



Arlington Airport Commission Agenda Bill

Item A:

COMMISSION MEETING DATE:	
September 9, 2025	
SUBJECT:	
SmartCap Arlington Air North Phase 1, LLC	
ATTACHMENTS:	
Lease, Memorandum of Understand, Second Memorandum of Understanding, General Terms and Conditions and PowerPoint	
DEPARTMENT OF ORIGIN	
Airport	
EXPENDITURES REQUESTED:	N/A
BUDGET CATEGORY:	N/A
LEGAL REVIEW:	Yes
DESCRIPTION:	
<p>SmartCap proposes to develop ten acres of land immediately west of 51st Ave. on Airport non-aeronautical land. SmartCap would like to request a revision of the current phasing language within their lease; for SmartCap to be able to respond appropriately to market conditions by way of a Memorandum of Understanding (MOU). These MOUs would give SmartCap the airport’s standard 18-month allowance of construction or occupancy before the start of payment of that phased lease. SmartCap would then get 21 months before the start of construction of the next phase. The project would begin on or before December 31, 2026. When finished this five phased project will have five buildings and two pocket parks built. Once the endeavor is complete the total annual revenue brought to the Airport would increase annually by no less than \$900,000 per year.</p>	
HISTORY:	
<p>SmartCap has been a committed partner with the City of Arlington for the last six years. This partnership was established with the Airport in 2021 when SmartCap completed two large buildings on the corner of 172nd St. and 51st Ave. The completion of these buildings increased the Airport revenue annually by \$300,000.</p>	
ALTERNATIVES	
<p>Approve Staff’s Recommendation Deny Staff’s Recommendation Table Staff’s Recommendation</p>	
RECOMMENDED MOTION:	
<p>I move to approve the agreed upon updated SmartCap Lease and MOU’s pending Legal review.</p>	

LEASE AGREEMENT
SmartCap Arlington Air North Phase 1, LLC
(Acct # _____, Lot _____)

* * *

The parties to this Lease Agreement (this "Lease") are the CITY OF ARLINGTON, a municipal corporation of the State of Washington, (hereinafter, "Landlord" or "Arlington"), and SmartCap Arlington Air North Phase 1, LLC, a Delaware limited liability company (hereinafter, "Tenant"). This Lease Agreement is effective as of _____, 2025 (the "Effective Date").

FOR AND IN CONSIDERATION of the mutual covenants hereinafter contained, the parties agree as follows:

1. LEASE AND DESCRIPTION. Upon the terms and conditions hereinafter set forth, Arlington does hereby lease to Tenant, and the Tenant does hereby lease from Arlington, those certain premises (as defined below) along 51st Avenue NE situated in Arlington, County of Snohomish, State of Washington, being a part of the Arlington Municipal Airport ("Arlington Municipal Airport" or "Airport"), according to the map thereof filed with Arlington's Clerk, said Airport being situated on real property located in Sections 15, 16, 21 and 22 Township 31 North, Range 5 East, W.M. (the "Airport Property"), and being described as follows:

See legal description and map attached hereto as Exhibit "A" which is incorporated herein by reference, hereinafter called the "Premises."

Landlord agrees and acknowledges that Tenant's development of the Premises will consist of construction of those certain buildings and related improvements with respect to the Premises. On-site physical construction (such as rough grading, site preparation, or other evident construction activities) with respect to the Premises will commence within ninety (90) days after signature of the Lease Agreement, and Tenant's receipt of all Permits (subject to Force Majeure), and will be completed (meaning Tenant has submitted an application for issuance of a temporary or final certificate of occupancy for one or more buildings on the Premises) within eighteen (18) months after commencement of construction (subject to Force Majeure) in accordance with the plans and specifications approved by the City. The date of such completion is referred to herein as the "Completion Date."

For clarity, this Lease supersedes that certain Memorandum of Understanding Regarding Long-Term Ground Lease, dated August 2, 2021, as amended by that certain First Amendment to Memorandum of Understanding Regarding Long-Term Ground Lease dated March 9, 2022 and that certain Second Amendment to Memorandum of Understanding Regarding Long-Term Ground Lease dated

_____, 2025 (collectively, the "Memorandum of Understanding"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Memorandum of Understanding. The terms of this Lease shall supersede in all respects the terms of the Memorandum of Understanding, which upon execution of this Lease shall become null and void in all respects. Landlord hereby releases Tenant from any and all claims, demands or causes of action whatsoever (i) arising out of the previously contemplated "Phase Two Lease", and (ii) arising from acts or omissions on the Premises prior to the date hereof.

2. BUSINESS PURPOSE. The Premises are to be used for such purposes as may be allowed under the zoning restrictions for the Premises as well as distribution, warehouse, and related or other transportation-intensive uses, *provided* that Tenant agrees that all such leases or subleases entered into by Tenant shall require that transportation-intensive truck traffic utilize off-peak hours to mitigate peak hour traffic (the "Traffic Requirements"), and *provided* further that no use may be made of the Premises which can or does interfere with use of the airport by aircraft by reasons of electrical, electronic, or smoke emanations, lighting conditions, height of any structure or appurtenance, or any use which may attract birds. Unauthorized development of residential living quarters, whether by Tenant or any subtenant, is prohibited and may be declared an event of default under the lease. Notwithstanding the foregoing, Tenant will have the right to build or lease four hundred thousand (400,000) square feet (in the aggregate) of the proposed buildings within the Premises for distribution or other transportation intensive uses, subject to compliance with the Traffic Requirements. Without limiting the location of such uses, Landlord agrees that such distribution and transportation intensive uses may be located in the building areas for any buildings to be developed by Tenant and as shown on the site plan attached hereto as Exhibit "C", whether such buildings are separately built or combined into a single building, provided, however, except with respect to such distribution or transportation intensive uses, the remainder of the Premises shall be reasonably expected (at the time of sublease execution) to be able meet the following guidelines upon completion of development and stabilized operation of businesses under such subleases: (i) such sublessee provides jobs in the subleased premises at wages of Twenty-Three Dollars per hour (\$23.00) or greater, and (ii) such sublessee shall generally operate the subleased premises during regular business hours at a ratio no greater than one regular employee over 1,200 square feet (1/1,200), with the number of regular employees per square foot as the numerator and the square footage of the subleased space as the denominator (the "Sublessee Guidelines").
3. TERM. The term of this lease shall commence on the Effective Date (the "Commencement Date"), and end at midnight on the date that is seventy-five (75) years after the Rent Commencement Date (the "Termination Date"), subject to the provisions of Section 7, below. The period commencing on the Commencement Date and ending on the Termination Date is referenced the "Term." Notwithstanding anything to the contrary provided herein, all dates and deadlines for Tenant's

performance of any obligations under this Lease shall be extended due to an Event of Force Majeure (as defined in the General Terms and Conditions in Exhibit "B" attached hereto), and such delay will not be deemed a default or violation of this Lease so long as Tenant is diligently pursuing all obligations under this Lease and keeps Landlord apprised of the status thereof.

4. RENTAL.

4.1 Rent Commencement Date. The "Rent Commencement Date" for the Premises is the date that is eighteen (18) months after final approval (meaning approval and expiration of all appeal periods) of all zoning approvals, site plan approvals, special and/or conditional use permits, subdivision approvals, environmental approvals, building permits, amendments to the City's zoning code to allow for the intended use as a permitted use by right and all other governmental approvals (including approvals of the FAA) related to the Premises (each a "Permit" and collectively, the "Permits"). Tenant shall undertake commercially reasonable efforts to cooperate with Landlord, Airport, and/or any commission or board with respect to the Permits.

4.2 Rent Amount. Tenant shall pay Landlord, in lawful money of the United States of America, a net annual rental ("Rent"), in the amount set forth below. Rent shall be charged only on that portion of the Premises that is suitable for development, which portion shall not include any area encumbered by any road, right of way, dedication, wetland area, utilities, easements, construction staging or access areas, and any other encumbrance, restriction, or condition that would affect Tenant's ability to construct improvements thereon (the "Net Usable Area"). Landlord and Tenant agree that as of execution of this Lease, the Net Usable Area of the Premises shall be determined based on the square footage of the Phase Development (defined below). Landlord and Tenant agree to recalculate Net Usable Area within ten (10) days following any change in the conditions of the Premises that would increase or decrease Net Usable Area and shall immediately adjust Rent in accordance with the new calculation of Net Usable Area. The annual Rent for the period from the Rent Commencement Date through the Termination Date (as to each one-year period, the "Rental Year"), shall be paid in monthly installments on the first day of each calendar month (which monthly installment shall incur an additional administrative fee to be paid on a fixed fee basis and not on a percentage basis), commencing on the Rent Commencement Date, and shall be mailed or hand delivered to the Airport Office at 18204 59th Drive N.E., Arlington, Washington 98223, and shall be in the following amounts for Rent and Excise Taxes:

Prior to Rent Commencement Date: \$0, no rent due to grace period for construction.

First Rental Year (following Rent Commencement Date): the prorated sum of \$0.__/square foot of Net Usable Area, together with \$0.___/square foot in leasehold excise tax, for a total of \$0.___/square foot of Net Usable Area¹.

By way of illustration, if FAA approval is granted on or before the Commencement Date, then the rental payments for the first Rental Year are anticipated to be as follows:

Period	Rental Rate	Annual Rent	Excise Tax Rate	Annual Excise Taxes	Annual Total
Rental Year 1	\$___ per square foot	\$_____	\$___ per square foot	\$_____	\$_____

For the avoidance of doubt, notwithstanding the foregoing or anything to the contrary herein no Rent shall be due and owing with respect to the Premises until the Rent Commencement Date occurs.

4.3 Rent Years 2 through 25; CPI Adjustment of Rent. Commencing with the second Rental Year (and after any Reset Year for which readjustment occurs pursuant to Section 4.7), Rent shall be increased annually for each Rental Year until the next Reset Year or the Termination Date by the lesser of the following percentages: (i) based upon percentage increases in the Consumer Price Index as set forth below, or (ii) two and one-half percent (2.5%) of the Rent applicable to the most recent Rental Year ("Percentage Rent Increase"). The new Rent for each applicable Rental Year calculated pursuant to subsection (i) of the preceding sentence shall be established pursuant to a formula, as follows:

$$\text{New Rent} = \text{Rent applicable to the most recent Rental Year} \times (100\% + \text{Percentage Rent Increase}).$$

"CPI" shall be defined as the percentage increase in the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics (BLS), or its successor, for the smallest geographical region for which a separate index is published and in which Seattle, WA is situated, for the most recent twelve month period for which the BLS has released CPI data during the twelve months of the Rental Year immediately preceding the date the CPI adjustment is to be calculated. In no case shall rent decrease pursuant to CPI adjustment, subject to paragraph 4.7 below.

¹ To be updated

Landlord and Tenant shall work in good faith to agree upon the Rent as adjusted under this Section 4.3 at least ninety (90) days prior to the first day of each Rental Year, subject to Section 4.7 for each Reset Year.

4.4 Leasehold Excise Tax/Personal Property Tax. In addition to the Rent, Tenant shall pay to Arlington at the same time the Rent is paid such leasehold excise tax or other taxes as shall have been or may be lawfully levied by the State of Washington or Snohomish County, which leasehold excise tax or other tax may rise or fall as rentals increase or decrease, or as applicable laws may change ("Excise Taxes").

4.5 Leasehold Excise Tax Provisions. In the event that the Tenant does not own the improvements as would be stated in the Section 1 of the General Lease Terms and Conditions of this lease, then for the purpose of compliance with the State of Washington leasehold excise tax law, the Tenant shall within five days after demand of Arlington furnish to Arlington all information as to the actual cost of any improvements placed on the Premises by the Tenant (and at least annually during the Term to furnish all information as to the actual cost of any improvements placed on the Premises following construction of the building placed thereon), and if demanded, such information shall be in the form of a sworn affidavit. It is understood that said information may be furnished to the Washington State Department of Revenue for the purpose of auditing and regulating the payment or collection of such tax, and the tax may be based upon the information furnished. If Arlington shall in the future determine that it must adopt some other or different method of securing information to enable it to comply with said law, the Tenant agrees to cooperate fully and promptly in such manner and to furnish all information demanded of it, including but not limited to depreciation schedules used for federal income tax purposes.

4.6 Late Charges. There shall be assessed, and the Tenant shall pay upon any installment of rent or portion thereof not paid within 10 days after such rent installment is due and payable, a late charge penalty for each month or fraction thereof the rent or portion thereof is not paid equal to five percent (5%) of the amount of such rent or portion thereof (plus accrued late charge penalties, if any) due and payable. The amount of such late charge penalty shall be added to the amount due each month, and total thereof shall be subject to a late charge for each succeeding month or fraction thereof in the amount of five percent (5%) of the total.

4.7 Statutory Rental Readjustment. On the first 25th anniversary of this Lease and on each 25th anniversary thereafter (each a "Reset Year"), Rent under this Lease shall be "reset" or adjusted to the lesser of the then current market rate or a figure equal to the initial rental rate for the first Lease Year of the previous 25-year period increased by 3.0% year-over-year through the Reset Year. For purposes of the then-current market rate, this provision shall be considered in any

arbitration and adjustment of rent pursuant to RCW 14.08.120. Landlord and Tenant shall work in good faith to agree upon the Rent at least one hundred eighty (180) days prior to the first day of the Reset Year and shall follow the schedule attached hereto as Exhibit "D".

5. GENERAL TERMS AND CONDITION/INCORPORATION BY REFERENCE.

- 5.1. Attached hereto as Exhibit "B" and incorporated herein by this reference is that document entitled "Arlington Municipal Airport General Lease Terms and Conditions" (hereinafter, the "General Terms and Conditions"). Compliance with the General Terms and Conditions (as modified below and elsewhere in this document) is a material element of Tenant's and Landlord's performance under and obligations under this Lease. In the event of any conflict between the terms and conditions of this Lease and the terms and condition of the General Terms and Conditions, the terms and conditions of this Lease shall supersede and control over the conflicting terms and conditions of the General Terms and Conditions. Minimum Standards for Commercial Aeronautical Activity shall also apply for those leases providing the aeronautical services described therein.
- 5.2. In the event that the City or FAA does not approve of Tenant's Permits, Tenant shall have the option to terminate and/or cancel this Lease, which shall be of no further force and effect.
- 5.3. Landlord may request Tenant to move any excess timber, gravel, or soil to a location within a reasonable distance of the Premises so long as such removal does not unreasonably interfere with Tenant's business, development or operations.
- 5.4. Notwithstanding anything to the contrary in Section 15.3 of the General Terms and Conditions, Landlord's ability to collect rent from subtenants or occupants shall be subordinate to any of Tenant's lenders.
- 5.5. Notwithstanding anything in this Lease or the General Terms and Conditions to the contrary, Tenant and each subtenant shall have the absolute and unconditional right, without Landlord's consent, to execute and deliver leasehold and subleasehold mortgage(s) at any time and from time to time during the Term. Landlord need not join in, or "subordinate the Fee Estate" to, any leasehold or subleasehold mortgage. Landlord shall, at Tenant's or any subtenant's request, promptly execute and deliver to Tenant such instruments in recordable form as such (prospective) leasehold or subleasehold mortgagee or any subtenant shall reasonably require for its mortgage or sublease. Any such instrument that is a

recognition, non-disturbance, and attornment agreement shall provide, *inter alia*, that (a) such mortgagee or subtenant, as applicable, has the right to cure defaults on behalf of Tenant or the applicable subtenant and shall have an additional notice and cure period in which to do so, including without limitation, a period during which to foreclose upon and enforce its lien, (b) such mortgagee shall have the unilateral right to foreclose upon the lien of its mortgage and/or take possession of the Premises and other property that serves as collateral for its lien, and to cause an assignment of this Lease or the sublease to such mortgagee, all without Landlord's or Tenant's consent, (c) in the event a mortgagee so forecloses or causes an assignment of this Lease or the applicable sublease to Landlord, such mortgagee shall have the right to continue with this Lease or the applicable sublease or, or upon such mortgagee's or sublessee's request, Landlord will enter into a new direct lease with the mortgagee, (d) in the event this Lease is terminated or rejected in bankruptcy, the Landlord will recognize the applicable sublease, which shall become a direct lease with Landlord, or upon such mortgagee's or sublessee's request, Landlord will enter into a new direct lease with the sublessee, and the sublessee shall have no obligation or liability to cure any defaults of Tenant under this Lease, (e) Landlord will not disturb the sublessee's quiet enjoyment of its subleased premises, (f) no mortgagee shall be liable for any defaults or liabilities under this Lease or the applicable sublease that arose or accrued prior to the date of its foreclosure upon its lien and assumption of this Lease or the applicable lease, and (g) such other terms and conditions are customarily included in commercial recognition, non-disturbance, and attornment agreements with institutional mortgagees.

6. ENVIRONMENTAL STATUS. Tenant accepts the Premises in its present condition. For purposes of determining the Tenant's compliance with environmental laws as set forth in Section 12 of the General Terms and Conditions, Tenant warrants that: (a) it has had the opportunity to inspect the Premises and conduct at its expense any and all studies, environmental audits, or other examinations of the Premises; and (b) that, to Tenant's knowledge, no contamination of the soil or other violations of environmental law exists on the site as of the Commencement Date.

7. LEASE SPLITTING. The Tenant has the intention of constructing multiple buildings on the Premises, each under a separate Phase Development. For financing or other purposes, it may be in the interest of Tenant to separate the leases into multiple leases for the Premises so that each building contains a separate lease for each Phase Development, pursuant to a binding site plan or other process. The City of Arlington agrees to such a request, provided that no such lease split shall result in a reduction of overall rent to the City or a change in guarantors of the Lease, unless otherwise agreed in writing by the City following Airport Commission approval. All such leases shall be in a form acceptable to the City Attorney. The City shall be reimbursed its

reasonable expenses associated with drafting and review of requests for lease splitting under this paragraph.

8. UNIQUE LEASEHOLD PROVISIONS.

8.1. The terms of this lease agreement are based on the leased property including up to forty-eight (48) acres in size, and the extraordinary investment in infrastructure to serve the Premises, justifying special considerations to the Tenant.

8.2. The City shall consider applying for any federal or state grants which may support the infrastructure needed to support the development of the Premises and area-wide improvements of general benefit to the City and the Airport.

8.3. The City agrees to consider abating certain traffic mitigation, connection, and other fees as agreed by the City and Tenant.

8.4. At Tenant's sole cost and expense, Tenant shall construct 174th Street connecting 43rd Avenue to Airport Boulevard/51st Avenue (approximately 2,500 LF) (the "174th Street Improvements"), in compliance with all applicable laws with respect thereto and in accordance with the Memorandum of Understanding. Tenant agrees to construct two "Pocket Parks" within the two unutilized parcels adjacent to Airport Boulevard as a mitigation measure for the elimination of the required seventy-five foot wide buffers between the buildings, in order to allow for campus style building orientation in accordance with the Memorandum of Understanding. The "Pocket Park" design plans and specifications are approved by Landlord and attached hereto as Exhibit "C". Landlord shall grant to Tenant such commercially reasonable access and construction staging rights as necessary to allow Tenant to construct the 174th Street Improvements and Pocket Parks. For the avoidance of doubt, the 174th Street Improvements and Pocket Parks shall be owned by Landlord and excluded from the Net Usable Area calculation for the Premises, and Tenant may use such areas of the Premises for construction access and staging pursuant to the previous sentence without incurring rent thereon. Landlord agrees and acknowledges that it shall be solely responsible for the maintenance, repairs, and replacement of the 174th Street Improvements and the Pocket Parks, in Landlord's sole cost and expense following Tenant's completion thereof and Landlord's reasonable acceptance of same.

8.5. Landlord shall grant to Tenant such commercially reasonable access and construction staging rights as necessary to allow Tenant to construct those certain buildings to be located on the Premises as contemplated under this Lease, regardless of whether the Rent Commencement Date has occurred. The parties acknowledge and agree that such activities will not trigger the Rent

Commencement Date and that the payment of Rent after the Rent Commencement Date is good and sufficient consideration for such activities.

- 8.6. Notwithstanding anything to the contrary in this Lease, Tenant shall maintain, repair, and replace, the Premises in a good and working order and repair similar to comparable industrial projects in the Arlington, Washington metropolitan area, and in compliance with all laws, subject to normal wear and tear, condemnation, and casualty. This standard shall supersede and control over any conflicting standard.
- 8.7. Tenant's obligations to discharge mechanics and similar liens shall be limited to such liens that arise by, through, or under Tenant, and Tenant shall have the right to bond over such liens in compliance with applicable laws. The last sentence of Section 11 of the General Terms and Conditions is hereby deleted.
- 8.8. Tenant shall have no obligations or liabilities with respect to any Hazardous Substances that exist on the Premises unless such Hazardous Substances exist at the Premises due to the actions of Tenant or one or more of its subtenants in violation of this Lease, and Landlord shall be fully responsible for and perform all remediation and other obligations with respect to the same.
- 8.9. Tenant shall have the right to assign this Lease without Landlord's consent to any entity (a) which owns or controls Tenant, is owned or controlled by Tenant, or is under common control as Tenant (an "Affiliate"), (b) is under common ownership or control with Tenant, (c) that is a successor to Tenant or an entity that is an Affiliate of Tenant as the result of merger, consolidation, stock sale, transfer or swap, transfer of beneficial interests, or by operation of law, (d) that acquires a majority of the assets of Tenant (whether or not there may be a change in Tenant's name) or of an entity that is an Affiliate of Tenant or is created using a majority of the assets of Tenant or of an entity that is an Affiliate of Tenant, or (e) that acquires the Premises and this Lease pursuant to a sale agreement with Tenant. In the event of any assignment, Tenant shall be released from any and all obligations and liabilities that first arose or accrued during, or are attributable to, the period on and after the effective date of such assignment.
- 8.10. Tenant shall have the right to execute subleases for the Premises without Landlord's consent so long as the sublessee's intended use is allowed under this Lease and the zoning for the Premises (or is otherwise approved by the city through the entitlement process, such as through issuance of a conditional use permit or similar entitlement), the sublease includes the Traffic Requirements, and if required under Section 2, the sublessee is reasonably expected (at the time of sublease execution) to be able meet the Sublessee Guidelines upon completion of development and stabilized operation of its business in the subleased premises.

- 8.11. Landlord's rights to access and enter upon the Premises shall be subject at all times to the rights of the subtenants under their respective subleases, including without limitation, all rights to accompany persons entering the subleased premises. Landlord shall promptly repair all damage caused during any such entry to the condition that existed prior to such entry, at Landlord's sole cost.
- 8.12. Tenant's indemnification obligations in this Lease shall not apply to any claims, demands, fines, penalties, losses, procedures, costs, actions, obligations, or other liabilities to the extent the same arise out of or relate to the actions or negligence of Landlord or other tenants within the Airport.
- 8.13. Tenant and each subtenant shall have the right to satisfy the insurance obligations of Tenant under this lease through a program of self-insurance provided use of self-insurance does not thereby decrease the insurance coverage or limits set forth in this Lease.
- 8.14. In the event that the Premises is damaged by fire or other casualty, in addition to Tenant's other rights in this Lease, Tenant shall have the right to terminate this Lease by written notice to Landlord if (a) the casualty destroys the entire Premises, more than 25% of the value of the improvements constructed by Tenant, or more than 25% of the parking spaces at the Premises; (b) Tenant's lender requires that Tenant pay the insurance proceeds to such lender or there are insufficient insurance proceeds to repair the damage caused by the casualty; or (c) the casualty occurs in the final 10 years of the Lease term. If Tenant elects to repair or reconstruct the damage caused by such casualty, Tenant shall use all insurance proceeds made available to Tenant (subject to the rights of sublessees and lenders) to complete such work, and Tenant shall complete such work within a reasonable period after approval of all Permits and receipt of all insurance proceeds for such work, and Rent shall abate on a pro-rata basis until the damage is fully repaired and certificates of occupancy are issued for all affected improvements.
- 8.15. In the event of a condemnation or sale in lieu of a condemnation that substantially and materially interferes with Tenant's use and occupation of the Premises or access thereto, Tenant shall have the right to terminate this Lease by written notice to Landlord. Tenant shall have the sole right to negotiate the scope, terms, and award for any condemnation with respect to Tenant's property and interests (including, without limitation, the value of all improvements constructed by Tenant, Tenant's leasehold interest, the value of all subleasehold interests, and costs of closure and relocation), and the right to all condemnation awards or compensation for any sale in lieu of a condemnation, except for any

awards or compensation for Landlord's fee interest in the Premises as a result of condemnation of by any third party, which shall remain Landlord's sole property.

- 8.16. Tenant and sublessees shall have the right to remove furniture, fixtures, trade fixtures, equipment, and other personal property from the Premises, and Landlord shall have no right in any such property unless it remains at the Premises after termination or expiration of this Lease and is not removed within thirty (30) days after receipt of written notice from Landlord requesting such removal. Tenant or the respective sublessee shall repair any damage to the Premises caused by such removal and any costs incurred by the City in respect to removal of the equipment should the same be left upon the Premises.
- 8.17. No rules or regulations adopted by Landlord, the Airport, or any other authority claiming jurisdiction over the Tenant or Premises shall increase Tenant's obligations or limit Tenant's rights under this Lease, and any such rules or regulations that purport to do so shall not be binding upon Tenant or the Premises; provided, however, that this shall not restrict the applicability or enforcement of laws of general application throughout the City of Arlington or State of Washington.
- 8.18. Upon execution of this Lease, Landlord and Tenant shall execute, and Tenant shall have the right to record, a commercially reasonable memorandum of this lease, in a form approved by Landlord and Tenant. Within 10 days after receipt of written request from Tenant or any sublessee, Landlord shall execute and return to Tenant or such sublessee a commercially reasonable memorandum of sublease, in a form approved by Landlord, Tenant, and such sublessee.
- 8.19. Within 10 days after receipt of written request from Tenant, Landlord shall execute and deliver to Tenant an estoppel certificate stating that this Lease remains in full force and effect, this Lease has not been amended (or listing any amendments), there are no defaults under this Lease, there are no facts or circumstances that with the giving of notice or passage of time could constitute a default under this Lease, Tenant has not paid rent more than one month in advance, the amount of Rent, the Commencement Date, the Rent Commencement Date, the Termination Date, and any other matters reasonably requested by Tenant. Within 30 days after receipt of written request for the same from Landlord (accompanied by reasonable evidence of such costs), Tenant shall reimburse Landlord for Landlord's its reasonable outside counsel attorneys' fees for review of any such estoppel certificates, not to exceed \$2,500.
- 8.20. Landlord agrees (a) to not record or consent to the recording of any easements or other encumbrances that would materially interfere with Tenant's use of the Premises in accordance with this Lease; (b) to not rezone the Premises or inclusion of the Premises in any metropolitan district, business district,

improvement district, urban renewal area, or other similar special district or authority; (c) subject to budgetary constraints of the City, to maintain, repair, and replace the roads and other public improvements (including without limitation, regional detention facilities, drainage facilities, utility lines and facilities, and sewer facilities) that provide access to or serve the Premises in good, working, and safe condition and repair; (d) provide access to, from, and between the Premises and dedicated public rights of way.

8.21. If Landlord defaults on any obligations in this Lease and does not cure such obligation within a reasonable time (considering the nature of the default, including without limitation, whether such default creates any emergency circumstances or is prohibiting access to or use of the Premises, for which a shorter or nor cure period may be required) not to exceed thirty (30) days after receipt of written notice from Tenant of such default for any other default, then in addition to all other rights and remedies at law or in equity, Tenant shall have the right to cure such default, and Tenant shall have the right to offset such amounts incurred against future payments of Rent until Tenant is fully reimbursed.

8.22. Tenant shall have the right to contest or protest the amount of, and any valuations related to, all ad valorem and other taxes applicable to the Premises, Tenant's leasehold interest, or the improvements thereon, and Landlord shall reasonably cooperate with such efforts.

8.23. Notwithstanding anything to the contrary in this Lease, neither party shall seek from the other, and each party hereby irrevocably waives the right to seek or claim, any consequential, special, punitive damages, or lost profits arising out of or related to this Lease or any default hereunder.

8.24. Intentionally Omitted.

8.25. All notices permitted or required under this Lease shall be in writing and shall be delivered in-person, by nationally recognized overnight courier service, by certified mail, postage pre-paid, return receipt requested, or by e-mail, to the following addresses for each party (which addresses may be updated from time to time by written notice delivered in accordance with this Section 9.25). Notices shall be deemed delivered: (a) if delivered in-person, then upon receipt or refusal of delivery; (b) if delivered by e-mail, then upon receipt (and automated delivery receipts shall constitute deemed receipt); (c) if delivered by overnight courier, upon the next business day; and (d) if delivered by certified mail, upon the earlier of three business days after deposit with U.S. Mail or actual receipt as demonstrated by the delivery receipt provided by U.S. Mail.

Tenant: SmartCap Arlington Air North Phase 1, LLC

c/o Amstar-322, LLC
1200 17th Street, Suite 1850
Denver, Colorado 80202
Attention: Sam Herman
Email: sam.herman@amstar.com
and
Attention: Matthew Karp
Email: matthew.karp@amstar.com

With required copies to: The SmartCap Group, Inc.
8201 164th Avenue NE, Suite 105
Redmond, WA 98052
Attention: Tim Shoultz
Email: timsh@thesmartcapgroup.com

and

Foster Garvey PC
1111 3rd Avenue, Suite 3000
Seattle, WA 98101
Attention: Bryan Helfer
Email: bryan.helfer@foster.com

and

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
Attention: Charlie Smith
Email: CJSmith@bhfs.com

Landlord: City of Arlington
238 N. Olympic Ave.
Arlington, WA 98223
ATTN: City Administrator
Email: pellis@arlingtonwa.gov
And ATTN: City Attorney
Email: orey@arlingtonwa.gov
And ATTN: Airport Manager
Email: mwray@arlingtonwa.gov

9. SEVERABILITY. If any term or provision of this lease or the application of any term or provision to any person or circumstance is declared invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to whom it is held invalid or unenforceable, shall not be affected and will continue in full force and effect.

[Signatures on Following Page]

IN WITNESS WHEREOF the parties hereto have executed this Lease on the _____ day of _____, 2025.

CITY OF ARLINGTON

By _____
Don Vanney
Mayor

ATTEST:

Wendy Van der Meersche
City Clerk

TENANT:

SmartCap Arlington Air North Phase 1,
a Delaware limited liability company

By:

By: The SmartCap Group, Inc.,
a Washington corporation,
its manager

By: _____
Name: Tim Shoutlz
Title: Chief Executive Officer

STATE OF WASHINGTON)
 : ss
COUNTY OF SNOHOMISH)

On this _____ day of _____, 2025 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Don Vanney and Wendy Van Der Meersche, to me known to be the Mayor and City Clerk, respectively, of the City of Arlington, Washington, 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.

GIVEN under my hand and official seal this _____ day of _____, 2025.

NOTARY PUBLIC in and for the
State of Washington
My commission expires: _____

STATE OF WASHINGTON)
 :ss
COUNTY OF SNOHOMISH)

On this _____ day of _____, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tim Shultz to me known to be the Authorized Signatory of THE SMARTCAP GROUP INC., a Washington corporation, the Manager of Amstar-SmartCap Baker View – AA North, LLC, a Delaware limited liability company, the Sole Member of SmartCap Arlington Air North Phase 1, LLC, a Delaware 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/she was authorized to execute said instrument on behalf of said limited liability company.

GIVEN under my hand and official seal this _____ day of _____, 2025.

NOTARY PUBLIC in and for the
State of Washington
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Lots 1, 2, 3, 4 and 5 of the forthcoming Binding Site Plan for the following:

That Portion of the Northeast Quarter and Southeast Quarter's of Section 21, Township 31 North, Range 5 East, W.M., Lying 55.00 Feet Southwesterly of the Center Line of 51st Ave. NE (Airport Boulevard)

Except the West 235.00 Thereof; and

Except the South 1019.00 feet of said Southeast Quarter.

EXHIBIT A

EXHIBIT B

GENERAL TERMS AND CONDITIONS

EXHIBIT B



Arlington Municipal Airport
18204 59th Dr. NE, Ste. A
Arlington, WA 98223

General Lease Terms & Conditions

1. BUILDING CONSTRUCTION ON PREMISES.

1.1 Any building construction proposed on the premises shall be approved by the Airport Commission. Any buildings so constructed shall be done strictly in accordance with full plans and specifications, (including drawings and elevations showing the appearance and color of the finished building) to be filed with the Airport Office prior to commencing construction. Prior to construction said plans and specifications shall be approved by and permits issued by Arlington's Building Official. The building shall be placed upon the lot at the location shown on the plot plan submitted to Arlington's Building Official, which must be first approved by Arlington's Airport Director. Any timber, gravel, or excess soil from this construction shall remain the property of the Lessor and shall be removed from the site by Lessee to a location determined by the Airport Director or his designee. A copy of all "as built" for the site to include Building, Utility, Drainage and Paving plans shall be furnished to Arlington Municipal Airport in electronic format acceptable to the Airport upon completion of construction. All buildings shall be used for the business purpose(s) set forth in paragraph 2 of this lease.

1.2 If the purpose of the Lease was for the construction of a building, then unless construction of the building is commenced within two hundred seventy (270) days of the date this Lease is executed and the initial building completed within one hundred eighty (180) days after commencement of construction, Arlington shall have the right, upon giving sixty (60) days written notice to Lessee, to terminate this lease. The time for construction may be extended for the period of any delay caused to Lessee by any strike, unavailability of materials or work forces, weather, or similar conditions beyond the control of Lessee.

1.3 It shall be the responsibility of Lessee to secure at Lessee's sole expense all permits and approvals required for the use of the premises and construction of any building thereon. As part of the approval process, it shall be the responsibility of the Lessee to submit a completed 7460 Form to the FAA for their review. Lessee must provide proof of FAA approval to Arlington prior to issuance of the Building Permit. The height and configuration of any and all buildings shall be subject to any restrictions caused by existing or future landing, runway, or taxiway requirements of the airport. Work and/or materials not in accord with the foregoing shall be corrected, removed, replaced, and/or repaired by Lessee at its expense upon written notice by the Airport Director or his or her designee. If such work and/or material is not so corrected, removed, replaced or repaired by Lessee within a reasonable time of such notice, Arlington may correct, remove, replace and/or repair such work or material at Lessee's expense, including the costs of utility installation, relocation, or removal required by the construction and its use and occupancy of the premises.

1.4 All work by Lessee shall be performed in a safe manner both on the leased premises and with respect to other city property at the airport which might be utilized or affected by any activity of Lessee. Work shall be performed so as not to interfere with the use of other airport property by Arlington, its other tenants, or other users of airport property. During any construction, Lessee shall keep the leased premises and any other airport property free of waste materials and rubbish caused by the work. Material and/or equipment shall not be placed or stored upon airport property other than the leased premises without the prior

consent of the Airport Director or his or her designee.

1.5 In the event of termination as provided for herein, Arlington may retain all rents therefor received by it, and all rights of Lessee shall absolutely terminate. In the event at the effective date of termination pursuant to notice given hereunder any rent is owing by Lessee, Lessee shall pay said rent (together with leasehold or other tax thereon) within ten (10) days of said effective date.

1.6 During the lifetime of this lease, all buildings and improvements to the property shall be the property of Lessee. At the expiration of this lease, Arlington shall have the option in its sole discretion to accept a deed or other conveyance of the improvements constructed hereunder, or of requiring Lessee to remove any buildings or other improvements made to the premises and restore the premises to the same condition as when first leased.

2. CLEARING AND GRADING PREMISES. Lessee shall perform at Lessee's own expense any clearing or grading of the premises required. Grading and clearing shall be done to such standards and on such grades as Arlington may require. Lessee shall secure any grading permit that may be required prior to commencement of any grading.
3. REPAIRS. The premises have been inspected and are accepted in their present condition, and Lessee will at all times keep the premises neat, clean and in a sanitary condition, and will replace any glass of all broken windows and doors of the building as may become cracked or broken, and except for reasonable wear and tear and damage by fire or other unavoidable casualty, will at all times preserve said premises in as good repair as they now are or may hereafter be put to. All repairs shall be at Lessee's sole cost and expense. Lessee agrees that at the expiration or sooner termination of this lease Lessee will quit and surrender said premises without notice and in a neat and clean condition and will deliver to Arlington all keys to all buildings on the premises.
4. UTILITIES. Lessee hereby covenants and agrees to pay all charges for heat, light, water And sewer, and for all other public utilities which shall be used in or charged against the Leased premises during the full term of this lease. Lessee shall at its cost construct and keep in repair a suitable lawful sewage system, in accordance with Snohomish County health and sanitary regulations. Any permits therefor which may be required shall be secured by Lessee at Lessee's expense prior to installation.
5. WATER SERVICE. Public water has been extended to the premises by Arlington. Lessee shall pay any connection charges required by city ordinance. Lessee shall be entirely responsible for the extension into the leased premises of said water for its own and any subtenant's purposes, and shall pay the entire cost thereof, including but not limited to labor, pipes, meter box, all necessary fittings, and the cost of any permits. Prior to installation, Arlington shall approve all plans and specifications for the water service within the premises to assure that said service meets all applicable building and other codes, laws, rules and regulations, and shall inspect and approve the same prior to covering any water lines or appurtenances. Nothing herein shall be construed as obligating Arlington at any time to make changes in the water service to the premises, such as increasing the size of the water line.
6. ACCIDENTS--INDEMNITY. All personal property on said leased premises shall be at the

risk of Lessee. Arlington shall not be liable for any damage, either to person or property, sustained by Lessee or others, caused by any defects now in said premises or hereafter occurring therein, or due to the condition of any buildings hereafter erected to any part or appurtenance thereof becoming out of repair, or caused by fire or by the bursting or leaking water, gas, sewer or steam pipes, or from any act or neglect of Arlington, its employees, its elected and appointed officials, tenants or other occupants of said buildings, or any other persons, including Arlington, or due to the happening of any accident from any cause in or about said buildings. Lessee covenants to protect, save and indemnify Arlington, its elected and appointed officials and employees while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of Lessee's employees or third parties on account of personal injuries, death or damage to property arising out of the premises leased by Lessee or in any way resulting from the willful or negligent acts or omission of Lessee and/or its agents, employees or representatives.

7. NO OCCUPANCY OF BUILDING(S) PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY. Lessee shall not occupy or use any building hereafter erected on the Premises until a final or temporary certificate of occupancy thereof shall have been issued by Arlington's Building Official.

8. CARE OF PREMISES. Arlington shall not be called upon to make any improvements or Repairs of any kind upon said premises and said premises shall at all times be kept and used in accordance with the laws of the State of Washington, ordinances of the City of Arlington, rules and regulations and minimum standards of Arlington Municipal Airport and in accordance with all directions, rules and regulations of the health officer, fire marshal, building official or other proper officer of any pertinent and authorized public authority, at the sole cost and expense of Lessee. Lessee will commit or permit no waste, damage or injury to the premises, and at Lessee's own cost and expense, will keep all drainage pipes free and open and will protect water, heating and other pipes so that they will not freeze or become clogged, and will repair all leaks, and will also repair all damages caused by leaks or by reason of Lessee's failure to protect and keep free, open and unfrozen any of the pipes and plumbing on said premises.

9. LAWS AND REGULATIONS.

9.1 Lessee shall conduct and carry on in said premises only the business for which said premises are leased, and shall not use the premises for illegal purposes. The premises shall not be used for residential purposes. Lessee shall comply with all applicable laws, ordinances, codes and airport rules and regulations, and minimum standards both those in existence at the commencement of this lease as well as those in existence in the future. Lessee shall be responsible for securing and maintaining all permits and paying, when due, all costs, fees, taxes, and other charges or benefits incidental to the lease, construction, and use of the leased premises.

9.2 Under the requirements imposed upon Arlington as recipient of Federal Aid Airport Program Grant Funds, the parties agree as follows:

a. Lessee covenants that it will not, in its operation at the Arlington Airport, on the basis of race, color, creed, or national origin, discriminate or permit

discrimination against any person or group of persons in any manner prohibited by Part 21 of the Federal Aviation Regulations (49 CFR), and in the event of such discrimination, Lessee agrees that Arlington has the right to take such action as the United States Government may direct to enforce this covenant.

b. With respect to any aeronautical services, Lessee agrees:

- (1) To furnish said aeronautical service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and
- (2) To charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided, that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

10. COMPLIANCE WITH FAA LEGAL REQUIREMENTS.

- 10.1 The LESSEE, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- 10.2 The LESSEE specifically agrees to pay any applicable business and occupation (B & O) taxes which may be due on account of this Agreement.
- 10.3 Access to Records and Reports. The LESSEE must maintain an acceptable cost accounting system. The LESSEE agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or duly authorized representatives, access to any books, documents, papers, and records of the LESSEE which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The LESSEE agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.
- 10.4 General Civil Rights Provisions. The LESSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the LESSEE and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
- 10.5 Title VI Solicitation Notice: The CITY, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- 10.6 Compliance with Nondiscrimination Requirements. During the performance of this contract, the LESSEE, for itself, its assignees, and successors in interest

(hereinafter referred to as the "LESSEE") agrees as follows:

- a. Compliance with Regulations: The LESSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. Non-discrimination: The LESSEE, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LESSEE will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the LESSEE for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the LESSEE of the LESSEE's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- d. Information and Reports: The LESSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a LESSEE is in the exclusive possession of another who fails or refuses to furnish the information, the LESSEE will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of a LESSEE's noncompliance with the Nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 1. Withholding payments to the LESSEE under the contract until the LESSEE complies; and/or
 2. Cancelling, terminating, or suspending a contract, in whole or in part.
- f. Incorporation of Provisions: The LESSEE will include the provisions of paragraphs 10.6(a) through 10.6(e) in every subcontract, including procurements of materials and leases of equipment, Required Contract Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The LESSEE will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, that if the LESSEE becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the LESSEE may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the LESSEE may request the United States to enter into the litigation to protect the interests of the United States.

- g. The Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 - b. With respect to this Lease, in the event of breach of any of the above Nondiscrimination covenants, the City will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

10.7 Applicable Nondiscrimination Statutes. During the performance of this contract, the LESSEE, for itself, its assignees, and successors in interest (hereinafter referred to as the "LESSEE") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964,

The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

10.8 Texting While Driving. In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the LESSEE to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The LESSEE must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

10.9 Energy Conservation Requirements. LESSEE and its subcontractors agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

10.10 Federal Fair Labor Standards Act. All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the

Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The LESSEE has full responsibility to monitor compliance to the referenced statute or regulation. The LESSEE must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

10.11 Occupational Safety and Health Act of 1970. All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. LESSEE must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The LESSEE retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). LESSEE must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

10.12 Trade Restriction Certification. By submission of an offer, the LESSEE certifies that with respect to this solicitation and any resultant contract, the LESSEE -

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The LESSEE must provide immediate written notice to the Owner if the LESSEE learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The LESSEE must require subcontractors provide immediate written notice to the LESSEE if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a LESSEE or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign

country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of LESSEE is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The LESSEE agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. The LESSEE may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R., unless the LESSEE has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the LESSEE or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

10.13 Veteran's Preference. In the employment of labor (excluding executive, administrative, and supervisory positions), the LESSEE and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

10.14 Certification Regarding Lobbying. The LESSEE certifies by signing and submitting this agreement, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the LESSEE, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- 10.15 Clean Air and Water Pollution Control. LESSEE agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The LESSEE agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.
- 10.16 Certification of LESSEE regarding Debarment. The LESSEE certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.
- 10.17 Certification of LESSEE regarding Tax Delinquency and Felony Convictions
- 1) LESSEE represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
 - 2) The LESSEE represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.
- 10.18 Disadvantaged Business Enterprises Provisions. LESSEE shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The LESSEE shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:
- 1) Withholding monthly progress payments;
 - 2) Assessing sanctions;
 - 3) Liquidated damages; and/or
 - 4) Disqualifying the Contractor from future bidding as non-responsible.
- 10.19 Breach of Contract. Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide LESSEE written notice that describes the nature of the breach and corrective actions the LESSEE must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to LESSEE until such time the LESSEE corrects the breach or the Owner elects to terminate the

contract. The Owner's notice will identify a specific date by which the LESSEE must correct the breach. Owner may proceed with termination of the contract if the LESSEE fails to correct the breach by deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

11. LIENS AND INSOLVENCY. Lessee shall keep the leased premises and the property in which the leased premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. If any liens are filed on the property, Lessee shall promptly discharge the same and shall take all steps required to protect Arlington's interests, including discharging the lien or placing funds in escrow in an amount acceptable to Arlington. Lessee shall pay all of Arlington's expenses relating to the filing of liens, including, but not limited to, Arlington's attorneys fees relating in any way to the lien filing. If Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of Lessee, Arlington may cancel this lease at Arlington's option.
12. ENVIRONMENTAL ISSUES AND HAZARDOUS SUBSTANCES.
 - 12.1. Hazardous Substances. The term "Hazardous Substances", as used in this Lease, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum or petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.
 - 12.2. Lessee's Restrictions. Lessee shall not cause or permit to occur:
 - a. Any violation of any federal, state or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the Premises or anywhere on the Airport, or arising from Lessee's use or occupancy of the Premises or the Airport, including, but not limited to, soil and ground water conditions; or
 - b. The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under, or about the Premises or anywhere on the airport, or the transportation to or from the Premises or Airport of any Hazardous Substance, except as specifically disclosed in this Lease.
 - 12.3. Environmental Clean-up.
 - a. Lessee shall, at Lessee's own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances ("Laws").
 - b. Lessee shall, at Lessee's own expense, make all submissions to, provide all

information required by, and comply with all requirements of all governmental authorities (the "Authorities") under the Laws.

- c. Should any Authority or any third party demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge, or other release of Hazardous substances that occurs during the Term of this Lease, at or from the Premises or on the Airport, or which arises at any time from Lessee's use or occupancy of the Premises or the Airport, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Lessee shall carry out all such cleanup plans.
- d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is requested by Arlington. If Lessee fails to fulfill any duty imposed under this Paragraph 14.3 within a reasonable time, Arlington may do so; and in such case, Lessee shall cooperate with Arlington in order to prepare all documents Arlington deems necessary or appropriate to determine the applicability of the Laws to the Premises and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon Arlington's request. No such action by Arlington and no attempt made by Arlington to mitigate damages under any Law shall constitute a waiver of any of Lessee's obligations under this Paragraph 14.3.
- e. Lessee's obligations and liabilities under this Paragraph (14.3) shall survive the expiration of this Lease.

12.4 Lessee's Indemnity.

- a. Lessee shall indemnify, defend, and hold harmless Arlington, its elected and appointed officials, agents, and employees from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including attorneys' and Lessees' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Premises, anywhere on the Airport as a result of the Lessee's activities and/or involving Lessee's equipment and/or employees or which arises at any time from Lessee's use or occupancy of the Premises, or from Lessee's failure to provide all information, make all submissions, and take all steps required by all Authorities under the laws and all other environmental laws.
- b. Lessee's obligations and liabilities under this Paragraph 14.4 shall survive the expiration of this Lease.

12.5 Compliance With Future Laws.

Lessee shall comply with all federal, state, county, municipal, and other governmental laws, ordinances, rules and regulations now or hereafter affecting the Premises, Lessee's business, or any activity or condition on or about the Premises, including, without limitation, all environmental laws and any other laws relating to the improvements on the Premises or the air in and around the Premises (collectively, the "Laws"). Lessee warrants that its

business and all activities to be conducted or performed in, on, or about the Premises shall comply with all of the Laws. Lessee agrees to change, reduce, or stop any such activity, or install necessary equipment, safety devices, pollution control systems, or other installations at any time during the lease to so comply.

If, during the lease Lessee is required to alter, convert, replace the HVAC system serving the Premises in order to comply with any of the Laws concerning indoor air pollution or quality, or in order to meet any applicable limitation on, standard for, or guideline relating to indoor air quality or the emission of any indoor air pollutant, including, without limitation, those adopted by the Occupational Safety and Health Administration, the American Society of Heating, Refrigeration, and Air Conditioning Engineers, or the Environmental Protection Agency, Lessee shall be responsible for paying all costs or any such conversion or replacement, including without limitation, the purchase and installation of new equipment, and the alteration of existing HVAC equipment in the Premises to accommodate any new equipment.

12.6 Reporting Requirements.

Each party agrees to comply with all local, state and federal laws, rules, regulations or statutes requiring the submission, reporting, or filing of information about the storage, use, or discharge of chemical or other substances at the Premises or in the Building, and provide to the other a full copy of any such filing or report as submitted within 15 days of such submission. Arlington also agrees to provide Lessee with a copy of any such filing or report made by any other Lessee in the Building within 30 days of the date Arlington files or receives a copy of such submission.

12.7 Limited Use of Hazardous Substances by Lessee.

"Hazardous Substance" means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or Ownership of which is restricted, prohibited, regulated or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. secs. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. secs. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. secs. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C., secs. 1251 et seq.), the Clean Air Act (42 U.S.C. secs. 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. secs. 2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. secs. 651 et seq.), Arlington Airport's Spill

Prevention Control & Countermeasure (SPCC) Plan, and the Airport Fuel Regulations, as these laws, plans, and regulations have been amended or supplemented.

The Lessee shall not use in any way, or permit or suffer the use of the Leased Premises or any part thereof or the Airport in general, to either directly or indirectly prepare, produce, generate, manufacture, refine, treat, transport, store, maintain, handle, dispose of, transfer, or process any Hazardous Substance as defined herein, unless it has received the prior written consent of Arlington, which may not be unreasonably withheld.

Any substance which Arlington permits the Lessee to treat, store, transfer, or dispose of must be done in strict compliance with any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. secs. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. secs. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. secs. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C., secs. 1251 et seq.), the Clean Air Act (42 U.S.C. secs. 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. secs. 2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. secs. 651 et seq.), Arlington Airport's Spill Prevention Control & Countermeasure (SPCC) Plan, and the Airport Fuel Regulations, as these laws, plans, and regulations have been amended or supplemented.

Lessee hereby agrees that the premises may not be used for any purpose which, in Arlington's sole discretion, exposes the building or those occupying it to an unreasonable danger of exposure to electromagnetic rays and/or fields. Breach of this provision by Lessee shall entitle Arlington, in addition to any other remedies which it may have, to injunctive relief, it being acknowledged that monetary damages are insufficient.

12.8 Right to Confirm Lessee's Environmental Compliance.

Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the premises as Arlington, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems. Arlington expressly reserves the right to conduct examinations, tests, (including but not limited to a geohydrologic survey of soil and subsurface conditions), inspections, and reviews of the premises as Arlington in its sole and absolute discretion may determine to be necessary.

The right reserved to Arlington in this provision to conduct such examinations, test, inspections, and reviews of the premises as Arlington, in its sole and absolute discretion, shall determine to be advisable shall be exercised by Arlington in a reasonable fashion. More specifically, no such test shall be

conducted during the normal business hours of Lessee, unless Lessee specifically agrees otherwise. Arlington shall take all reasonable steps to restore the premises to the condition in which they existed prior to the taking of such steps. Arlington shall take all reasonable steps to ensure that no conditions on the premises associated with such testing shall create an unreasonable risk or an unreasonable hazard.

13. WASTE WATER. This lease is subject to all statutes and regulations of the state of Washington with respect to waste water disposal. If Lessee's use of the premises results in the discharge or the potential for discharge of any waste waters other than domestic waste waters from the premises, Lessee shall immediately apply to the Washington State Department of Ecology for a State Waste Water Discharge Permit. Lessee shall advise Arlington which storm drains or other waste water facilities Lessee will utilize in disposing of waste waters. Arlington may designate storm sewers or other facilities which Lessee may use to dispose of waste waters. Sanitary sewers shall not be used for storm drainage or the discharge of any effluent deemed by the Airport Director to be harmful to the sanitary sewer system. No hazardous or toxic materials shall be discharged into the sanitary or storm sewer systems. Lessee shall complete the Industrial/Commercial Waste Discharge Permit application.
14. WETLANDS. Lessee shall not damage or destroy and shall maintain and preserve Wetlands existing on the leased premises. Any wetlands destroyed by Lessee shall be replaced as required by law.
15. ASSIGNMENT AND SUBLETTING.
 - 15.1 This lease may be assigned by Lessee in whole only and not in part, and only with the prior written consent of Arlington, to an assignee such as a bank for security for money loaned or advanced to Lessee for construction on the premises or other business purposes of Lessee, or to an assignee other than for security purposes whose use of the premises has prior to such assignment been approved in writing by Arlington. In such latter case, such assignment may only be made to an assignee for a use of the premises for such business purpose as is consistent with the zoning restrictions for the premises. Finally, in such latter case, the assignee must be shown to Arlington to be of such financial standing and responsibility at the time of such assignment as to give reasonable assurance to Arlington of prompt payment of all rents and other amounts to be paid under this lease, and of full compliance with all other terms, covenants, conditions and provisions of the lease. No such assignment may be made or be of any force or effect if at the time of such assignment Lessee is in default in any of the terms, covenants, conditions and provisions of the lease, including default in the payment of rent; provided, however, the assignee may cure the default(s) prior to taking possession of the premises. No such assignment for any purpose shall be of any force or effect unless Arlington first shall in writing have consented to said assignment and has received a true copy of the proposed assignment. Arlington may not refuse to consent to such assignment for any purpose hereinabove set forth. Such assignment shall

include the then-unexpired balance of the term of this lease.

- 15.2 Lessee may sublet the whole or any portion of any buildings on the premises, but not the real property (other than that part of the real property which is beneath the buildings), to a subtenant or subtenants; provided: (1) that the use to be made of the buildings is consistent with zoning restrictions and federal grant assurances for the premises and federal grant assurances, (2) Arlington has in writing given its consent prior to the sublease being effective, (3) Arlington has received a true copy of the proposed sublease, and said sublease includes a section stating that the sublease is bound to the conditions of the master lease, (4) the subtenant shall meet the insurance requirements of the primary lease, which shall be evidenced by the Lessee providing proof of insurance for all subtenants to Arlington and shall comply with all hold harmless and indemnification provisions of this lease; and (5) any other conditions as may be required by the most current Airport Sublease Policy. Arlington may not refuse to consent to such a sublease where the sublease meets the above requirements.
- 15.3 If all or any part of the leased premises be sublet or occupied by anybody other than Lessee, Arlington may, after default by Lessee, collect rent and leasehold tax from any and all subtenants or occupants, and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of any agreement, term, covenant or condition hereof nor the acceptance by Arlington of any subtenant or occupant as tenant.
16. ACCESS. Lessee will allow Arlington or Arlington's agents free access at all reasonable times and upon at least twenty-four (24) hours notice to said premises during normal business hours for the purpose of inspection. Nothing herein shall be construed as in any way limiting the authority of Arlington's Building Official under existing law.
17. INDEMNITY AND HOLD HARMLESS. The Lessee agrees to indemnify and hold Arlington harmless as provided herein to the maximum extent possible under law. Accordingly, Lessee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Arlington, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's exercise of rights and privileges granted by this Lease Agreement.

The Lessee's obligations under this section shall include:

- a. Indemnification for such claims whether or not they arise from the sole negligence of Lessee or the concurrent negligence of both parties, except to the extent of Arlington's negligence or the negligence of one or more third parties;
- b. The duty to promptly accept tender of defense and provide defense to Arlington at Lessee's own expense;

- c. Indemnification of claims made by Lessee's own employees or agents; and,
- d. Waiver of Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Arlington, which waiver has been mutually negotiated by the parties.

In the event it is necessary for Arlington to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from Lessee.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease Agreement, Lessee agrees to defend, hold harmless, and indemnify Arlington to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of Arlington to the full extent of Lessee's negligence. Lessee agrees to defend, indemnify, and hold harmless Arlington for claims by Lessee's employees and agrees to waiver of its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

18. FIRE INSURANCE.

- 18.1 Lessee will carry fire and extended coverage insurance with rent interruption endorsement in an amount equal to the full insurable value of all improvements, structures, and buildings located on the Premises. The policy shall include Arlington as an insured for its vested interest in the property. A certificate of insurance shall be provided to Arlington.
- 18.2 In the event of the total or partial destruction by fire (or otherwise) of the building, structures, or facilities currently on the Premises or subsequently constructed by lessee, Lessee shall have the obligation to reconstruct such facilities to their original condition within six (6) months after their destruction.
- 18.3 Lessee shall maintain in full force and effect on all of its fixtures and equipment in the Premises, a policy or policies of fire and extended-coverage insurance with standard coverage endorsement to the extent of at least eighty percent (80%) of their insurable value, or to the extent of at least the minimum required insurance limit as stated in the Airport's most current policy, whichever is greater. During the term of this Lease, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the fixtures and equipment so insured. Arlington shall have no interest in the insurance upon Lessee's equipment and fixtures and will sign all documents necessary or proper in connection with the settlement of any claim or loss by Lessee. Lessee shall furnish Arlington with a certificate of such policy and whenever required shall satisfy Arlington that such policy is in full force and effect within thirty (30) days of the commencement of this Lease. Arlington will not carry insurance on Lessee's property.

19. LIABILITY INSURANCE REQUIREMENTS.

19.1. Insurance Term

The Lessee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Lessee's operation and use of the leased Premises.

19.2. No Limitation

Lessee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.

19.3. Minimum Scope of Insurance

Lessee shall obtain Commercial General Liability insurance which shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. Arlington shall be named as additional an insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.

19.4. Minimum Amounts of Insurance

Lessee shall maintain Commercial General Liability insurance which shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. Lessee shall maintain environmental or pollution liability insurance for fueling operations and cover the gradual, sudden and accidental discharge or spill of pollutants including first party cleanup and remediation of the Premises. The policy shall be in an amount of not less than \$1 million per claim. Lessee warrants that any retroactive date on the policy shall precede the effective date of this lease.

If Lessee is conducting a Commercial Aeronautical Activity, the Lessee shall maintain those limits set forth in the Minimum Standards for Commercial Aeronautical Activity adopted by the City.

19.5. Other Insurance Provisions

The Lessee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respects Arlington. Any Insurance, self-insurance, or self-insured pool coverage maintained by Arlington shall be excess of the Lessee's insurance and shall not contribute with it.

19.6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

19.7. Verification of Coverage

Lessee shall furnish Arlington with certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee.

19.8. Notice of Cancellation

The Lessee shall provide Arlington with written notice of any policy cancellation within two business days of their receipt of such notice.

19.9. Failure to Maintain Insurance

Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of lease, upon which Arlington may, after giving five business days' notice to the Lessee to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to Arlington on demand.

19.10. Arlington Full Availability of Lessee Limits

If the Lessee maintains higher insurance limits than the minimums shown above, Arlington shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this contract or whether any certificate of insurance furnished to Arlington evidences limits of liability lower than those maintained by the Lessee.

20. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, Arlington and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided that this Agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of Arlington or Lessee.

21. NOTICE. All notices and consents hereunder shall be given in writing, delivered in person or mailed by certified mail, postage pre-paid, to the receiving party at its address below, or to such other address as the receiving party may notify the sender beforehand referring to this lease.

22. GOVERNMENTAL FEES. All fees due under applicable law to the City, County or State on account of any inspection made on leased premises by any officer thereof, shall be paid by Lessee.
23. SIGNS. All signs and symbols placed in the windows or doors or elsewhere about the premises, or upon the exterior part of the building, shall be subject to the approval of Arlington or Arlington's agents. In the event Lessee shall place signs or symbols on the exterior of said building or in the windows or doors or elsewhere where they are visible from the street that are not satisfactory to Arlington or Arlington's agents, Arlington or Arlington's agents may immediately demand the removal of such signs or symbols, and the refusal of Lessee to comply with such demand within a period of twenty-four (24) hours will constitute a breach of this lease, and entitle Arlington to immediately recover possession of said premises in the manner provided by law. Any signs so placed on the premises shall be so placed upon the understanding and agreement that Lessee will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Lessee, then Arlington may have the same removed at Lessee's expense. Lessee shall in respect to signs conform to all requests of the City of Arlington Sign Code and Building Code, and pay applicable fees.
24. ALTERATIONS. Lessee shall not make any alterations, additions or improvements to any building, not owned by Lessee and placed on said premises without consent of Arlington in writing first hand obtained, and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense of Lessee, and shall become the property of Arlington, and shall remain in and be surrendered with the premises as a part thereof at the termination of this lease, without disturbance, molestation or injury. In addition, for any building which is owned by the Lessee and placed on the premises, Lessee shall not make any alterations, additions or improvements without consent of Arlington in writing first hand obtained, if such consent is required by law or regulation, and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense of Lessee and if Arlington decides at the end of the lease to accept a deed or other conveyance of the building, all alterations, additions and improvements shall remain in and be surrendered with the premises as a part thereof without disturbance, molestation or injury. If Lessee shall perform work with the consent of Arlington, as aforesaid, Lessee agrees to comply with all laws, ordinances, rules and regulations of the pertinent and authorized public authorities. Lessee further agrees to save Arlington free and harmless from damage, loss or expense arising out of the said work. Heating systems, plumbing systems (including hot water tanks) and all lighting and electrical systems and parts thereof shall be considered fixtures, and become part of the real estate upon being installed in any building.
25. DEFAULT AND RE-ENTRY. If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default in any of the covenants and agreements therein contained, then Arlington may cancel this lease upon giving the notice required by law, and re-enter said premises, but notwithstanding such re-entry by Arlington, the liability of Lessee for the rent provided for

herein shall not be extinguished for the balance of the term of this lease, and Lessee covenants and agrees to make good to Arlington any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to. Lessee shall pay such deficiency each month as the amount thereof is ascertained by Arlington, together with leasehold tax.

26. COSTS AND ATTORNEY'S FEES. If by reason of any default on the part of either party, litigation is commenced to enforce any provision of this lease or to recover for breach of any provision of this lease, the prevailing party shall be entitled to recover from the other party's reasonable attorney's fees in such amount as is fixed by the court, and all costs and expenses incurred by reason of the breach or default by the other under this lease.
27. LIQUIDATED DAMAGES IN CERTAIN INSTANCE. If by reason of any breach of this lease by Lessee, Arlington gives written notice to Lessee of termination of this lease or any notice to pay rent or vacate to perform a covenant or cease breaching any covenant or agreement herein, and if Lessee remedies said breach and the termination of the lease is not carried through and Lessee continues as a Lessee, then each such time at the option of Arlington, Lessee shall and does hereby covenant to pay to Arlington as liquidated damages within ten (10) days after mailing by Arlington by ordinary first class mail of a demand to pay such sum, the sum of Three Hundred Dollars (\$300.00). Failure to pay such sum within such time shall be considered as an additional breach of the covenants of this lease.
28. NON-WAIVER OF BREACH. The failure of either party to insist upon strict performance of any of the covenants and agreements of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such strict performance or of the exercise of such option, or any other covenants or agreements but the same shall be and remain in full force and effect.
29. REMOVAL OF PROPERTY. In the event of any entry in, or taking possession of, the leased premises as aforesaid, Arlington shall have the right, but not the obligation, to remove from the leased premises all personal property located therein or thereon, and may store the same in any place selected by Arlington, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property without notice to Lessee, after it has been stored for a period of at least sixty (60) days, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to Arlington under any of the terms hereof, and the balance, if any, to be paid to Lessee.
30. HEIRS AND SUCCESSORS. Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of any or all of the parties hereto.
31. HOLD OVER. If Lessee shall, with the written consent of Arlington, hold over after the expiration of the term of this lease, such tenancy shall become a month to month tenancy

as provided by the laws of the State of Washington. During such tenancy Lessee agrees to pay Arlington the an amount equal to one hundred twenty five percent of the equivalent of the rental for the last month of the lease, unless a different rate is agreed upon, and to be bound by all of the terms, covenants and conditions as herein specified, so far as applicable.

32. RESTRICTIONS AND CONSENTS. This lease shall be and is subject to all the terms, covenants, restrictions, reservations and agreements contained in that certain Quit Claim Deed dated February 25, 1959, by the United States of America to Town of Arlington, recorded in Snohomish County, Washington, on August 20, 1959, in Volume 690 of Deeds, pages 38 through 46, under Auditor's File No. 1356180, records of said County, including the written consent of the Federal Aviation Agency if the leased premises are to be used for other than airport purposes. This lease is also subject to the most current and any future federal grant obligations, Airport rules and regulations, Airport Minimum Standards and policies.
33. LANDSCAPING. Lessee covenants to landscape the grounds pursuant to the provisions of the Arlington Municipal Code, in order to make the entire premises attractive both for the beneficial effect it will have upon commercial property at the airport and as an example to and in order to encourage other tenants to do the same. The landscape and drainage plan shall be submitted to Arlington at the same time as the building and plot plans herein before mentioned. Failure of Lessee to fully carry out this agreement shall be a breach of covenant of this lease.
34. MAINTENANCE OF GROUNDS. Lessee covenants to maintain the rented premises and the materials installed and used in landscaping the premises in a neat, sightly, and attractive condition at all times, and to water and care for the same in a professional manner. Failure of the lessee to fully carry out this covenant shall be a breach of covenant of this lease.
35. STORAGE OF MATERIALS, SUPPLIES, ETC. Lessee covenants to not store or deposit materials, supplies or other objects on the leased premises without the permission of Arlington and only then by the erection of a sight-obscuring fence or hedge which is acceptable to Arlington. Non-aeronautical items shall not be stored on premises leased for aeronautical purposes. Failure of Lessee to fully carry out this agreement shall be a breach of covenant of this lease.
36. MOTOR VEHICLE PARKING ON PREMISES. Lessee shall provide on the leased premises in accordance with an approved plan and specifications sufficient parking facilities for all motor vehicles in connection with Lessee's business, and shall at all times see that all such vehicles park within the leased premises.
37. REIMBURSEMENT FOR COST OF SURVEY. If Arlington shall have had the premises herein surveyed for the purpose of this lease, Lessee shall within ten (10) days after being billed by Arlington thereof, reimburse Arlington for the cost of such surveying.
38. VENUE. The venue of any suit which may be brought by either party under the terms of

this lease or growing out of the tenancy under this lease shall at the option of Arlington be in court or courts in Snohomish County, Washington.

39. SITE PLAN. Development of the site shall be in strict compliance with the site plan submitted to and approved by the City. Any deviations from the site plan shall require written approval by the City. Where reference is made in this lease to a plot plan or site plan, it is understood and agreed between the parties that such plan must include as a minimum those matters hereinafter set forth and shall be in the form of a scale drawing of the entire leased premises with all of those matters set forth to scale and legibly thereon:
- a. Location of all structures and sizes and heights thereof, together with size, height, and location of any future structures which Lessee anticipates may be placed on the premises.
 - b. Location of all roads, driveways, entrances, and exits.
 - c. Location of all parking areas and description of method of delineating such areas by curbs or other methods.
 - d. Location of all utilities, including but not limited to those hereinafter mentioned in this paragraph, and in case of underground utilities, mention thereof.
 - e. Landscaping. (See other paragraph(s) of this lease for further details.)
 - f. Open storage areas, and methods of screening such areas if such screening is to be done. (See Paragraph 34 hereof.)
 - g. Interior and exterior drainage.
 - h. Location and type of all fencing and gates.
 - i. Site and exterior building lighting.
 - j. Location of runways, taxiways, taxilanes and ramps and their distances from all proposed structures.
40. RIGHT OF FLIGHT. There is hereby reserved to Arlington, its successors and assigns, for the use and benefit of Arlington and the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, nor known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from and operating aircraft on or over the Arlington Municipal Airport, all in accordance with applicable safety and operating regulations of said Airport and the Federal Aviation Administration. Lessee shall not allow any structures or objects to be erected or located upon the premises which would penetrate the imaginary surfaces described in Part 77 of the Federal Aviation Regulations.

EXHIBIT C

SITE PLAN AND POCKET PARK DESIGN AND SPECIFICATIONS

EXHIBIT C

EXHIBIT D

RESET YEAR RENT SCHEDULE²

Period	Rent Increases	X	Y
Rental Years 2-25	Rent increases each year, year-over-year by <u>lesser</u> of columns X or Y in accordance with Section 4.3	CPI	2.5%
Reset Year 26	Rent is reset at the <u>lesser</u> of columns X or Y in accordance with Section 4.7	Fair Market Value (pursuant to RCW 14.08.120)	A rate equal to the Year 1 Rental Rate increased by 3.0% per year compounding commencing Year 1
Rental Years 27-50	Rent increases each year, year-over-year by <u>lesser</u> of columns X or Y in accordance with Section 4.3	CPI	2.5%
Reset Year 51	Rent is reset at the <u>lesser</u> of columns X or Y in accordance with Section 4.7	Fair Market Value (pursuant to RCW 14.08.120)	A rate equal to the Year 26 Rental Rate increased by 3.0% per year compounding commencing Year 26
Rental Years 52-75	Rent increases each year, year-over-year by <u>lesser</u> of columns X or Y in accordance with Section 4.3	CPI	2.5%

² Landlord and Tenant shall engage in discussions on the date that is 180 days prior to the end of the Reset Year to determine the rental rate that shall apply on the first day following the Reset Year. By way of example, Landlord and Tenant shall engage in discussions on the date that is 180 days prior to the end of the 25th Rental Year of this Lease to determine the rental rate that shall apply on the first day for the 26th Rental Year. A similar process shall then occur 180 days prior to the end of the 50th Rental Year of this Lease to determine the rental rate that shall apply on the first day for the 51st Rental Year.

EXHIBIT D

**MEMORANDUM OF UNDERSTANDING
ARLINGTON AIRPORT NORTH BINDING SITE PLAN AND PERMIT DECISIONS**

SmartCap Arlington Air North Phase 1, LLC AND
c/o The SmartCap Group, Inc.
8201 164th Avenue NE, Suite 105
Redmond, WA 98052
E-mail: timsh@thesmartcapgroup.com
Attn: Tim Shoultz

Owner: City of Arlington
238 N. Olympic Ave.,
Arlington, WA 98223
Attn: City Administrator
Email: pellis@arlingtonwa.gov
Attn: City Attorney
Email: orey@arlingtonwa.gov
Attn: Airport Director
Email:
mwray@arlingtonwa.gov

AND
Community and Economic Development
18204 59th Avenue, NE
Arlington, WA 98223
Attn: Amy Rusko, Deputy Director
(360)-403-3550
Email: arusko@arlingtonwa.gov

Beginning Date: **Upon Execution**

Expiration Date: **See Section VI.A.**

I. PURPOSE

- A. This Memorandum of Understanding (“**MOU**”) is made and entered into by and between SmartCap Arlington Air North Phase 1, LLC, a Delaware limited liability company (hereinafter referred to as the “**SmartCap**”), and the City of Arlington, a political subdivision of the State of Washington (hereinafter referred to as “**Owner**”), of the property described in Exhibit A attached to this MOU (hereinafter referred to as the “**Property**”).
- B. On June 28, 2022, Owner issued a Notice of Decision and approval of SmartCap Arlington Airport North Design Review Board Decision – File No. PLN #943. The Design Review Board Decision received a one-year permit extension to December 15, 2025.
- C. On August 10, 2022, Owner issued a Notice of Decision and approval of SmartCap Arlington Airport Industrial Park North Forest Practice Permit Decision – File No. PLN #958. The Forest Practice Permit Decision received a one-year permit extension to August 10, 2025.
- D. On December 15, 2022, Owner issued a Notice of Decision and approval of the SmartCap Arlington Airport Industrial Park North Special Use Permit Decision – File No. PLN #954. The Special Use Permit Decision received a one-year permit extension to December 15, 2025.

- E. On February 14, 2023, Owner issued a Notice of Decision and approval of SmartCap Arlington Airport North Industrial Park Binding Site Plan – Zoning Permit File No. PLN #1007 as required by Arlington Municipal Code to SmartCap where Owner approved SmartCap’s proposed project with conditions. The Binding Site Plan is recorded under AFN 202303065001.
- F. The permits subject to the MOU are the Design Review Board Decision PLN #943, Special Use Permit Decision PLN #954, Forest Practice Permit Decision PLN #958, and Binding Site Plan PLN #1007 (hereinafter referred to as the “**Development Permits**”).
- G. Owner and SmartCap now desire to move forward with the development of the project (the “**Project**”). In order to avoid the risk of further project delay and administrative burden, Owner and SmartCap desire to extend the validity of the previously approved Development Permits and to ensure the Development Permits applies to the newly proposed phases of the Project.
- H. This MOU constitutes an administrative extension of the previously issued Development Permits. The original issuance of the Development Permits was subject to all applicable public notice, comment, and appeal procedures, which were fully provided and satisfied at that time. Accordingly, no additional public notice, comment period, or appeal rights shall apply to this extension.
- I. In consideration of the mutual covenants and promises contained below, the sufficiency of which is acknowledged, Owner and SmartCap agree to the terms contained herein.

II. AUTHORITY

SmartCap and Owner have authority to enter into this MOU pursuant to RCW 14.08.120.

III. OBLIGATIONS OF THE OWNER

- A. The Owner agrees to extend the validity of the previously issued Development Permits with conditions to SmartCap as part of SmartCap’s Project.
- B. Owner agrees and acknowledges that, any amendments to the City of Arlington’s zoning code shall allow for the intended use of the Project as a permitted use by right, including, but not limited to, all other governmental approvals related to the Project.
- C. Owner further agrees that so long as the MOU with the Owner of the Arlington Municipal Airport (as amended, the “**Airport MOU**”) has not terminated or expired and SmartCap is not in default of the Airport MOU, then SmartCap may delay commencement of the Project or any phase of the Project coterminous with the Airport MOU, and in each such case, any such delay shall not terminate the applicability of the extended Development Permits.

- D. Owner agrees and acknowledges that this MOU constitutes an administrative extension of the Development Permits and, therefore, the extended Development Permits shall not be subject to the public notice, comment, and appeal periods associated with permit decisions.

IV. OBLIGATIONS OF SMARTCAP

- A. SmartCap agrees and acknowledges that the extended Development Permits shall be used for the same proposed project as the previously approved Development Permits, of which Project includes the development of five (5) buildings and two pocket parks, but has been changed from the previously planned two phases to include up to five phases (*e.g.*, one phase per building) as depicted on **Exhibit A** attached hereto and incorporated herein.
- B. SmartCap agrees and acknowledges that the extended Development Permits includes the same conditions set forth in the conditions section in each of the Development Permits.
- C. SmartCap’s development of the Property will consist of construction of those certain buildings and related improvements with respect to the Property as depicted on **Exhibit A** attached hereto and incorporated herein. On-site physical construction (such as rough grading, site preparation, or other evident construction activities) with respect to the Property will commence in accordance with the plans and specifications approved by the Owner in accordance with the Development Permits.
- D. SmartCap shall undertake commercially reasonable efforts to cooperate with Owner (subject to Force Majeure) with respect to the extension of the Development Permits.

V. POINTS OF CONTACT

- A. Owner’s Point of Contact:

Name: Paul Ellis
Title: City Administrator
Address: 238 N. Olympic Ave
City, State, Zip: Arlington, WA 98223
Phone: 360.403.4603
Cell Phone: 425.754.8939

E-mail: pellis@arlingtonwa.gov

- B. Community and Economic Development Point of Contact:

Name: Amy Rusko
Title: Deputy Director
Address: 18204 59th Avenue, NE

City, State, Zip: Arlington, WA 98223
Phone 360.403.3550
E-mail: arusko@arlingtonwa.gov

C. SmartCap's Point of Contact:

Name: SmartCap Arlington Air North Phase 1, LLC
c/o The SmartCap Group, Inc.
Address: 8201 164th Avenue NE, Suite 105
City, State, Zip: Redmond, WA 98052
E-mail: timsh@thesmartcapgroup.com
Attn: Tim Shoultz

VI. EFFECTIVE DATE, DURATION AND MODIFICATION

- A. The period of performance of this MOU shall commence as of the final dated signature of the parties to this MOU and end on the date of termination or expiration of the Airport MOU (the "**Expiration Date**"). This MOU may be extended at any time by mutual written consent of both parties.
- B. This MOU may be amended at any time by mutual written amendment to this MOU. No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto, and any oral understanding or agreements not incorporated herein shall not be binding.

VII. ASSIGNMENT AND TERMINATION

- A. Assignment. SmartCap shall have the right to assign this MOU without Owner's consent to any entity (a) which owns or controls SmartCap, is owned or controlled by SmartCap, or is under common control as SmartCap (an "**Affiliate**"), (b) is under common ownership or control with SmartCap, (c) that is a successor to SmartCap or an entity that is an Affiliate of SmartCap as the result of merger, consolidation, stock sale, transfer or swap, transfer of beneficial interests, or by operation of law, (d) that acquires a majority of the assets of SmartCap (whether or not there may be a change in SmartCap's name) or of an entity that is an Affiliate of SmartCap or is created using a majority of the assets of SmartCap or of an entity that is an Affiliate of SmartCap, or (e) that acquires the any portion of the Project pursuant to a sale agreement with SmartCap.
- B. Termination for Cause. In addition to the Expiration Date set forth above, either party may terminate this MOU for cause if the other party fails to comply with any of the terms and conditions of this MOU in a timely and acceptable manner, including failure to comply with all federal, state, and local health and safety laws and regulations. The terminating party shall notify the other party in writing of the need to take corrective action. If the default or violation is not corrected after ten (10) days or within a reasonable timeframe as determined by the terminating party, the MOU shall be deemed terminated. The terminating party reserves the right to

suspend all or part of the MOU during investigation of the alleged compliance breach and pending corrective action by the terminating party or a decision by the terminating party to terminate the MOU. The rights and remedies of the parties provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

C. In the event this MOU is terminated, SmartCap will be given reasonable time and access to the Property to remove any equipment, cache, supplies or improvements.

VIII. LEGAL RELATIONS

To the fullest extent permitted by law, each party to this Agreement shall be responsible for injury to persons or damage to property resulting from negligent acts or omissions on the part of itself, its employees, agents or officers. Each party shall defend, protect, and hold harmless the other party from and against all claims, actions, costs, damages, or expenses of any nature arising out of or incident to that party's negligent performance or failure to perform this agreement. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any third party.

IN WITNESS HEREOF, the parties hereto have executed this Memorandum of Understanding the ____ day of _____, 2025.

By: _____ Date _____
Don Vanney
Mayor
City of Arlington

By: _____ Date _____
Tim Shoultz
Chief Executive Officer

EXHIBIT A

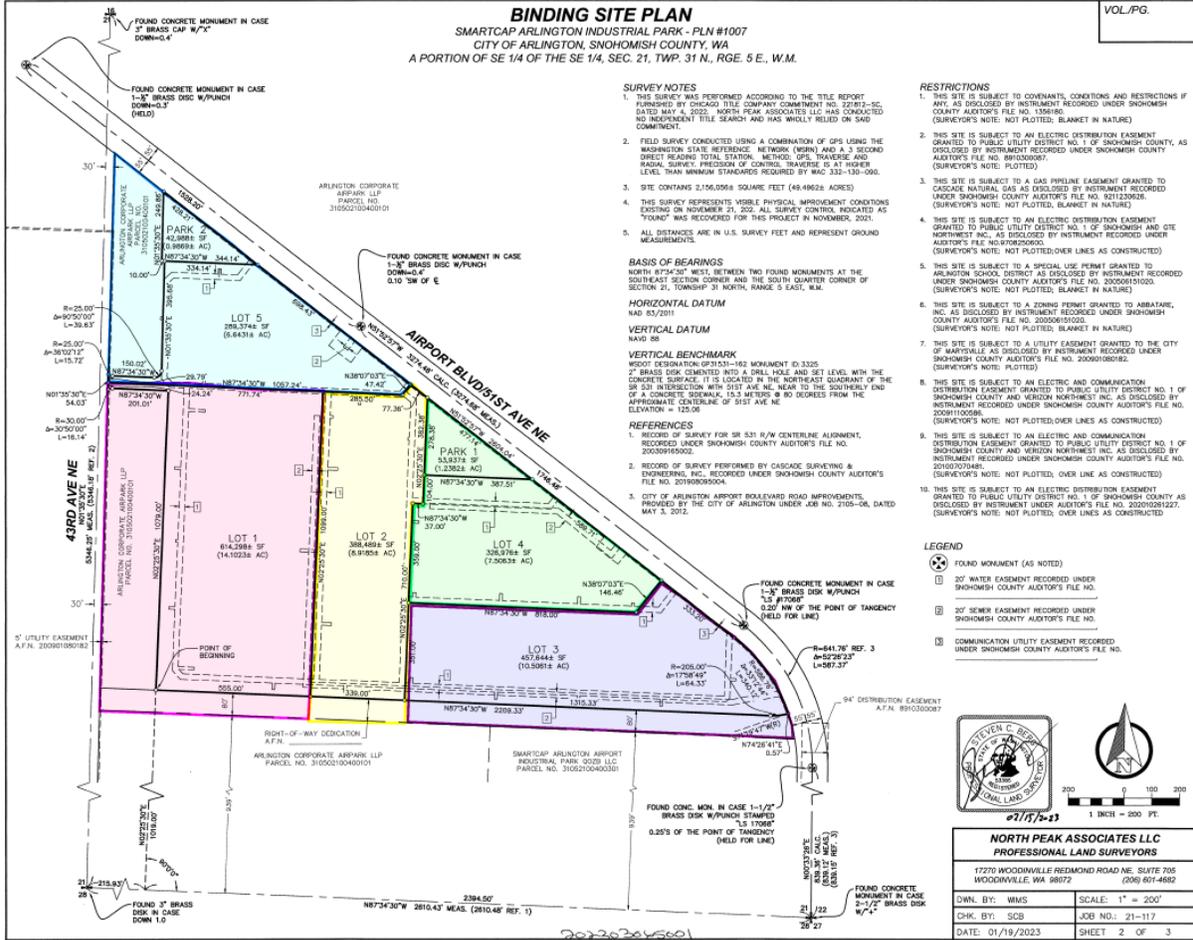
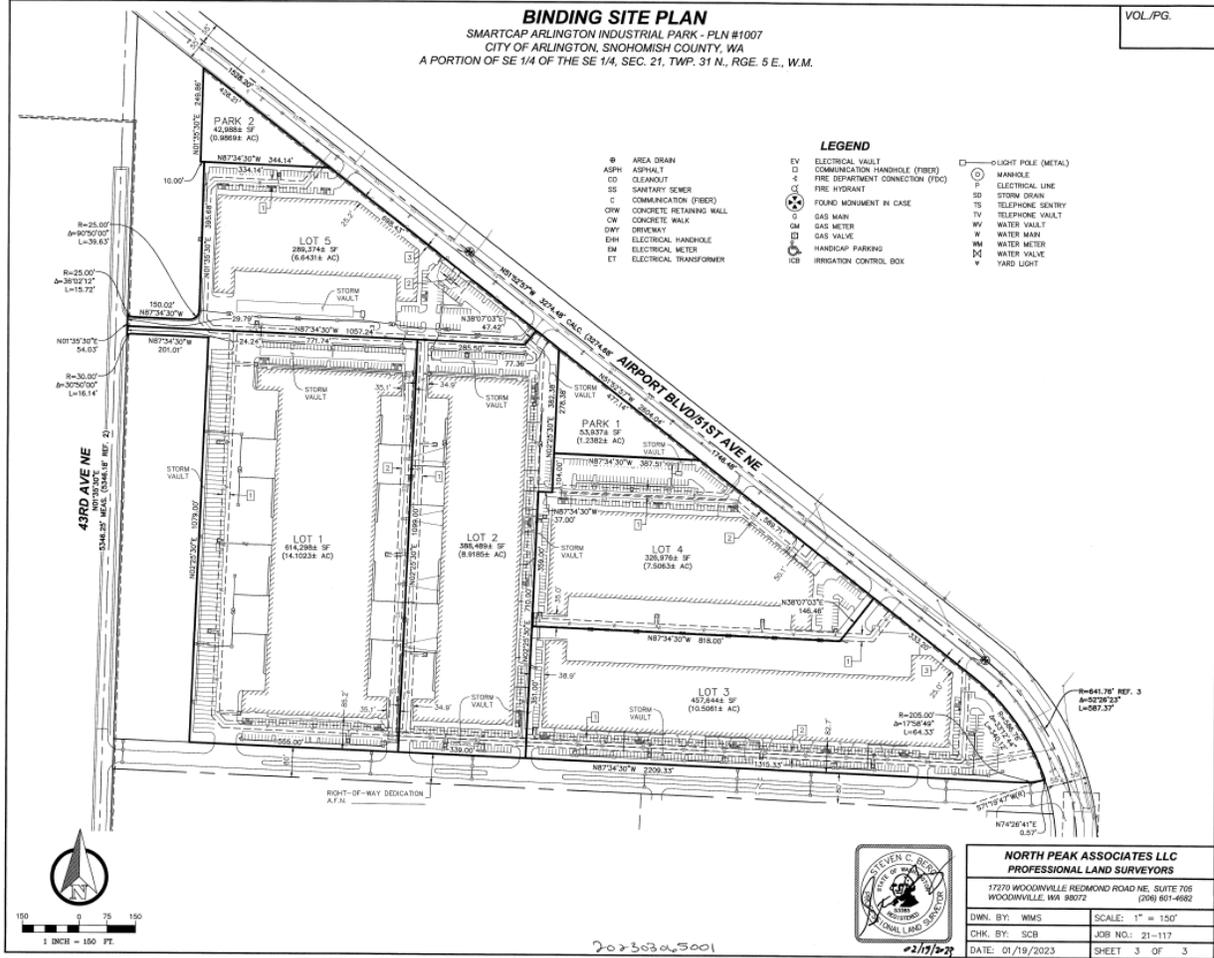


EXHIBIT A



**Second Amendment to Memorandum of Understanding Regarding Long-Term
Ground Lease**

This **Second Amendment to Memorandum of Understanding Regarding Long-Term Ground Lease** (this “**Amendment**”) is dated _____, 2025, and is by and among THE SMARTCAP GROUP, INC., a Washington corporation and/or its successors or assigns (“**SmartCap**”), and the CITY OF ARLINGTON, a Washington municipal corporation (hereinafter, “**City**” or “**Ground Lessor**”) and amends that certain Memorandum of Understanding Regarding Long-Term Ground Lease by and among an affiliate of SmartCap and the City dated as of August 2, 2021 (the “**Original MOU**”) as amended by that certain First Amendment to Memorandum of Understanding Regarding Long-Term Ground Lease by and among SmartCap and the City dated as of March 9, 2022 (the “**First Amendment**,” and together with the Original MOU, the “**MOU**”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the MOU.

RECITALS

A. WHEREAS, SmartCap, through an affiliate, and City previously entered into that certain Lease dated June 10, 2020, as amended, by and between the City, as ground lessor, and SmartCap, as tenant, situated in Arlington, County of Snohomish, State of Washington, being a part of the Arlington Municipal Airport (the “**Arlington Municipal Airport**” or “**Airport**”) to construct the City of Arlington Airport Business Park;

B. WHEREAS, SmartCap proposed to lease from City certain real property as described in the Original MOU, and SmartCap or an affiliate intends to construct a multi-tenant clean light industrial / distribution facility, similar to the City of Arlington Airport Business Park (the “**Project**”);

C. WHEREAS, SmartCap and/or its assigns as directed by SmartCap pursuant to Section 7 of the Original MOU, and City entered into that certain Letter of Intent to Lease Land dated May 5, 2021, to enter the Proposed Ground Lease, whereby the parties agreed that the Original MOU would set the guidelines to negotiate the Proposed Ground Lease;

D. WHEREAS, SmartCap and the City entered into that certain Memorandum of Understanding Regarding Long-Term Ground Lease dated as of August 2, 2021 and that certain First Amendment to Memorandum of Understanding Regarding Long-Term Ground Lease dated as of March 9, 2022; and

E. WHEREAS, the parties also desire to amend the MOU as set forth in this Amendment certain specific other terms and conditions in respect of these matters.

NOW, THEREFORE, for and in consideration of the foregoing premises, and the mutual undertakings set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Project Depiction; Sequencing. The MOU is hereby amended such that the Project includes the development of five (5) Buildings and two Pocket Parks, but has been changed from the previously planned two phases to include up to five phases (*e.g.*, one phase per Building) as depicted on **Exhibit A** attached hereto and incorporated herein. The development of each Building of the Project shall be under a separate Proposed Ground Lease, and SmartCap shall have the right to sequence the Project in any order so long as SmartCap is otherwise in compliance with the timelines and requirements under the MOU and this Amendment (each, a “**Phase Development**”).

2. Project Timelines; Rent. The MOU is hereby amended such that SmartCap shall commence the initial Phase Development on or prior to December 31, 2026, and thereafter each Phase Development shall commence within twenty-one (21) full calendar months following the “Completion Date” under the most recently executed Proposed Ground Lease (each, a “**Phase Commencement Deadline**”). If SmartCap has not commenced a Phase Development of the Project prior to the Phase Commencement Deadline, then the Airport may provide written notice to SmartCap of such failure. SmartCap shall then have thirty (30) days following receipt of such written notice to commence the next Phase Development or shall be deemed to be in default of the MOU and the Airport and/or City may proceed to lease the remaining undeveloped Land under the MOU to other users or developers. Rent under each Proposed Ground Lease shall be due for the respective Phase Development on the date that is eighteen (18) months after final approval (meaning approval and expiration of all appeal periods) of all zoning approvals, site plan approvals, special and/or conditional use permits, subdivision approvals, environmental approvals, building permits, amendments to the City’s zoning code to allow for the intended use as a permitted use by right and all other governmental approvals (including approvals of the FAA) related to the Premises (each a “**Permit**” and collectively, the “**Permits**”).

3. Offsite Improvements Tied to Buildings (173rd Street, 43rd Avenue, 174th Street, Pocket Parks). The MOU is hereby amended such that each Phase Development shall be required to include certain off-site improvements to be constructed as depicted on **Exhibit A** attached hereto and incorporated herein and described below:
 - **Building 1:** Portion of 43rd Ave. NE, and portion of 174th St. directly associated with the lot.
 - **Building 2:** Portion of 174th St. directly associated with the lot.
 - **Building 3:** Portion of 174th St. directly associated with the lot.
 - **Building 4:** Must complete Pocket Park adjacent to lot.
 - **Building 5:** Must complete Pocket Park adjacent to lot as well as improvements on the Eastern ½ of 43rd Ave. NE.

For the avoidance of doubt, in the event that Building 1 is commenced as a Phase Development prior to Building 2, then SmartCap shall be required to install that portion of 174th St. associated with Building 2 prior to completion of the Building

2 Phase Development (or otherwise receive a variance from the City relating to same). In addition, in the event that Building 3 is commenced as a Phase Development prior to Building 1 and Building 2, then Building 1 shall be commenced as Phase Development prior to Building 2 such that there will be no gap in the completion of the 174th St. improvements.

4. Construction of 174th Street and Latecomer Agreement. The MOU is hereby amended such that the parties shall endeavor to record a latecomer agreement (a “**Latecomer Agreement**”) against that certain area South of 174th Street herein (the “**Latecomer Land**”), to the extent permissible under RCW Chapter 35.72 and subject to the City’s approval. The parties acknowledge that RCW 35.72.040 requires the establishment of an “assessment reimbursement area” based on the presence of adjacent parcels. Because the Latecomer Land does not presently include such adjacent parcels, the Latecomer Agreement shall be treated as a discretionary accommodation rather than a guaranteed right. If the Latecomer Agreement is permitted under RCW Chapter 35.72 and approved by the City, the Airport and SmartCap agree and acknowledge that the Latecomer Agreement shall encumber the Latecomer Land such that any third party that develops any portion of the Latecomer Land shall be required to pay its prorata share of costs incurred by SmartCap in connection with the 174th Street improvements.
5. Form of Proposed Ground Lease. The MOU is hereby amended such that the parties shall agree that the form of Proposed Ground Lease for each Phase Development is attached hereto as **Exhibit B**.
6. Electronic Signatures; Counterparts. This Amendment shall be executed only by a pen and ink signature, but may be delivered by facsimile or email with a pdf attachment of a signed counterpart. It may be signed in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
7. Recitals. The recitals set forth at the beginning of this Amendment are true and correct, and are incorporated herein by this reference.
8. Full Force and Effect: Except as specifically amended herein, all other provisions of the MOU shall remain in full force and effect and are hereby affirmed and ratified. To the extent of any inconsistencies or contradictions between the terms and conditions of the MOU and this Amendment, the terms and conditions contained in this Amendment shall govern and control.

[Signatures on next page]

IN WITNESS WHEREOF, this Second Amendment to Memorandum of Understanding Regarding Long-Term Ground Lease has been executed as of the date first above written.

CITY OF ARLINGTON,
a Washington municipal corporation

By: _____
Marty Wray, Airport Director

THE SMARTCAP GROUP INC.,
a Washington corporation
its Manager

By: _____
Name: Tim Shoultz
Title: Chief Executive Officer

EXHIBIT A

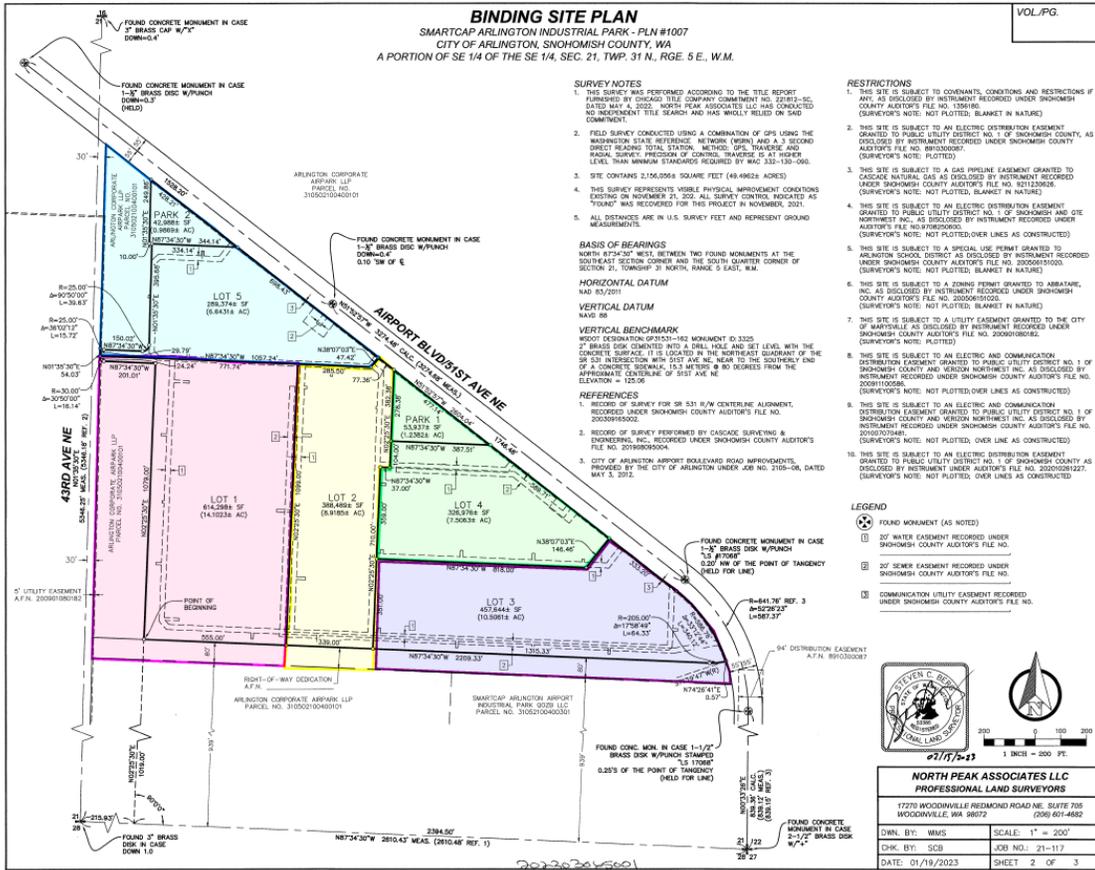


EXHIBIT A

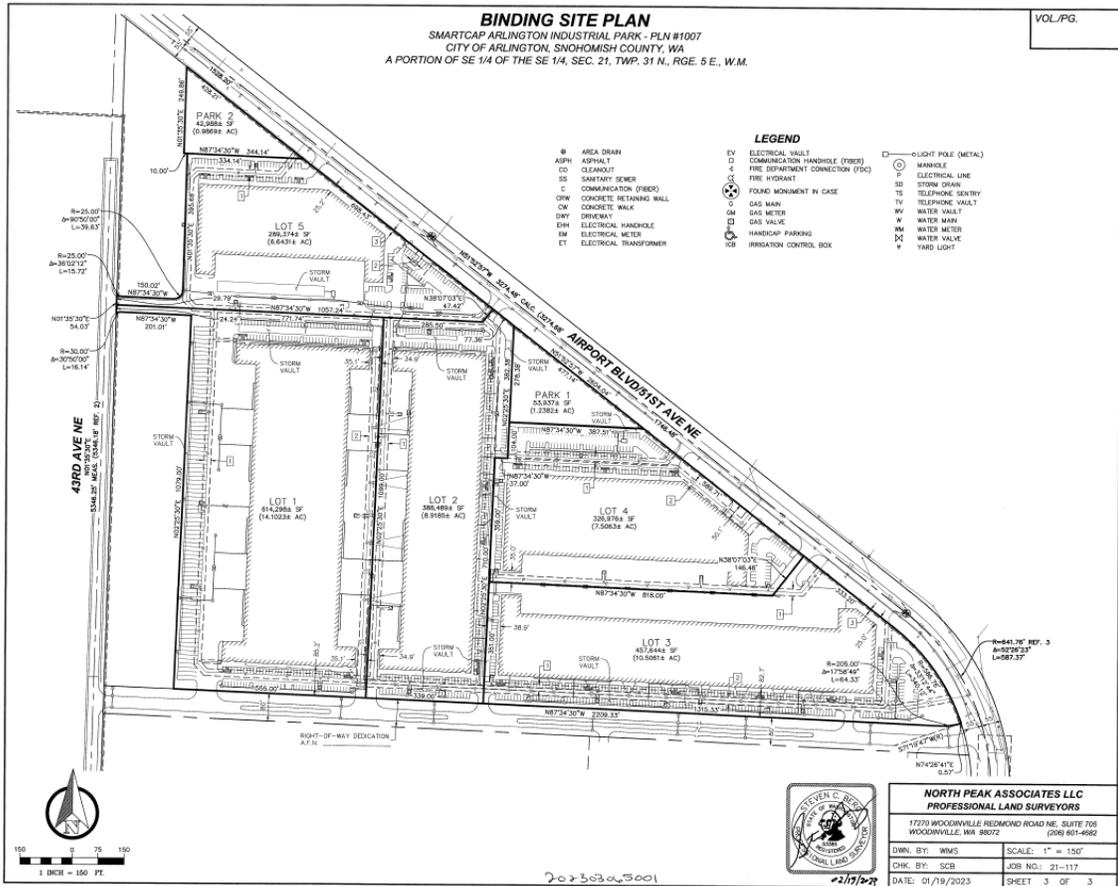


EXHIBIT B

Form of Proposed Ground Lease