I move to approve the Lease Assignment between 63<sup>rd</sup> LLC and 19417 63R LLC, conditioned on the proposed Tenant's signature of the Acknowledgement and final approval of the City Attorney as to form.</p>	

LEASE ASSIGNMENT--LOT 112 A

The parties hereto are 63rd, LLC., a Washington limited liability company hereinafter referred to as "63rd", and 19417 63R, LLC, a Washington limited liability company, "assignee".

WHEREAS, 63RD leases certain premises from the City of Arlington, hereinafter referred to as "City", for the purposes set forth in a lease dated December 1, 2012, which lease has been amended by periodic Rental Readjustments (collectively referred to as "the Lease"); and

WHEREAS, assignee desires to assume 63RD's interest in said Lease, as amended, and to take assignment of said Lease, in accordance with the agreement between these parties.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

1. Assignment of Lease. Conditional upon approval of the City of Arlington which shall be evidenced below, and for and in receipt of valuable consideration in hand paid by assignee, receipt of which is hereby acknowledged, 63RD does hereby grant, bargain, sell, assign, transfer and set over the Lease unto assignee and to their heirs, executors and successors. Such assignment shall include all of 63RD's right, title and interest in and to the Lease and any and all improvements, fixtures and personal property upon the subject premises.

2. Hold Harmless. Assignee covenants and agrees to comply fully with the terms and conditions of the assigned lease and to hold 63RD harmless from any and all obligations which might arise out of said lease after the effective date of said assignment.

3. Effective Date of Assignment. This agreement shall be effective upon the City of Arlington approving the same in the form attached hereto. 63RD and their successors, administrators and assigns do covenant and agree that 63RD is the owner of said leasehold interest and improvements thereon, has good right and full authority to assign the same hereunder, and that they will warrant and defend the assignment hereby made unto assignee and its executors, administrators and assigns, against all and every person or persons claiming an adverse interest in the same.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ASSIGNEE:

19417 63R LLC, a Washington limited liability company

\_\_\_\_\_  
Benjamin London, Member

\_\_\_\_\_  
Jake Schwartz, Member

\_\_\_\_\_  
Christopher Seidler, Member

ASSIGNOR:

63RD, LLC, a Washington limited liability company

By: \_\_\_\_\_  
Richard Tschetter, Manager

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BENJAMIN LONDON, to me known to be a member of 19417 63R LLC the limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes herein mentioned, and on oath stated that he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_.  
My commission expires: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JAKE SCHWARTZ, to me known to be a member of 19417 63R LLC the limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes herein mentioned, and on oath stated that he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_.  
My commission expires: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CHRISTOPHER SEIDLER, to me known to be a member of 19417 63R LLC the limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes herein mentioned, and on oath stated that he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_.  
My commission expires: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared RICHARD TSCHETTER, to me known to be the MANAGER of 63RD, LLC the limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes herein mentioned, and on oath stated that he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_.  
My commission expires: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

CONSENT OF CITY

The City of Arlington having duly considered the above referenced Assignment on its regular City Airport Commission meeting of the \_\_\_\_\_ day of November, 2016, and the same being approved by the Airport Commission;

NOW, THEREFORE, the City does hereby consent to the assignment of lease as set forth above, provided the bank or lending institution using said lease for collateral also consents to this assignment, and further subject to the personal guaranty subjoined.

CITY OF ARLINGTON

By: \_\_\_\_\_  
Barbara Tolbert, Mayor

ATTEST:

By: \_\_\_\_\_  
Kristin Banfield, City Clerk

PERSONAL GUARANTY

For and in consideration of financial accommodations given to 19417 63R LLC, a Washington limited liability company, by the City, and in consideration of the City agreeing to deal with the company, the undersigned hereby jointly and severally guarantee payment to the City of all liabilities and indebtedness which the company has incurred under the above-referenced lease agreements.

The City shall not be bound to exhaust its resources or to take any action against the company or other parties before being entitled to payment by the undersigned of all amounts hereby guaranteed, but may make such demand and take such actions as it deems advisable.

Notice of default on the part of the company is hereby waived; and the undersigned jointly and severally agree to remain bound, notwithstanding any extension or renewals of any indebtedness or any liabilities hereby guaranteed or any part thereof; and consent is hereby given to 19417 63R LLC to make such renewals and extensions as the company, at its option, may choose to grant or accept.

The undersigned guarantee and represent that they are members and are financially interested in the above-named company.

DATED: \_\_\_\_\_

\_\_\_\_\_  
BENJAMIN LONDON

DATED: \_\_\_\_\_

\_\_\_\_\_  
JAKE SCHWARTZ

DATED: \_\_\_\_\_

\_\_\_\_\_  
CHRISTOPHER SEIDLER

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me BENJAMIN LONDON, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me JAKE SCHWARTZ, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Name: \_\_\_\_\_



## **ACKNOWLEDGEMENT RE LOT 112 LEASE**

The parties hereto are the **CITY OF ARLINGTON**, a municipal corporation of the State of Washington, (hereinafter “City”), and **19417 63R LLC, a Washington limited liability company**, (hereinafter “Lessee”).

### **RECITALS:**

- A. Lessee has requested the assignment of a Lease dated March 28, 2014 (“the Lease”) for certain real property located at 19417 63<sup>rd</sup> Avenue NE, Arlington, WA and known as Lot 112 of the Arlington Municipal Airport (“the Property”).
- B. The Property is located on the Arlington Municipal Airport, a city-owned property which is subject to federal grant assurances and restrictions promulgated and regulated by the Federal Aviation Administration (FAA) and potentially under the jurisdiction of other federal agencies.
- C. Lessee intends to use the property for the production and/or processing of marijuana products, a use permissible under state and local law but a use which is still prohibited under federal law.
- D. Due to the uncertainty due to the conflict between state and federal law, the City is unwilling to consent to the assignment of the lease desired by Lessee without the acknowledgement and covenants contained herein.

**FOR AND IN CONSIDERATION** of the mutual covenants contained herein and in consideration of the City agreeing to the assignment of the Lease, the parties do hereby agree as follows:

- 1. Lessee does hereby acknowledge that its contemplated use of the property is, as of the date of the approval of the assignment, illegal under federal law even though the contemplated use is or may be legal under state law.
- 2. The Lessee acknowledges that the property, while located on City-owned property and regulated by state and local law, is also subject to grant assurances made by the City to the federal government, which include the assurances to comply in all respects with the requirements of federal law, under which the use is illegal.
- 3. The Lessee acknowledges that the City is authorizing the assignment and assumption of the Lease and the contemplated use with the understanding that the federal government is not presently prosecuting or taking other enforcement actions against marijuana production and processing businesses conducted in strict compliance with state law.
- 4. The City and Lessee agree that although the federal government has generally not taken enforcement action against marijuana production and processing facilities under federal law, changes in federal or state law and enforcement or prosecutorial guidelines are possible at any time during the term of the lease and could result in the United States government taking enforcement action, which enforcement action could include termination of the lease, seizing of any improvements and personal property contained on the Property, or other remedies, and that the City would be required to comply with any

lawful directive of the United States Government to bring the use of the property into compliance, including, but not limited to, cessation of the use or termination of the Lease.

- 5. The Lessee agrees to indemnify and hold the City harmless, in accordance with paragraph 16 of the Lease General Terms and Conditions, from any and all claims, losses, or liabilities, including attorney’s fees, resulting from or caused by the federal government taking action, changes in state or federal law or policy, or any branch of the federal government requiring the City to take some action, as a result of changes in federal or state law or policy rendering the contemplated use of the property illegal or impermissible under state and/or federal law and policy.

**IN WITNESS WHEREOF** the parties hereto have executed this Acknowledgement on the \_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF ARLINGTON**

By: \_\_\_\_\_  
Barbara Tolbert, Mayor

ATTEST:

\_\_\_\_\_  
Kristin Banfield, City Clerk

**19417 63R LLC, a Washington limited liability company**

\_\_\_\_\_  
Benjamin London, Member

\_\_\_\_\_  
Jake Schwartz, Member

\_\_\_\_\_  
Christopher Seidler, Member

STATE OF WASHINGTON )  
 : ss  
COUNTY OF SNOHOMISH )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BARBARA TOLBERT and KRISTIN BANFIELD, to me known to be the Mayor and City Clerk, respectively, of the City of Arlington, the municipal corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said municipal corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BENJAMIN LONDON, to me known to be a member of 19417 63R LLC the limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes herein mentioned, and on oath stated that he is authorized to execute the said instrument.

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Printed Name: \_\_\_\_\_

STATE OF WASHINGTON )  
 : ss  
COUNTY OF \_\_\_\_\_ )

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COUNTY OF \_\_\_\_\_ )

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\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_.  
My commission expires: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

59th DR.



LOT 112A

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