

ORIGINAL

AGREEMENT OF SUBLEASE

SUBLEASE OF BUILDING 40

**AT THE
FORMER ALAMEDA NAVAL AIR STATION**

BETWEEN

**ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY,
A JOINT POWERS AUTHORITY ESTABLISHED BY THE CITY OF ALAMEDA
AND THE COUNTY OF ALAMEDA
UNDER THE CALIFORNIA JOINT EXERCISE OF POWERS ACT
AS
SUBLESSOR**

AND

**BLADIUM, INC.,
A CALIFORNIA CORPORATION
AS
SUBTENANT**

AGREEMENT OF SUBLEASE
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 FORMER ALAMEDA NAVAL AIR STATION
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AGREEMENT OF SUBLEASE

BETWEEN

THE ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY
AND
BLADIUM, INC.

FOR THE
SUBLEASE OF BUILDING 40

AT THE
FORMER ALAMEDA NAVAL AIR STATION

THIS SUBLEASE is made this 1ST day of ~~January~~ ^{FEBRUARY}, 2000 (the "Sublease Execution Date"), by and between the Alameda Reuse and Redevelopment Authority, a Joint Powers Authority established by the City of Alameda and the County of Alameda under the California Joint Exercise of Powers Act as set forth in Title 1, Division 7, Chapter 5, Article I of Government Code of the State of California (Government . Code §6500 *et seq.*) ("Sublessor") and Bladium, Inc., a California corporation ("Subtenant").

RECITALS:

WHEREAS, the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", has declared certain facilities surplus at the Naval Air Station, Alameda, California (the "Station"), and Sublessor has immediate need to use certain of these facilities; and

WHEREAS, such surplus property may be leased to state or local governments pending final disposition of such property pursuant to the provisions of Public Law 94-107, 1 0 U.S.C. 2667(f); and

WHEREAS, Government made and entered into that certain Large Parcel Lease with Sublessor dated March 24, 1997 (the "Prime Lease") to accomplish such result and has leased the Leased Premises (as hereinafter defined) herein described to Sublessor, as Lessee, upon the terms and conditions set forth in the Prime Lease.

WHEREAS, Sublessor is willing to lease the Leased Premises herein described from Government under the Prime Lease in order to be able to sublease the Leased Premises to Subtenant;

WHEREAS, on September 22, 1997, the City of Alameda Planning Board approved a Master Use Permit (UP97-1) for interim uses at the Station (the "**Master Permit**"); and

WHEREAS, on October 25, 1999 the City of Alameda Planning Board approved a Use Permit (UP-99-17) for interim use of the Leased Premises by Subtenant ("**Use Permit**").

WHEREAS, Sublessor and Subtenant have agreed to make and enter into this Sublease, whereby Subtenant will lease from Sublessor the Leased Premises (as hereinafter defined).

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Sublessor and Subtenant hereby agree as follows:

1. **LEASED PREMISES.** Sublessor does hereby lease, rent, and demise to Subtenant and Subtenant does hereby hire and rent from Sublessor those certain premises known as Building 40, containing approximately 104,000 square feet, together with the improvements and fixtures situated therein (the "**Building**") and certain land including parking area under and adjacent to the Building, (the "**Land**") as shown and described on Exhibit A. The Building, the Land, all improvements thereon as shown and described in Exhibit A, and the right of ingress and egress thereto are collectively referred to in this sublease as the "**Leased Premises**."

1.1 Subordinate to Prime Lease. This Sublease is subject and subordinate to the Prime Lease between Government, a signed copy of which is attached hereto as Exhibit B. Subtenant acknowledges that Sublessor's rights to the Leased Premises arise solely under the Prime Lease. In the event that Sublessor obtains fee title to the premises, this Sublease shall be revised in accordance with attached Exhibit "G."

1.2 Relationship to Prime Lease. Notwithstanding any provision of this Sublease, Sublessor and Subtenant hereby agree as follows: (i) Subtenant will not do or permit anything to be done in or on the Leased Premises which will cause the occurrence of a default by Sublessor under the Prime Lease; (ii) if the Prime Lease expires or is terminated for any reason, then this Sublease shall thereupon terminate, without any liability to Sublessor (unless such expiration or termination is caused by a material default of Sublessor under the Prime Lease), as if such date were the scheduled expiration date of the Term, as defined in Section 2. Sublessor shall take all necessary actions within Sublessor's control to keep the Prime Lease in full force and effect during the term of this Sublease and any extensions thereto.

1.3 Compliance with Prime Lease. Sublessor covenants and agrees that it shall comply with all the terms of the Prime Lease if the failure to so comply would adversely affect the rights of Subtenant under the Sublease or would provide Government under the Prime Lease with

any right of cancellation or termination of the Prime Lease or the Sublease, or any termination, cessation or interruption of any rights or services to Subtenant under the Sublease.

1.4 Default in Prime Lease. Sublessor shall have no liability to Subtenant for Government's defaults under the Prime Lease. Subtenant agrees that Sublessor shall not be obligated to perform any of Government's obligations under the Prime Lease, except to the extent that such obligations are expressly made obligations of Sublessor under this Sublease. Subtenant further agrees that neither this Sublease nor any obligation hereunder, including the payment of Base Rent or Additional Rent (each as hereinafter defined), shall be affected by Government's default under the Prime Lease, except to the extent that the Prime Lease is terminated, or unless such default causes Sublessor to breach the covenant of quiet enjoyment in favor of Subtenant contained herein, provided however, that if as a result of Government's default Subtenant's use of the Leased Premises is materially adversely affected for a period of five (5) or more business days, all rent payable hereunder shall abate from the date of adverse impact until Subtenant's use is no longer so materially adversely affected. Sublessor shall make diligent efforts to enforce Government's obligations under the Prime Lease, however, Subtenant shall have the ability to enforce all rights of Sublessor under the Prime Lease, or cause Sublessor to enforce all such rights.

1.5 Prime Lease Controls. In the event of any conflict in the rights of Subtenant under this Sublease and the rights of Sublessor under the Prime Lease, the terms, conditions and covenants of the Prime Lease shall control.

1.6 Copy of Prime Lease. Subtenant represents that it received, read and is familiar with the terms of the copy of the Prime Lease delivered to it by Sublessor. Sublessor represents that the document attached hereto as Exhibit B is a true, correct and complete copy of the Prime Lease. Notwithstanding the foregoing, or anything otherwise stated herein, it is expressly understood that all obligations of Subtenant relative to this Sublease and Subtenant's use and occupancy of the Leased Premises are contained in this Sublease, and that Subtenant shall have no other or further obligations to Sublessor or to Government which are not expressly set forth in this Sublease.

2. **TERM.** Subject to Sections 2.1, 2.2, 2.3, 2.4 and 2.5 hereof, the term of this Sublease (the "**Term**") shall commence January 1, 2000 ("**Sublease Commencement Date**") and end on June 30, 2010 ("**Initial Term**") unless sooner terminated or extended as provided herein.

2.1 Joint Inspection. Notwithstanding anything stated in the preceding paragraph, prior to the use and occupancy of the Leased Premises by Subtenant, a joint inspection of the Leased Premises shall be conducted pursuant to Section 6 of the Prime Lease and Section 6 of this Sublease (the "**Joint Inspection**").

2.2 Commencement of Possession. Commencement of Possession. If Sublessor is unable to give possession of the Leased Premises on the Sublease Commencement Date because Government has not yet consented to this Sublease despite the exercise of Sublessor's diligent efforts

to obtain such consent, Sublessor shall not be subject to any liability for the failure to give possession on said date. Under such circumstances, unless the delay is the fault of Subtenant, the Rent (as defined herein) shall not commence until the Rent Commencement Date (as defined herein) and no such failure to give possession on the Sublease Commencement Date shall in any way affect the validity of this Sublease or the obligations of Subtenant hereunder, provided, however, that the Term shall be extended for the period of the delay. Notwithstanding the foregoing, if Sublessor is unable to provide Subtenant possession of the Leased Premises by January 30, 2000, then Subtenant shall be entitled to terminate this Sublease by providing fifteen (15) calendar days advance written notice to Sublessor stating that Subtenant is terminating the Sublease based upon failure of Sublessor to provide possession to Subtenant.

2.3 Extension of Term. Upon expiration of the Term of this Sublease, Subtenant shall have the right and option to extend the Initial Term for five (5) additional years ("**First Renewal Term**") as hereinafter provided. Tenant shall exercise said option by giving Sublessor written notice prior to March 31, 2010 ("**First Renewal Notice Date**"). If such notice is not given by Subtenant prior to such First Renewal Notice Date, such right and option to extend this Sublease shall terminate. If Subtenant exercises such option as provided herein, the respective rights, duties and obligations of Government, Sublessor and Subtenant during the First Renewal Term shall be governed by the terms and conditions of the Sublease with no increase in rent other than normal CPI adjustments as defined in Section 3.10 hereof.

2.4 Second Extension of Term. Upon expiration of the First Renewal Term of this Sublease, and provided Subtenant is not in default under the Sublease at the time of exercising its rights under this Section, Subtenant shall have the right and option to extend the Sublease Term for ten (10) additional years ("**Second Renewal Term**") as hereinafter provided. Tenant shall exercise said option by giving Sublessor written notice prior to March 31, 2015 ("**Second Renewal Notice Date**"). If such notice is not given by Subtenant prior to such Second Renewal Notice Date, such right and option to extend this Sublease shall terminate.

If Subtenant exercises such option as provided herein, the respective rights, duties and obligations of Government, Sublessor and Subtenant during the Second Renewal Term shall be governed by the terms and conditions of the Sublease.

Subtenant's rent in the first year of the Second Renewal Term shall be adjusted to equal ninety percent (90%) of the fair market rental value for monthly Base Rent for the Leased Premises ("**FMRV**") for the Second Renewal Term, as extended. The FMRV shall be based upon viewing the Building as 87,516 square feet of light industrial space; 3,500 square feet of finished office space and 12,984 square feet of unfinished office space (requiring new carpets, paint, HVAC, telecommunications ducts, lighting and a dropped ceiling), with appropriate adjustments for location and other factors that affect value. The build-out, type of use, and condition of the building shall be as described in Exhibit F hereto, but including all Qualified Shell Improvements (as described herein). The appraiser shall assume that the Building complies with all applicable building codes. Sublessor shall cause Exhibit F to be prepared by an MAI appraiser and addressed to Sublessor and

Subtenant ("**Initial MAI Report**") and incorporated into the Sublease within sixty (60) calendar days of the Sublease Execution Date.

Upon Subtenant's exercise of the right to extend the Initial Term, each party shall jointly retain an MAI appraisal to determine the FMRV for the Leased Premises during the Second Renewal Term utilizing the instructions included herein ("**Future Appraisal**"). The cost of such appraisal shall be shared equally. In the event Sublessor and Subtenant cannot agree on the FMRV, then Sublessor and Subtenant shall each retain another MAI appraiser at their own costs to determine the FMRV as specified herein. If the lower appraisal is not less than 90% of the higher appraisal, FMRV shall be the average of the two appraisals. If the lower appraisal is less than 90% of the higher appraisal, the two appraisers shall select a third independent MAI appraiser who will appraise the FMRV. In this event, the FMRV shall equal the average of the two closest of the three appraisers.

The rent during years two through ten of the Second Renewal Term shall be subject to normal CPI adjustments as defined in Section 3.10 hereof.

2.5 Third Extension of Term. Upon expiration of the Second Renewal Term of this Sublease, and provided Subtenant is not in default under the Sublease at the time of exercising its rights under this Section, Subtenant shall have the right and option to extend the Sublease Term for an additional ten (10) years ("**Third Renewal Term**") as hereinafter provided. Tenant shall exercise said option by giving Sublessor written notice prior to March 31, 2025 ("**Third Renewal Notice Date**"). If such notice is not given by Subtenant prior to such Third Renewal Notice Date, such right and option to extend this Sublease shall terminate.

If Subtenant exercises such option as provided herein, the respective rights, duties and obligations of Government, Sublessor and Subtenant during the Second Renewal Term shall be governed by the terms and conditions of the Sublease.

Subtenant's rent in the first year of the Third Renewal Term shall be adjusted to equal ninety percent (90%) of the fair market rental value for monthly Base Rent for the Leased Premises ("**FMRV**") for the Third Renewal Term, as extended. The FMRV shall be determined in the same manner as described in Section 2.4.

The rent during years two through ten of the Third Renewal Term shall be subject to normal CPI adjustments as defined in Section 3.10 hereof.

2.6 Early Termination. In the event that at any time during the Term, Subtenant is unable to obtain permits required by it to carry on fully its business activities at the Leased Premises, Subtenant may terminate this Sublease upon sixty (60) calendar days prior written notice to Sublessor. In addition, (i) if as a result of the expiration or termination of, or a material change to, either the Master Permit or the Use Permit, Subtenant is unable to carry on fully its business activities at the Leased Premises, (ii) if the cost of the qualified shell improvements (as set forth on

Exhibit E attached hereto) significantly exceeds the Maximum Qualified Shell Improvement Costs, as defined herein, or (iii) if Subtenant's Lender, as defined herein, is unwilling to finance subtenant's improvements, Subtenant may terminate this Sublease on thirty (30) calendar days prior written notice to Sublessor.

3. CONSIDERATION.

3.1 Base Rent. Subtenant shall pay to Sublessor as "**Base Rent**" an amount as indicated herein. Base Rent shall commence on the date that is thirty (30) calendar days after issuance of a Temporary Certificate of Occupancy for the Leased Premises by the City of Alameda Building Department ("**Rent Commencement Date**"). Each monthly payment of Base Rent shall be paid in advance promptly on the first day of every calendar month of the Term. The Base Rent shall be paid without prior notice or demand, and, except as may be authorized under Sections 3.2, 3.3, 3.4 and 3.5 hereof, without any setoff, counterclaim or deduction whatsoever, except as provided for herein. The Base Rent shall be paid at Sublessor's offices, or such other place, as Sublessor shall direct. If the Base Rent commences on a day other than the first day of the calendar month or ends on a day other than the last day of the calendar month, Base Rent for any such partial month shall be prorated at the rate of one-thirtieth of the monthly Base Rent for each day of the period. As an additional part of Base Rent and consideration for this Sublease, Subtenant shall pay any and all Taxes levied or imposed against the Leased Premise in accordance with the provisions of Section 27.

Year	Base Rent Per Square Foot	Monthly Rent
01/01/01 - 12/31/01 1	\$0.27	\$28,080
01/01/02 - 12/31/02 2	\$0.27	\$28,080
01/01/03 - 12/31/03 3	\$0.28	\$29,120
01/01/04 - 12/31/04 4	\$0.30	\$31,200
01/01/05 - 12/31/05 5	\$0.32	\$33,280
6-10	Annual CPI increase as per Section 3.10	Annual CPI increase as per Section 3.10

3.2 Base Rent Offset. Sublessor shall permit Subtenant to receive an offset from payment of Base Rent equal to the actual cost of certain physical improvements made by Subtenant to the Building and Land ("**Qualified Shell Improvement Costs**") as further defined in Exhibit E attached hereto. The offset shall be in the amount of 100% of the Base Rent during the first year of the Initial Term on a monthly basis. The outstanding balance of the Qualified Shell Improvement Costs shall accrue interest payable to Subtenant beginning on the Sublease Commencement Date. The interest rate will be a variable rate based on the prime lending rate as published by the Wall Street Journal plus 2.00 percentage points, adjusted quarterly. Interest will be calculated on the basis of a 360-day year and actual days elapsed. Sublessor shall also reimburse Subtenant for actual loan

fees up to a maximum of \$25,000, which may be added to the outstanding balance of the Qualified Shell Improvement Costs.

Subtenant shall provide to Sublessor an itemized statement of the Qualified Shell Improvement Costs along with such documentation as reasonably required by Sublessor evidencing and verifying that Subtenant has completed the work and that Subtenant has expended the funds for such Qualified Shell Improvement Costs. Notwithstanding any of the foregoing, the total Qualified Shell Improvement Costs shall be the actual costs of improvements described in Exhibit E but shall not exceed nine hundred and seventy five thousand dollars (\$975,000) ("**Maximum QSIC**"). Notwithstanding the foregoing, the Maximum QSIC shall be increased by actual loan fees and interest accrual as described above. Also notwithstanding any of the foregoing, the Maximum QSIC may be increased upon Sublessor's sole discretion. Also notwithstanding the foregoing, certain other provisions of the Sublease provide for additions to the amount of the Maximum QSIC.

Notwithstanding anything contained in this Sublease to the contrary and in addition to Subtenant's rights and remedies under the Sublease, should Sublessor default under the Sublease, Sublessor, its successor and assigns, shall promptly pay Subtenant for all unamortized Qualified Shell Improvement Costs as of the date of default or termination, as the case may be. In the event that Subtenant shall purchase the Leased Premises at a time when the Qualified Shell Improvement Costs have not been fully paid by Sublessor to Subtenant, the unpaid portion of the Qualified Shell Improvement Costs shall be deducted from the purchase price.

3.3 Discounts For Use By Community Groups. As part of Bladium's community outreach program ("**COP**"), Bladium will make certain areas of the facility available at no charge for not less than four (4) hours per month to qualified youth groups and organizations. Qualified youth groups and organizations ("**QYG**") must be non-profit entities based in Alameda and established to serve the Alameda community and shall be certified as QYGs by the City of Alameda. QYG must have adequate insurance coverage and adult supervision. Bladium reserves the sole right to approve all QYG. Bladium shall not be obligated to provide staff, supervision, or equipment for any COP, QYG or any program contemplated herein. Bladium shall in its sole and absolute discretion determine the time(s), day(s), and activities in which this program may be utilized. During this program, the QYG may share areas of the facility with other Bladium programs, activities and guests. The number of hours per month is not cumulative and will expire after each month. This program is intended to provide youth groups with recreational services.

3.4 No Security Deposit. A security deposit securing Subtenant's obligations under this Sublease is waived.

3.5 Additional Rent. All sums payable by Subtenant to Sublessor under this Sublease not otherwise payable as Base Rent, including but not limited to the sums payable pursuant to Sections 12 and 27 of this Sublease, shall be deemed additional rent ("**Additional Rent**"). For the purposes of this Sublease, Base Rent and Additional Rent are hereinafter collectively referred to as "**Rent**".

3.6 Default Rate. If any portion of Rent shall be due and unpaid for more than ten (10) business days, it shall thereafter bear interest at the per annum rate equal to 2% per annum greater than the prime rate of interest announced from time to time by the Wall Street Journal, as the same may change from time to time (the "**Default Rate**"), from the due date until the date of payment thereof by Subtenant.

3.7 Late Charge. If any payment of Rent or any part thereof to be made by Subtenant to Sublessor pursuant to the terms of this Sublease shall become overdue for a period in excess of ten (10) business days after written notice from Sublessor that the same is past due, a late charge of five cents for each dollar overdue shall be paid by Subtenant for the purpose of defraying the expense incident to handling such delinquent payment, together with interest from the date such payment or part thereof was due, at the Default Rate. Nothing herein or in the imposition or acceptance of a late charge by Sublessor shall be construed as a waiver of any rights of Sublessor arising out of any default of Subtenant; the right to collect any late charge or interest is separate and apart from any rights or remedies of Sublessor relating to any default by Subtenant.

3.8 Survival. The obligation of Subtenant with respect to the payment of Rent shall survive the termination of this Sublease, subject to the terms and conditions of the Sublease.

3.9 Net Lease. Subtenant hereby acknowledges and agrees that this Sublease is intended to be a triple net lease to Sublessor, as such term is commonly used for the leasing of industrial properties, except as expressly herein set out, such that Sublessor is not responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy thereof, or the consents thereof or the business carried on therein, and that Subtenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises except as expressly otherwise agreed herein. As set forth in this Sublease, all costs of maintenance and repair of the Leased Premises, all costs of insuring the Leased Premises, and all taxes, as that term is defined in Section 27 of this Sublease, allocated to the Leased Premises shall be paid by Subtenant. Notwithstanding anything contained in this Sublease to the contrary, Subtenant shall have no obligation to make any capital or extraordinary improvements or repairs to the Leased Premises or to perform any environmental remediation of or at the Leased Premises, except as and to the extent provided in Section 12 hereof, or to the extent any of the same is necessitated by Subtenant's negligence or willful misconduct or results from Subtenant's misuse of hazardous materials.

3.10 CPI Adjustments to Rent. The rent adjustments paid by Subtenant during years six through ten of the Initial Term, years two through ten of each year of the First Renewal Term, years two through ten of the Second Renewal Term and years two through ten of the Third Renewal Term shall be adjusted according to the following formula:

$$\text{Adjusted rent} = \text{prior year's annual rent} \times \frac{\text{Preceding year's Index (as defined below)}}{\text{Index for the year prior to preceding year}}$$

Such adjusted rent shall be payable in twelve (12) equal monthly installments; provided, however, that in no event shall the Base Rent be increased due to CPI adjustments by more than 5% or less than 2% per annum during years 6-10 of the Initial Term or by not more than 8% or less than 2% during the First Renewal Term and subsequent renewal terms.

Index ("**Index**") shall mean the Consumer Price Index ("**CPI**") for all items and all Consumers for Alameda County, as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor index for the six month average for months July through December issued in February of the following year. In the event that the United States Bureau of Labor Statistics shall discontinue the issuance of the Index, then the rental adjustments provided for in this Sublease shall be made on the basis of changes in the most comparable and recognized cost of living index then issued and available which is published by the United States Government.



4. **USE OF LEASED PREMISES.** The sole purpose for which the Leased Premises may be used, by Subtenant or authorized contractors, subcontractors or licensees of Subtenant, is for light industrial use or general warehouse, office and/or recreational uses including but not limited to arena soccer, in-line hockey, rock climbing, fitness center, group exercise, baseball, golf, basketball, volleyball, food and beverage service, go cart racing, sports tournaments, gymnastics, video games, boxing, special events and parties, retail sales and any other related uses.

4.1 **No Other Uses.** The Leased Premises shall not be used for any other purposes, which are substantially different than the uses listed in Section 4 without the prior written approval of Government and Sublessor, which shall not be unreasonably withheld.

4.2 **Compliance With FOSL and Other Governmental Documents.** Any use or uses of the Leased Premises shall comply with all terms and conditions of this Sublease and with the Findings for Suitability to Lease ("**FOSL**") for the Leased Premises under the Prime Lease and all conditions expressed therein as well as all conditions expressed in any Categorical Exclusion or other environmental action with respect to the uses of the Leased Premises prepared for compliance with the National Environmental Protection Act. A copy of the Categorical Exclusion is attached as Exhibit C. A copy of the FOSL is available for review at Sublessor's offices during normal business hours.

4.3 **Use of Hazardous or Toxic Materials.** Pursuant to 10 U.S.C. 2692, Subtenant is prohibited from storing or disposing non-DOD-owned toxic or hazardous materials, which includes materials that are of an explosive, flammable, or pyrotechnic nature, on a military installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his or her designee. In the event that Subtenant desires to store or dispose of any such non-DOD-owned toxic or hazardous materials, which includes materials that are of an explosive, flammable, or pyrotechnic in nature, on a military installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692, Subtenant shall contact Sublessor in writing and Sublessor shall coordinate with Government the obtaining of any approvals required to be obtained from the Secretary of Defense or his or her designee.

4.4 Exclusive Use Provision. Sublessor agrees that it will not lease or sell any property at the Station to any other private party, person, entity or company to utilize such property that would compete with Subtenant's Leased Premises, products or services. Competition includes and is limited to in-line hockey, arena soccer, fitness center, rock climbing, gymnastics, martial arts or any other recreational use offered by Subtenant. This provision does not apply to public parks or facilities owned and operated by the City of Alameda. Sublessor specifically reserves the right to sublease other properties within the Station for a privately owned ice skating facility.

4.5 Hours of Operation. Sublessor acknowledges and agrees that the Leased Premises will be open for business Monday through Sunday from 6:00 AM to 1:00 AM. These hours may be modified to accommodate for increased or decreased demand.

4.6 Confidential. Sublessor agrees that it shall keep the terms and conditions of this Sublease and any other information relating to Subtenant confidential and shall ensure that its agents, employees and representatives will not disclose in any manner whatsoever, in whole or in part, any information relating to this proposal, except as may be required by law.

5. ASSIGNMENT AND SUBLETTING.

5.1 No Assignment or Subletting. Subtenant shall not, without Sublessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed (i) except as otherwise provided herein, assign, convey, mortgage, pledge, encumber or otherwise transfer (whether voluntarily or otherwise) this Sublease or any interest under it; (ii) allow any transfer of or any lien upon Subtenant's interest by operation of law; (iii) sublet more than 5,000 square feet of space within the Leased Premises or any part thereof, or (iv) permit the use or occupancy of the Leased Premises or any part thereof by anyone other than Subtenant and its employees. Notwithstanding anything in Sections 5.1, 5.2 and 5.3 to the contrary, Sublessor agrees to cooperate and allow Subtenant to use this Sublease as security for a loan ("**Loan**"). The Loan proceeds will be used to complete the improvements to the Leased Premises and the Lender (as defined herein) will have a security interest in Subtenant's leasehold estate and assets of Subtenant located within the Leased Premises to be used exclusively for the uses permitted herein. Sublessor further agrees to refinancing of the Loan at future dates. Sublessor agrees to reasonably cooperate and work with Subtenant's lender ("**Lender**") on any financing issues or documents required by Lender.

5.2 Request for Assignment or Subletting. Subtenant's request for consent to any subletting or assignment shall be in writing and shall contain the name, address, and description of the business of the proposed assignee or subtenant, its most recent financial statement and other evidence of financial responsibility, its intended use of the Leased Premises, and the terms and conditions of the proposed assignment or subletting. Within thirty (30) calendar days from receipt of such request, Sublessor shall either grant or refuse consent, which consent shall not be unreasonably withheld, conditioned or delayed. Failure to respond within thirty (30) calendar days shall be deemed approval. Notwithstanding anything in Sections 5.1, 5.2 and 5.3 to the contrary,

Sublessor agrees to allow Subtenant the ability to sublease or grant concessions to operate up to 10,000 square feet of office space in the Leased Premises for general office use, provided Subtenant remains fully liable to Sublessor under the terms of this Sublease.

5.3 Change in Control. For purposes of this section, any transfer or change in control of Subtenant by operation of law or otherwise shall be deemed an assignment hereunder, including, without limitation, any merger, consolidation, dissolution or any change in more than 50 percent of the interests of Subtenant, whether in a single transaction or a series of related transactions. Notwithstanding the forgoing, Subtenant shall have the right, without Sublessor's consent but upon notice in writing to Sublessor, to transfer and assign Subtenant's rights, title and interest under this Sublease to any of its subsidiaries, affiliates (an entity which is controlled by, controls, or is under common control with Subtenant or Subtenant's shareholders), or successor legal entities or to any entity acquiring substantially all of the assets of Subtenant provided such party's net worth, computed in accordance with the generally accepted accounting principals, is not less than the net worth of Subtenant as of the date of the Sublease Execution Date or to a wholly-owned subsidiary of a holding company which is under the same control and ownership as Subtenant. The term controls (including the terms "controlled", "controlled by", and "under common control with") means the possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise. Notwithstanding anything in Sections 5.1, 5.2 and 5.3 to the contrary, Sublessor shall consent to an assignment of this Sublease if the proposed assignee meets the following criteria: (i) the proposed assignee has demonstrated financial resources equal to or greater than those of Subtenant and (ii) the proposed assignee agrees to assume all obligations of Subtenant under the Sublease and be bound by all the terms and conditions of the Sublease.

5.4 Requirements for Assignment or Subletting. If, with the consent of Sublessor, this Sublease is assigned or if the Leased Premises or any part thereof is sublet or occupied by anybody other than Subtenant (except as set forth herein), Sublessor may, after default by Subtenant, collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the Rent herein reserved. If Sublessor consents to any such subletting or assignment, it shall nevertheless be a condition to the effectiveness thereof that a fully executed copy of the sublease or assignment be furnished to Sublessor and that any assignee assumes in writing all obligations of Subtenant hereunder. No consent to any assignment, subletting or occupancy shall be deemed a waiver of any of Subtenant's covenants contained in this Sublease nor the acceptance of the assignee, subtenant or occupant as Subtenant, nor a release of Subtenant from further performance of any covenants and obligations under this Sublease.

5.5 Consent. Any consent given by Sublessor to an assignment or subletting of this Sublease shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting.

6. **JOINT INSPECTION REPORT.** Prior to execution of this Sublease, a joint inspection of the Leased Premises shall be conducted by representatives of Sublessor, Subtenant and

Government ("**Joint Inspection**"). The Joint Inspection report shall be prepared at the sole cost and expense of Sublessor to document the existing condition of the Leased Premises, including any deficiencies, which may exist. The Joint Inspection Report is attached as Exhibit C to the Prime Lease and as Exhibit D to this Sublease, and shall be incorporated into this Sublease by this reference along with the videotape footage of the Leased Premises, a copy of which will be held by each of Sublessor and Subtenant.

6.1 Corrections. Any safety or health hazards identified during the above said Joint Inspection shall be corrected prior to the use and occupancy of the Leased Premises. Responsibility and expense for correcting any such hazards shall have been determined by mutual agreement between Sublessor, Government and Subtenant prior to commencement of the Sublease. Subtenant shall have the option, but not the obligation, to correct any condition identified in the Joint Inspection Report, on behalf of Sublessor, so as to avoid any termination of the Prime Lease pursuant to Section 14.3 thereof.

6.2 Termination for Condition of Leased Premises. If, prior to construction of the Qualified Shell Improvements, Subtenant finds that the Leased Premises is not in fact in a condition suitable for the use intended by Subtenant, and will not for whatever reason be rendered suitable for such use by Government, Sublessor, or Subtenant; then Subtenant may terminate this Sublease, without incurring any liability to Sublessor, upon ten (10) days written notice to Sublessor.

6.3 No Warranty by Government or Sublessor. Except as otherwise set forth in this Sublease, the Leased Premises will be delivered to Subtenant by Sublessor "as is, where is," and, as such, Sublessor makes no warranty as to such facilities and property either as to their usability generally or as to their fitness for any particular purpose except as made in the Prime Lease. Without limiting application of the foregoing, Subtenant specifically acknowledges that the roof of the Building may be defective and may leak and require repair during the Term of this Sublease. In addition to the hold-harmless and indemnification provisions contained elsewhere in this Sublease, Subtenant agrees to hold Sublessor harmless for any damage to any property resulting from or related in any way to the defective roof, including but not limited to damage from water and other elements leaking through the roof and into the Building, and from any interruption of its business, loss of income or other financial loss resulting from or related in any way to Sublessor's decision to, and Sublessor's actual repair of, the roof. Should this Sublease terminate and not be succeeded by either another lease or sublease, or a conveyance of title to the Leased Premises, or by active negotiation for either lease or conveyance, Subtenant shall turn over to Government the Leased Premises in the same condition in which they were received, reasonable wear and tear excepted and subject to the approved or allowed alterations and modifications of the Leased Premises made by Subtenant. Sublessor acknowledges and agrees that Subtenant plans to complete a significant amount of work required to convert the Leased Premises into a new recreational sports facility and that Sublessor shall accept the Property back as improved by Subtenant less Subtenant's office furniture, trade fixtures, permanent fixtures, sports equipment, rock wall, arena lighting, bleachers, mezzanines, kitchen equipment and any other of Subtenant's property ("**Subtenant's Property**") upon termination. The Joint Inspection Report attached hereto as Exhibit D shall be used as the

measurement with respect to any pre-existing contamination of the Leased Premises and the initial condition of the Lease Premises.

6.4 Possession as Evidence of Conditions. Subtenant's taking possession of the Leased Premises shall be conclusive evidence that the Leased Premises were in satisfactory condition when Subtenant took possession, except as to latent defects and as otherwise may be set forth in the Joint Inspection Report. No promises of Sublessor to alter, remodel, repair or improve the Leased Premises and no representation respecting the condition of the Leased Premises have been made by Sublessor to Subtenant, except as expressly stated in this Sublease.

7. ALTERATIONS.

7.1 No Alterations. Subtenant shall not make any substantial alterations, improvements, or additions to the exterior or interior of the Leased Premises (collectively the "Work") other than the Qualified Shell Improvements and any other work or improvements made to the Leased Premises required to convert the Leased Premises into a recreational sports facility, without prior written consent of Sublessor's Facilities Manager in each and every instance, which consent shall not be unreasonably withheld, conditioned or delayed. Substantial shall mean costing in excess of \$25,000 in any twelve (12) month period. Any Work which adds to, removes, or otherwise alters, the structural components of the Building, including the roof, any support structures, foundations, the exterior of the Building, and the fire retardant and other life safety systems of the Building, shall be deemed to be substantial unless Sublessor states in writing otherwise. In the event Subtenant desires to perform any Work, Subtenant shall first submit to Sublessor a written description of the proposed Work, and, if Sublessor requires, plans and specifications relating thereto, and obtain Sublessor's written approval, which approval shall not be unreasonably withheld, conditioned or delayed prior to commencing it. Approval of Work may be conditioned upon providing Sublessor with a performance and payment bond satisfactory to them in all respects in addition to other requirements deemed reasonably necessary to protect the interests of Sublessor. In the event Sublessor does not respond to Subtenant's request for written approval within twenty (20) business days of such request, Sublessor shall be deemed to have given such approval. Requests for approval shall be made to Sublessor's Facilities Manager.

7.2 City of Alameda Building Department. Because of the possibility that the Leased Premises will ultimately be under the jurisdiction of the City of Alameda for compliance with health and safety regulations and requirements, prior to undertaking or doing any Work on the Leased Premises, or any portion thereof, Subtenant agrees to submit an application to the City of Alameda Building Department, and, if required by the City, to other City departments, for review and obtaining approval of such plans and proposals for such Work to the Leased Premises, whether or not such are at such time is under the legal Jurisdiction of the City for such review and approval, unless such review and approval process is expressly waived in writing by such City Department. In addition to the application to the City of Alameda Building Department, Subtenant shall also submit a narrative description of all proposed Work on the Leased Premises, with the projected schedule and costs thereof, and an analysis as to how and why such Work will or will not be visible

for the exterior of the Building, or affect any historically significant features, or be substantially likely to adversely affect the environmental cleanup of the Station, human health, or the environment, or adversely impact the structure of the Building. All Work shall be done at the expense of Subtenant without any costs or obligation to Sublessor. No Work shall be undertaken by Subtenant on the Leased Premises, unless such Work has been approved by the City Building Department (such approval shall not be unreasonably withheld, conditioned or delayed) or such review has been waived in writing. In addition, there shall be no Work performed on the Leased Premises other than the Qualified Shell Improvements and any other work or improvements required to convert the Building and Land into a recreational sports facility without prior written authorization from Government under the Prime Lease to the extent required, and in the manner set forth, in Section 8 thereof, which consent shall not be unreasonably withheld, conditioned or delayed.

7.3 Improvements at End of Lease Term. At the termination of this Sublease, all fixed and permanent improvements made by Sublessor or Subtenant in or upon the Leased Premises shall become Sublessor's property and shall remain upon the Leased Premises at the termination of this Sublease without compensation to Subtenant (excepting only Subtenant's movable office furniture, trade fixtures, permanent fixtures, sports equipment, arena lighting, mezzanines, kitchen equipment, manufacturing, office and professional equipment, and any Work approved by Sublessor as to which, at the time of such approval, Sublessor stated, in writing, that such Work had to be removed at the termination of the Sublease).

7.4 Asbestos. Government has provided to Sublessor an asbestos survey for the Building. Before Subtenant undertakes any alterations, modifications or any other Work which will disturb any known friable or non-friable asbestos in the Building, Subtenant shall set forth a plan stating how it will handle any such asbestos, which plan shall be reviewed and approved by Sublessor. Notwithstanding the foregoing, any work relating to the removal of asbestos shall be approved by Sublessor if the plan to remove is in conformance with the current laws and regulations regarding the removal of such materials. All work associated with removing any asbestos shall qualify as additional Qualified Shell Improvement Costs. Government's asbestos survey for the Building is available for review by Subtenant at Sublessor's offices during normal business hours.

8. ACCESS BY GOVERNMENT AND SUBLESSOR. In addition under Sections 12.5 and 12.9, Government and Sublessor shall be allowed access to the Leased Premises at all reasonable times throughout the term of this Sublease, for any reasonable purposes upon prior written notice to Subtenant. Government and Sublessor will normally give Subtenant a minimum 24-hour prior notice of an intention to enter the Leased Premises, unless the entry is required on an emergency basis for safety, environmental, operations or security purposes. Unless an emergency situation, all such entry by Government and Sublessor shall be accompanied by an authorized representative of Subtenant. Subtenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Subtenant who will be available on short notice, 24 hours a day, 365 days per year, and possess and have authority to use all keys necessary to gain access to the Leased Premises, to facilitate entry in time of emergency. Subtenant shall ensure that Sublessor has a

current roster of such on-call personnel and their phone numbers. Subtenant shall have no claim against Government or Sublessor for exercise of their rights of access hereunder.

8.1 Utilities Access. Portions of Government's utilities systems serving the Station may be located within the Leased Premises and if so are reserved for use by Government under the Prime Lease. Subtenant agrees to allow Government and its utility suppliers reasonable access to the Leased Premises for operation, maintenance, repair and replacement of these utilities systems as may be required, provided such operation, maintenance, repair and replacement of these utilities systems does not significantly interfere with Subtenant's operations. In executing operation, maintenance, repair or replacement of these systems, Government has agreed in the Prime Lease to take all reasonable steps to limit interference with the use of the Leased Premises by Sublessor and its sublessees, including Subtenant.

9. UTILITIES

9.1 Provision of Utilities. Utilities will not be furnished to Subtenant by Sublessor. Sublessor will assist Subtenant in obtaining utilities from Government, as long as Government is providing utilities to occupants of the Station, other than Government's operations, or from other sources. Subtenant acknowledges that Government may terminate providing such utility services, that Sublessor is not obligated to provide utilities to Subtenant after Government ceases to provide any such utility services to the Leased Premises, and that the obtaining of such utility services after termination of providing of the same by Government is solely the responsibility of Subtenant. Sublessor will assist Subtenant in obtaining utilities should Government cease to provide such utilities to the Leased Premises. Any separate metering of utilities required by Government or by any utility provider shall be the responsibility of Subtenant. In the event that Subtenant is unable to obtain reasonable costs and rates, then Subtenant shall have the right to terminate this Sublease upon prior ten (10) day written notice to Sublessor. In the event that Subtenant is required by any utility provider or governmental authority to install or pay for any separate utility meters to the Leased Premises, the cost of the same plus the costs required to obtain and install any new utility shall constitute Qualified Shell Improvement Costs pursuant to Section 3 of this Sublease.

9.2 Payment for Utility Consumption. Subtenant shall pay for the consumption of all utilities used at or on the Leased Premises, including, but not limited to, electricity, gas, water, sewer and phone. Subtenant acknowledges that any one or more such services may be suspended by reason of accident or of repairs, alterations, or improvements necessary to be made, or by strikes or lockouts, or by reason of operation of law, or causes beyond the reasonable control of Sublessor. If any such utility services are interrupted for a period of time exceeding seven (7) calendar days, and such interruption in service materially and adversely interferes with the operations of Subtenant or its clients or guests, then Subtenant shall be entitled to abate all Rent until such time as said utilities are again restored to the Leased Premises. If such interruption continues for thirty (30) or more calendar days, then Subtenant can terminate this Sublease, if such utility service is not restored

within ten (10) calendar days after written notice to Sublessor of Subtenant's intention to so terminate.

9.3 Heating of Leased Premises. Subtenant acknowledges that Government's pre-existing steam heating facilities will not be operable for the Building during the entire Term of this Sublease. Subtenant acknowledges that Subtenant will be responsible for providing such heating to the Leased Premises as Subtenant desires when the current steam heating facilities are no longer operable.

9.4 Adjustment to Utility System. Subtenant acknowledges that pursuant to the provisions of the Prime Lease, Government in no way warrants the conditions or adequacy of its utility systems for the purposes intended by Subtenant. Subtenant may ask Sublessor to seek authorization from Government to replace, remove, or relocate utility systems on the Leased Premises in order to use the Leased Premises, so long as there is no unreasonable interference with use by Sublessor or Government, or with use by contractors of Sublessor or Government, of the utility systems, provided Subtenant bears all costs of the work, and provided Sublessor and Government have approved the replacement, removal or relocation in advance and in writing.

9.5 Non-Government Utility Providers. Subtenant agrees that it will accept needed utility services from any private or municipal supplier, who should during the term of this Sublease, become capable of delivering such services to the Leased Premises at competitive commercial rates and without substantial conversion costs. Subtenant agrees that it will investigate the feasibility of obtaining needed utility services directly from private or municipal suppliers prior to arranging for service from Government, and agrees that it will, during the term of this lease, continue to work toward obtaining direct services from non-Government utility suppliers at the earliest possible date in anticipation of the date beyond which Government will no longer provide utility services hereunder.

10. NO INTERFERENCE WITH GOVERNMENT OPERATIONS. Subtenant shall not conduct operations, nor make any alterations, that would interfere with or otherwise restrict Government operations or environmental clean-up or restoration actions by Government, Environmental Protection Agency ("EPA"), State of California, or their contractors. Environmental clean-up, restoration, or testing activities by these parties shall take priority over Subtenant's use of the Leased Premises in the event of conflict. In the event that any such activities substantially interfere with Subtenants use of the Leased Premises for a period of five (5) or more consecutive days, then all Rent payable hereunder shall abate until such interference ceases.

11. PROTECTION AND MAINTENANCE SERVICES. The services to be provided by Subtenant hereunder shall include the furnishing of all labor, supervision, materials, supplies, and equipment necessary to furnish the reasonable structural (including roof) maintenance; fencing maintenance; plumbing maintenance; electrical maintenance; maintenance of any new heating and cooling systems installed by Subtenant; exterior utility systems maintenance; pavement and grounds maintenance (including grass cutting, shrub trimming and tree removal); pest control; security within

the Leased Premises; refuse collection, removal, and disposal; and utilities maintenance on the Leased Premises reasonably necessary for the protection of Government property. For specifics as to such reasonable protection and maintenance required to be provided by Subtenant hereunder the following provisions shall apply.

11.1 Maintenance. The degree of reasonable maintenance services to be furnished by Subtenant hereunder shall be that which is reasonably sufficient to maintain weather tightness, structural stability, protection from fire hazards or erosion, and elimination of safety and health hazards, which arise during the term of the Sublease and which are not caused by the actions of Sublessor, Government or their employees, contractors, or agents, so that the Leased Premises being serviced will remain in the condition in which they exist at the commencement of the Sublease as documented in the Joint Inspection Report prepared pursuant to Section 6, ordinary wear and tear and damages due to casualty excepted. Both Sublessor and Government, upon due notice, may inspect the Leased Premises to insure performance of the reasonable maintenance set forth herein. Should this Sublease terminate and not be succeeded by either another lease, or a conveyance of title to the premises, or by active negotiation for either lease or conveyance, Subtenant shall turn over to Sublessor the Leased Premises in the same condition in which they were received, reasonable wear and tear and damages due to casualty excepted. Notwithstanding anything contained in this Sublease to the contrary, Subtenant shall have no obligation to make any capital or extraordinary improvements or repairs to the Leased Premises, except as and to the extent provided in Section 17 hereof, or to the extent any of the same is necessitated by Subtenant's negligence or willful misconduct or results from Subtenant's misuse of hazardous materials.

11.2 Housekeeping. Subtenant agrees that it will keep the Leased Premises in a safe, sanitary and orderly condition at all times, except during construction, and further agrees that it will keep the outside of the Leased Premises free of unused and unwanted materials at all times. At completion of the Sublease, the Leased Premises shall be left without containers, Subtenant's equipment, and other undesirable materials, and in a reasonably clean condition.

11.3 Security Protection. Subtenant shall provide for all reasonable security and safety within the Leased Premises.

11.4 Services. Subtenant shall be responsible, at its cost and expense, for obtaining and providing any and all other services which may be required in connection with Subtenant's use or occupancy of the Leased Premises.

12. ENVIRONMENTAL PROTECTION PROVISIONS.

12.1 Environmental Compliance. Subtenant, its contractors, assigns or subtenants shall comply with all applicable federal, state, and local laws, regulations, and standards that are or may become applicable to Subtenant's activities on the Leased Premises.

12.2 Environmental Permits. Subtenant, its contractors, assigns or subtenants shall be responsible for obtaining, except as provided in this Sublease, at its cost and expense, any environmental permits required for its operations under this Sublease for the Leased Premises.

12.3 Environmental Indemnification by Subtenant. In addition to the provisions of Section 15, Subtenant shall, and does hereby agree to, indemnify and hold harmless Government and Sublessor, from any costs, expenses, liabilities, fines, or penalties resulting from discharges, emissions, spills, storage, disposal, occurring during the Term of this Sublease, resulting from any action by Subtenant or its contractors, employees or agents, or any parties using or occupying the Leased Premises by or through Subtenant, or any other action by Subtenant, its contractors, assigns, subtenants, or any parties using or occupying the Leased Premises by or through Subtenant, giving rise to Sublessor or Government liability, civil or criminal, or responsibility under federal, state, or local environmental laws. This provision shall survive the expiration or termination of this Sublease, and Subtenant's obligations hereunder shall apply whenever Government or Sublessor incurs costs or liabilities for Subtenant's actions.

12.4 Environmental Issues Under Prime Lease. Subtenant acknowledges that Government's rights under the Prime Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Sublessor shall also have the right to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not Government or Sublessor is responsible for enforcing or complying with them. Government has agreed, and Sublessor hereby agrees, that it will give Sublessor or Subtenant 24 hours prior written notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. Subtenant shall not have any claim against Government on account of any entries, nor any officer, agent, employee, or contractor thereto. Subtenant shall not have any claim against Sublessor on account of any entries, nor any officer, agent, employee, or contractor thereto, except for gross negligence or willful misconduct.

12.5 Hazardous Waste Requirements. Subtenant shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act ("RCRA"), or its state equivalent, and any other applicable environmental laws, rules or regulations, with respect to Subtenant's handling, storage and disposal of hazardous waste generated by Subtenant or its clients or contractors at the Leased Premises. Except as specifically authorized by Government and Sublessor in writing, Subtenant must provide at its own expense such hazardous waste management facilities, and hazardous waste storage facilities as it may need, complying with all laws and regulations. Government hazardous waste management facilities will not be available to Subtenant.

12.6 Hazardous Waste Plan. If applicable, Subtenant shall have a Government approved plan for responding to hazardous waste, fuel, and other chemical spills prior to the commencement of operations on the Leased Premises. Such plans shall be independent of any Government Spill Prevention and Countermeasures Control Plan and shall not rely on use of Government personnel or equipment, nor the equipment or personnel of Sublessor. Should Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of Sublessor or Subtenant, or because Sublessor or Subtenant was not, in the opinion of the contracting officer, conducting timely response actions, Subtenant agrees to reimburse the Government for its reasonable costs.

12.7 Hazardous Waste Reporting. Subtenant shall be responsible for reporting, containment, removal and clean-up of any land, air or water pollution to the extent required by applicable laws that emanates from any of the Leased Premises due to the actions of Subtenant, its agents, employees, contractors, subcontractors, subtenants or assigns.

12.8 Entry for Testing. Government, EPA, and the State of California and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable written notice to Sublessor and to Subtenant, to enter upon the Leased Premises for the purposes enumerated in the following subparagraphs.

12.8.1 To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings and other activities related to the Installation Restoration Program ("IRP").

12.8.2 To inspect field activities of Government and its contractors and subcontractors in implementing the IRP.

12.8.3 To conduct any test or survey relating to the implementation of the IRP or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or the State of California by Government relating to such conditions.

12.8.4 To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP including, but not limited to, monitoring wells, pumping wells, and treatment facilities. Sublessor will endeavor to assure that any entry undertaken hereunder shall be undertaken in a manner as to not unreasonably or unnecessarily interfere with Subtenant's business and work under its contractual obligations.

12.9 Comply with Health and Safety Plans. Subtenant agrees to comply with the provisions of any health or safety plan in effect under the IRP during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action, to the extent practicable, shall be coordinated with representatives designated by Sublessor and Subtenant. Neither Sublessor nor any Subtenant shall have any claim on account of

such entries against Government or any officer, agent, employee, contractor, or subcontractor thereof.

12.10 No Excavation. Subtenant shall not conduct or allow any subtenant, contractor, agent or employee to undertake any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of Sublessor and the Contracting Officer of Government, which approval shall not be unreasonably withheld, conditioned or delayed.

12.11 Supply Addresses. Subtenant shall provide to Sublessor, in the event of any assignment or further sublease of the Leased Premises, which requires Sublessor approval, and in order that Sublessor may provide to the EPA Region 9 CERCLA Federal Facilities Section, and the State of California Department of Toxic Substances Control, at addresses which will be supplied and maintained by Government, by certified mail, a copy of the agreement or sublease (as the case may be), dispatched within fourteen (14) calendar days after the effective date of such transaction. Sublessor and Subtenant may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

12.12 Disposal of Hazardous Waste. DOD component accumulation points for hazardous and other wastes will not be used by Subtenant. Neither will Subtenant permit its hazardous wastes to be commingled with hazardous waste of the DOD component.

12.13 Governmental Indemnity. It is understood that the responsibility of Government to indemnify and hold harmless Sublessor and Subtenant against toxic torts and other environmental claims shall be in accordance with Public Law 102-484, the National Defense Authorization Act for Fiscal Year 1993, Section 330, as amended.

12.14 Minimize Disruption. Government has agreed in the Prime Lease to use its best efforts to minimize disruption of Subtenant's operations. Government shall also maintain the confidentiality of any proprietary information which comes into its possession as a result of inspections or entries upon the Leased Premises or examinations of the records of Subtenant.

12.15 Government Permits. Government has agreed in the Prime Lease to undertake a timely review with Sublessor of those permits which Government holds or will likely come to hold, in order to determine which permits may be, to the fullest extent allowed under state and federal law, transferred to Sublessor as Lessee. At Subtenant's request, all of such permits shall be made available to Subtenant by Sublessor to the fullest extent allowed under state and federal law. Subtenant shall be fully liable for its compliance with such permits as are made available to it, including payment of fines and penalties incurred due to its actions.

12.16 Notice of Governmental Action. To minimize interference in the use of the Leased Premises caused by implementation of response actions, Government has agreed to provide Sublessor with timely written notice and opportunity to comment upon any proposed response actions, which may interfere with use of the Leased Premises. Government shall consider timely

comments of Sublessor concerning the potential interference of any proposed response actions and will make a good faith effort to make adjustments to proposed response actions, with the goal of reconciling or minimizing any possible conflicts between Subtenant's use of the Leased Premises and the implementation of response actions. Sublessor agrees to communicate with Subtenant regarding the foregoing and to promptly transmit to Government all comments with respect thereto submitted to it by Subtenant. In the event that Subtenant is required to vacate the Leased Premises or a portion of the Leased Premises, or unable to conduct regularly scheduled activities caused by implementation of response actions all or the appropriate portion of Rent shall be abated for the period of such vacation.

12.17 Exceptions. The provisions of Section 12 do not prohibit Sublessor or Subtenant from independently contracting for transportation, treatment, storage or disposal of hazardous wastes with the same company which may have a contract with Government for transportation, treatment, storage or disposal of hazardous wastes generated at the Station, nor do they prohibit the carriage of properly manifested, marked and otherwise lawful containers of hazardous waste generated by Sublessor or Subtenant upon the same conveyance as hazardous waste generated by Government.

12.18 Pre-existing Conditions. If Subtenant, during the performance of Work to the Leased Premises that have been approved pursuant to Section 7 of this Sublease, encounters pre-existing conditions which require Government to take action in accordance with federal, state or local law to remove, remediate, correct, or abate hazardous substances, pollutants or contaminants, Subtenant shall promptly notify Government, cease performance, and secure the work site. Government has agreed to promptly survey the conditions and consult with Sublessor or Subtenant on a proposed course of action. Vacation of the Leased Premises, or any part thereof, will be directed pursuant to the provisions of Section 15 of the Prime Lease. Government will take necessary and appropriate actions, as required by federal, state or local law, and bear the cost of such removal, remediation, corrective action, or abatement, subject to the availability of funds for such purpose. In the event that Subtenant is required to vacate the Leased Premises, all Rent shall be abated for the period of such vacation.

12.19 Environmental Baseline Survey. Subtenant acknowledges that Sublessor has informed Subtenant of the availability of an Environmental Baseline Survey ("EBS") with respect to the Leased Premises, prepared on behalf of Government, in which EBS specifies that the Leased Premises, and the lands underlying the Leased Premises contain certain described hazardous waste. Sublessor has no other knowledge of any hazardous waste or any other hazardous substances, pollutants or contaminants with respect to the Leased Premises. The EBS is available for review by Subtenant at Sublessor's offices during normal business hours.

13. TERMINATION.

13.1 Termination by Government of the Prime Lease for Breach. Under certain circumstances, Government has the right to terminate the Prime Lease on account of the breach by

Sublessor, as the Lessee thereunder of any of the terms and conditions of the Prime Lease. In the event of a breach involving the performance of any obligation under the Prime Lease, the Prime Lease provides that Sublessor, as the Lessee thereunder, shall be afforded ten (10) working days from the receipt of Government's notice of intent to terminate, to commence action to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of the Prime Lease, which action to cure is to be completed within a reasonable period of time. Within said ten (10) working days, Sublessor thereunder is required to advise Government of Sublessor's intended course of action to cure and the estimated date as to when said action will be completed. Sublessor agrees to immediately, and in any event within 24 hours after Sublessor's receipt, except when it arrives on a weekend or holiday, in which event it shall be delivered by the next business day, provide a copy of any such notice to Subtenant. In the event that any such notice is delivered to Sublessor as the Lessee under the Prime Lease, for any such breach occasioned or caused by the action, negligence or inaction of Subtenant, or any party acting on behalf of or through Subtenant, for an obligation, covenant or undertaking of Subtenant under this Sublease, then Subtenant shall either commence action to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Sublease and the Prime Lease, which action to cure is to be completed within a reasonable period of time, or immediately advise Sublessor of Subtenant's intended course of action to cure the breach if it cannot be reasonably cured within the ten (10) working day period specified and the estimated date as to when said action will be completed. Subtenant shall either cure such breach within ten (10) working days from the date of receipt of Government's notice of intent to terminate by Sublessor, or Subtenant shall provide its plan and program in writing as to its proposed action to complete the performance of the obligation and shall commence such cure of the breach as soon as reasonable and possible under the circumstances and complete such action to cure within a reasonable period of time in light of the nature of the breach and any circumstances beyond Subtenant's reasonable control. If Subtenant should fail to cure within the grace periods provided above, and Government does not terminate the Lease under the provisions of the Prime Lease, then Sublessor shall have the option to terminate this Sublease, without the necessity of providing further notice or rights of cure to Subtenant. In the event that any such notice is delivered to Sublessor and the Lessee under the Prime Lease, for any such breach occasioned or caused by the action, negligence or inaction of Sublessor, or any party acting on behalf of or through Sublessor, for an obligation, covenant or undertaking of Sublessor under the Prime Lease, then Sublessor shall either commence action to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of the Prime Lease, which action to cure is to be completed within a reasonable period of time, or immediately advise Subtenant regarding Sublessor's intended course of action to cure the breach if it cannot be reasonably cured within the ten (10) working day period specified and the estimated date as to when said action will be completed. Sublessor shall either cure such breach within ten (10) working days from the date of receipt of Government's notice of intent to terminate, or Sublessor shall provide its plan and program in writing as to its proposed action to complete the performance of the obligation and shall commence such cure of the breach as soon as reasonable and possible under the circumstances and complete such action to cure within a reasonable period of time in light of the nature of the breach and any circumstances beyond Sublessor's reasonable control.

13.2 Termination of Prime Lease Due to Subtenant Default. In the event that Government shall elect to terminate the Prime Lease on account of the breach by Subtenant of any of the terms and conditions hereof or of the Prime Lease to be performed by Subtenant, Subtenant shall indemnify Sublessor against any claims Government may have against Sublessor for any of the following under the Prime Lease:

13.2.1 The costs incurred by Government in resuming possession of the Leased Premises.

13.2.2 The costs incurred in performing by Government of any of Subtenant's obligations under this Sublease.

13.2.3 An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not therefore paid or satisfied, which amounts shall be due and payable at the time when such obligations, and charges would have accrued or become due and payable under this Sublease.

13.3 Termination of Sublease due to Sublessor Default. In the event that Government shall elect to terminate the Prime Lease on account of the breach by Sublessor of any of the terms and conditions of the Prime Lease to be performed by Sublessor, Sublessor shall reimburse Subtenant the unamortized costs of the Qualified Shell Improvement Costs and any costs associated with work or improvements made to convert the Leased Premises into a recreational sports facility, not to exceed an additional \$1,000,000.

13.4 Termination by Government for Other Than Breach. In addition to the right to terminate the Prime Lease for breach, Government is entitled to terminate the Prime Lease for its convenience under the following terms and conditions:

13.4.1 Upon reasonable determination that the interim uses of the Lessee under the Prime Lease or the interim uses of Subtenant under this Sublease for the remaining duration of the Sublease term are incompatible with Government's final disposal decision as embodied in the NEPA Record of Decision, with respect to the required subsequent uses of the Leased Premises after said final disposal decision is made, which subsequent uses must be effected during the balance remaining on the Term of this Sublease, and a finding is made that the continued use and occupation of the Leased Premises through the end of the remaining Sublease Term cannot be permitted because of such irreconcilable incompatibility, unless the parties to this Sublease make such modifications to this Sublease as are reasonably required to make the uses compatible for the period of time remaining on the Sublease Term. Sublessor acknowledges that Subtenant's proposed use of the Leased Premises, as a public recreational facility is consistent with the uses approved for the Leased Premises in the Alameda Community Reuse Plan.

13.4.2 In the event of a National Emergency as declared by the President or the Congress of the United States and Government makes a reasonable determination that such

National Emergency requires the use by the United States of America of the Leased Premises, or such National Emergency otherwise necessitates the use of the Station and such use will materially interfere with the Lessee's use under the Prime Lease or any Subtenant's use of the Leased Premises.

13.4.3 In the event of a termination for Government's convenience as set forth in the Prime Lease, Sublessor as Lessee under the Prime Lease, is to be provided with no less than thirty (30) calendar days written notice of such termination and shall immediately provide Subtenant with a copy of any notification it receives from Government relative to such termination. Sublessor shall meet and confer with Subtenant and Government to determine what is a reasonable time for Subtenant to vacate the Leased Premises, considering the factors of the nature of the exiting uses of Subtenant, the consequences which would be affected if such termination is required and the losses and penalties which would be engendered if such termination is required. Sublessor shall provide Subtenant with as long and reasonable time as are under the facts and circumstances acceptable to Government relative to such termination. In the event of such termination, Subtenant and Sublessor as Lessee under the Prime Lease shall have only such remedies as are otherwise available under the law with respect to compensation from Government for such termination. Subtenant shall not seek and shall not have any claim against Sublessor for any such termination for convenience by Government, except to the extent that Sublessor obtains recovery therefor from Government for itself or on behalf of Subtenant.

13.5 Termination by Subtenant. The following provisions shall apply in the event of termination by Subtenant.

13.5.1 Damage and Destruction. Subtenant shall have the right to terminate this Sublease upon thirty (30) calendar days written notice to Sublessor in the event of damage to or destruction of all of the improvements on the Leased Premises or such a substantial portion thereof as to render the Leased Premises incapable of use for the purposes for which it is leased hereunder, provided that the cost of the repair, rebuilding, or replacement of the Building is in excess of the amounts of insurance carried therefor by Subtenant, as required under Section 17 of this Sublease or such damage or destruction was not occasioned by the willful misconduct or gross negligence of Subtenant or any of its officers, agents, servants, employees, subtenants, licensees, or invitees; or the damage or destruction was not occasioned by any failure or refusal on the part of Subtenant to fully perform its obligations under this Sublease.

13.5.2 Termination for Lack of Utility Service. Subtenant may terminate this Sublease upon thirty (30) calendar days notice if domestic water, waste water, electrical, gas, or telephone service is not available to it from government or non-Government. Subtenant may also terminate if, upon abandonment of the base-wide fire protection system, Subtenant cannot retrofit building sprinkler system or provide other measures to comply with fire code requirements applicable to its use. The cost of such retrofit or other measures shall be the sole responsibility of Subtenant, which costs are considered an addition to Maximum QSIC.

14. **VACATION OF LEASED PREMISES.** In the event environmental contamination is discovered on the Leased Premises which creates, in Government's reasonable determination, an imminent and substantial endangerment to human health or the environment, then notwithstanding any other termination rights and procedures contained in this Sublease, Government may require Sublessor to require that Subtenant vacate the Leased Premises for such period of time, and to such extent, as Government determines in good faith is necessary to abate the danger. Government shall use its best efforts to minimize disruption of Subtenant's operations. Government will also use its best efforts to provide temporary accommodations for use by Subtenant during the period of such vacation action. Government shall not be liable for the exercise of authority, which is in conformity with this subsection, but Government nevertheless shall not be relieved of any liability it may have under the Federal Tort Claims Act, the Comprehensive Environmental Response, Compensation and Liability Act, and other statutory and common law, if it would be liable in its role as the generator or disposer of the environmental contamination, or as the present, or former, owner or operator of the Leased Premises. In the event that Subtenant is required to vacate the Leased Premises or a portion of the Leased Premises, or unable to conduct regularly scheduled activities caused by such vacation, all or the appropriate portion of Rent shall be abated for the period of such vacation.

15. **INDEMNIFICATION BY SUBTENANT AND OF SUBTENANT.**

15.1 **Indemnification By Subtenant of Sublessor.** Subtenant shall hold harmless, indemnify and defend Sublessor, its officers, directors, agents, employees and representatives, from and against any suit, claim, demand, action, liability, judgment, cost, expenses or other fee arising out of any claim for injury or damage ("**Claim**") that results from, or is in any manner predicated upon activities of Subtenant on the Leased Premises during the Term of this Sublease, except to the extent that such Claim arises from and is attributable to the willful misconduct or negligence of Sublessor, its officers, directors, agents, employees and representatives, or Government, or its officers, directors, agents, employees and representatives.

15.2 **Indemnification By Subtenant of Government.** Subtenant shall hold harmless, indemnify, and defend Government from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for injury or damage that results from, or is in any manner, predicated upon activities of Subtenant on the Leased Premises during the Term of this Sublease, except to the extent that such Claim arises from and is attributable to the willful misconduct or negligence of Sublessor or Government.

15.3 **Indemnification By Sublessor of Subtenant.** Sublessor shall hold harmless, indemnify and defend Subtenant, its officers, directors, agents, employees and representatives, from and against any Claim that results from, or is in any manner predicated upon activities of Sublessor on the Leased Premises or the Station during the Term of this Sublease, except to the extent that such Claim arises from and is attributable to the willful misconduct or negligence of Subtenant or Government.

16. **SUBTENANT'S LIABILITY EXTENDS TO ITS CONTRACTORS AND SUBLESSEES.** Subtenant's liability shall extend to the performance of work or the use of the Leased Premises by any contractor or sublessee of Subtenant under this Sublease.

17. **SUBTENANT TO BEAR ALL RISK; INSURANCE PROVISIONS.**

17.1 **All Risk.** Subtenant shall, in any event and without prejudice to any other rights of the Government and Sublessor, bear all risk of loss or damage to any structures or improvements situated upon the Leased Premises, that are occupied or used by Subtenant or any of its subtenants or assigns, arising from any cause whatsoever, or in any manner connected with the occupation or use by Subtenant, its subtenants or its assigns, or by a risk customarily covered by insurance in the locality in which the Leased Premises is situated, even where such loss or damage stems from causes beyond Subtenant's control, with the understanding that insurance coverage for earthquake loss is not required under this Sublease. In the event of such loss or damage, the parties shall follow Section 17.6 below.

17.2 **Subtenant's Insurance.** During the entire period this Sublease is in effect, Subtenant shall at its expense carry and maintain:

17.2.1 Standard risk property and casualty insurance against the risks enumerated in Subsection 17.1 above in an amount equal to an amount reasonably calculated to cover the demolition work described in Section 18.6.4 of the Prime Lease, but not less than \$1,000,000. Provided however, in the event that the estimate for the cost of such demolition, as approved by Government pursuant to Section 18.2.1 of the Prime Lease, on which the amount of insurance coverage is based, is less than \$1,000,000, the required amount of insurance coverage hereunder may be reduced by Government in its sole discretion. Subtenant reserves the right to obtain such additional casualty insurance, as it may desire.

17.2.2 Public liability and property damage insurance, including but not limited to, insurance against assumed or contractual liability under this Sublease, with respect to the Leased Premises and improvements thereon, to afford protection with limits of liability in amounts, approved from time to time by Government and Sublessor, but not less than \$3,000,000 in the event of bodily injury and death to any number of persons in any one accident, and not less than \$1,000,000 for property damage. Such insurance shall name Sublessor and Government as additional loss payees or additionally named insured.

17.2.3 If and to the extent required by law, workers' compensation or similar insurance in the form and amounts required by law.

17.3 **Subtenant's Contractor's Insurance.** During the entire period this Sublease shall be in effect, any contractor performing work on the Leased Premises shall carry and maintain the insurance required below:

17.3.1 Comprehensive general liability insurance, including, but not limited to, contractor's liability coverage and contractual liability coverage, of not less than \$500,000 per occurrence with respect to personal injury or death, and with respect to property damage.

17.3.2 Automobile liability coverage of not less than \$200,000 per person and not less than \$500,000 per occurrence, and not less than \$20,000 per occurrence for property damage.

17.3.3 Workers' compensation or similar insurance in the form and amounts required by law.

17.4 Policy Provisions. All insurance which this Sublease requires Subtenant to carry and maintain or cause to be carried or maintained shall be in such form, for such amounts, for such periods of time, and with such insurers as Government and Sublessor may reasonably require or approve. All policies or certificates issued by the respective insurers for public liability and all-risks property insurance shall name each Sublessor and Government as an additional insured or loss payee, provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Government, provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by Sublessor and Government of written notice thereof, provide that the insurer shall have no right of subrogation against Government or Sublessor, except, as to Sublessor, to the extent that bodily injury, including death, or property damage is caused by the acts or omissions of Sublessor, and be reasonably satisfactory to Sublessor and Government in all other respects. In no circumstances will Subtenant be entitled to assign to any third party rights of action, which Subtenant may have against Government.

17.5 Delivery of Policies. Subtenant shall deliver or cause to be delivered promptly to Sublessor and Government a certificate of insurance evidencing the insurance required by this Lease and shall also endeavor to deliver no later than thirty (30) calendar days prior to the expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

17.6 Damage and Destruction and Use of Insurance Proceeds. In the event of damage or loss to the Buildings or improvements situated on the Leased Premises, the following shall apply:

17.6.1 Subtenant shall take all appropriate steps to erect necessary structures to preclude, unauthorized access to the Leased Premises and otherwise mitigate hazardous and unsafe conditions within the Leased Premises caused by the damage and destruction.

17.6.2 Subtenant shall proceed to repair and replace the damaged and destroyed structures and improvements on the Leased Premises, utilizing the proceeds of the

insurance policies required above, except in the event Subtenant has the right to terminate this Sublease pursuant to Section 13.6 hereof and has elected to exercise such right.

17.6.3 If Subtenant elects to terminate the Sublease in accordance with Section 13.6 and so notifies Sublessor, Sublessor shall then have the option, to be exercised by notice to Subtenant within thirty (30) calendar days of receipt of the Notice of Termination, of accepting an assignment of the proceeds of the insurance policy in lieu of any obligation of Subtenant to either repair, or replace, the improvements or to perform demolition as set out below less the unamortized Maximum QSIC plus other costs required to convert the Leased Premises into a recreational sports facility (which shall not exceed an additional \$1,000,000), and, effective upon notification of Sublessor's exercise of that option, Subtenant shall be released from further obligation to repair, replace or demolish improvements on Leased Premises.

17.6.4 If Sublessor does not then exercise the option to terminate, Subtenant shall promptly obtain all necessary permits for, and carry out, the complete demolition of the damaged improvements and structures within the Leased Premises, remove all debris from the Leased Premises, clear the Leased Premises of all damaged improvements, remove all safety hazards caused by the calamity and demolition, and return the damaged portion of the Leased Premises to a level grade.

17.6.5 In the event that damage and destruction to the Leased Premises is the result of an event for which insurance coverage is not required hereunder, Subtenant shall have the option to repair the Leased Premises, or if such damage and destruction render the Leased Premises unusable for their intended purposes, to terminate this Sublease in accordance with applicable provisions herein by written notice to Government. In the event Subtenant elects to terminate this Sublease under this section, Subtenant shall be responsible for compliance with Section 17.6.1 above and for removing its property from the Leased Premises including all hazardous materials attributable to Subtenant's use of the Leased Premises and not any pre-existing hazardous materials, and for reporting, containing, removing and cleaning up any land, air and water pollution resulting from the damage and destruction which is attributable to Subtenant's use of the Leased Premises. Such responsibilities will be carried out by Subtenant in a timely manner in compliance with Section 12 and other applicable provisions of this Sublease with due consideration for human health and safety and the protection of the environment.

18. **LABOR PROVISIONS.**

18.1 **Equal Opportunity.** During the Term of this Sublease, and with respect only to employment or employees at the Leased Premises, Subtenant agrees as follows:

18.1.1 Subtenant will not discriminate against any employee of Subtenant or applicant for employment because of race, color, religion, sex, or national origin. The employees of Subtenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment,

upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Subtenant agrees to post in conspicuous places, notices required by law, which are to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

18.1.2 Subtenant will to the extent required by law, in all solicitations or advertisements for employees placed by or on behalf of Subtenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

18.1.3 If applicable, Subtenant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of Subtenant's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.4 Subtenant will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor of the United States of America.

18.1.5 Subtenant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

18.1.6 In the event Subtenant has been found by a court of law to be in noncompliance with the Equal Opportunity Clause of this Sublease or with any said rules, regulations, or orders, this Sublease may be canceled, terminated or suspended in whole or in part and Subtenant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18.1.7 Subtenant will include the above provisions in every sublease or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee or vendor. Subtenant will take such action with respect to any sublessee or purchase order as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Subtenant becomes involved in, or is threatened

with, litigation with the sublessee or vendor as a result of such direction by Government, Subtenant may request the United States to enter into such litigation to protect the interests of the United States.

18.2 Convict Labor. In connection with the performance of work required by this Lease, Subtenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

18.3 Labor Provisions. Equal Opportunity. During the Term of this Sublease, and with respect only to employment or employees at the Leased Premises, Subtenant agrees as follows: Subtenant will not discriminate against any employee of Subtenant or applicant for employment because of race, color, religion, sex, or national origin. The employees of Subtenant shall be treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not

19. SUBMISSION OF NOTICES. All notices, demands, requests, consents, or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail, postage prepaid, or by reputable overnight delivery service or personal delivery as follows:

19.1 Subtenant. If for Subtenant, addressed to Subtenant at the Building, or at such other place as Subtenant may from time to time designate by notice to Sublessor.

Bladium, Inc.
8797 Montview Boulevard
Building #6
Denver, Colorado 80220

19.2 Sublessor. If for Sublessor, addressed to Sublessor at

Executive Director
Alameda Reuse and Redevelopment Authority
950 W. Mall Square, Suite 100
Alameda, CA 94501

19.3 Government. If for Government, addressed to

Commanding Officer (Code 24)
Engineering Field Activity West
Naval Facilities Engineering Command
900 Commodore Drive
San Bruno, CA 94066-5006

19.4 Change of Address. Notwithstanding the addresses provided in Subsections 19.1 through 19.3 of this section, any party may from time to time designate an alternate address by notice.

20. AUDIT. This Sublease shall be subject to audit by Sublessor and by any and all cognizant Government agencies. Subtenant shall make available to such agencies for use in connection with such audits all records, reports, reviews, audits, documents or other material which it maintains with respect to this Sublease and copies of all reports required to be filed hereunder. Subtenant will make these materials available for a period of three years after termination or expiration of this Sublease.

21. AGREEMENT. This Sublease, including all referenced Exhibits to this Sublease (whether or not completed and incorporated in this Sublease as of the Sublease Execution Date) and the parties' Addendum with respect to Subtenant's option to purchase the Leased Premises, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements of such parties in that connection. All such referenced Exhibits are hereby incorporated by reference into and made a part of this Sublease in full. This Sublease shall not be modified unless modified in writing and signed by both parties. No oral statements or representation made by, or for, or on behalf of either party shall be a part of this Sublease. This Sublease agreement shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, or for, on behalf of either party shall be a part of this Sublease.

22. FAILURE TO INSIST ON COMPLIANCE. The failure of Sublessor to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Sublease shall not be construed as a waiver or relinquishment of Sublessor's right to the future performance of any such terms, covenants, or conditions and Subtenant's right to the future performance of any such terms, covenants, or conditions and Subtenant's obligations in respect of such future performance shall continue in full force and effect. Whenever the terms of this Sublease call for one party to approve an action or make a determination before the other party may undertake or perform such action, said approval or determination shall not be unreasonably denied or delayed.

23. DISPUTE RESOLUTION. Any disputes arising under this Sublease that involve or relate to Government or Government's interpretation of the Prime Lease that are subject to resolution under the Contracts Disputes Act, 431 U.S.C. section 601 et seq. pursuant to the provisions of Section 24 of the Prime Lease shall be resolved under that Act. All other disputes that may arise under this Sublease shall be resolved in accordance with the provisions of the laws of the State of California.

24. COVENANT AGAINST CONTINGENT FEES. Subtenant warrants that no person or agency has been employed or retained to solicit or secure this Sublease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Sublessor for the purpose

of securing business. For breach or violation of this warranty, Sublessor shall have the right to annul this Sublease without liability or in its discretion to require Subtenant to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

24.1 **No Additional Fees.** Sublessor agrees and warrants to Subtenant that there are no additional fees, levies, charges, bonds, assessments and/or taxes other than those specifically contained within this Sublease that could be levied against the Leased Premises and/or Subtenant.

25. **OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Sublease or to any benefit to arise there from, but this proviso shall not be construed to extend to this Sublease is made with corporation for its general benefit.

26. **LIENS.** Subtenant shall promptly discharge or cause to be discharged any valid lien, right in rem, claim, or demand of any kind on the Leased Premise, except one in favor of Government, or Sublessor, which at any time may arise or exist with respect to the Leased Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Subtenant, or should Subtenant or Subtenant be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Sublessor reserves the right to take immediate possession without any liability to Subtenant or any subtenant thereof. If Subtenant breaches the foregoing, Subtenant and any subtenant thereof shall be responsible for any costs incurred by Government in securing clear title to its property. Notwithstanding the foregoing, Sublessor and Government acknowledge and approve Subtenant granting a security interest and lien in Subtenant's leasehold estate to a creditor for the purpose of securing a Loan, the proceeds of which will be utilized to fund the Qualified Shell Improvements Costs and other work or improvements made to the Leased Premises required to occupy the Leased Premises and convert the Leased Premises from a former maintenance hangar into a recreational sports facility.

27. **TAXES.** Subtenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Leased Premises during the Term. Taxes shall mean all taxes, assessments and governmental charges, whether federal, state, county or municipal, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Rent, the Leased Premises, the Building, any possessory interest therein, or their operation, whether or not directly paid by Sublessor. Taxes shall not include any assessment resulting from the costs to clean up the pre-existing environmental contamination on the Station caused by Government, any assessment resulting from Station and/or City of Alameda infrastructure costs and expenses associated with the redevelopment of the Station, any assessments resulting from traffic mitigation measures, open space fees, public art fees, affordable housing fees/subsidy, transit fees, transfer tax/fees, City impact fees, fire and police protection fees, road maintenance fees, school fees, emergency medical fees, landscape maintenance fees, storm water drainage fees, income taxes, excess profit taxes, franchise taxes, or other taxes imposed or measured on or by the income of Sublessor from the operation of the Leased Premises, provided, however, that if, due to a future change in the method of taxation or

assessment, any income, profit, franchise or other tax, however designated, shall be imposed in substitution, in whole or in part, for (or in lieu of) any tax, assessment or charge which would otherwise be included within the definition of Taxes, such other tax shall be deemed to be included within Taxes as defined herein to the extent of such substitution, or any other special assessments that may be imposed or levied on the Leased Premises. There shall be added to Taxes the expenses of any contests (administrative or otherwise) of Taxes incurred during the taxing year, but only to the extent such contests result in a reduction of Taxes for such year or any other year during the Term. Subtenant shall pay to the appropriate governmental authority any use, possessory interest, and/or occupancy tax applicable to the Leased Premises. In the event that Sublessor is required by law to collect such tax, Subtenant shall pay such use and occupancy tax to Sublessor as Additional Rent within thirty (30) calendar days of demand and Sublessor shall remit any amounts so paid to Sublessor to the appropriate governmental authority.

27.1 Property Taxation. The interest created by this Sublease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Sublease pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

27.2 Payment of Taxes. Subtenant shall pay the Taxes directly imposed upon it in accordance with the instructions of the taxing entity. Subtenant shall pay the Taxes originally imposed upon Sublessor, upon Sublessor's election, either (i) annually within thirty (30) calendar days after the date Sublessor provides Subtenant with a statement setting forth in reasonable detail such Taxes (which statement shall not be provided to Subtenant more than sixty (60) calendar days before such Taxes are due), or (ii) monthly in advance based on estimates provided by Sublessor based upon the previous year's tax bill. Other than for possessory interest tax Sublessor is not aware of any Taxes or assessments currently or proposed to be imposed upon it or the Leased Premises.

27.3 Proration of Taxes. All Taxes originally imposed upon Sublessor and payable by Subtenant with respect to the Leased Premises shall be prorated on a per them basis for any partial tax year included in the Term. Subtenant's obligation to pay Taxes during the final year of the Term shall survive the termination of this Sublease.

28. **SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY.**

28.1 Existing Easements. Subtenant acknowledges that the Prime Lease, and this Sublease, are subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Leased Premises or any portion thereof. Notwithstanding the foregoing, Sublessor has no knowledge of any outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Leased Premises or any portion thereof that would unreasonably interfere with the access to, and the use and possession of, the Leased Premises

by Sublessor or any sublessees, or other occupants who are legitimately in possession or occupancy of the Leased Premises through Sublessor or any sublessee of Sublessor.

28.2 Future Easements. Subtenant further acknowledges that Government is entitled, under Section 29 of the Prime Lease, to grant such additional easements and rights-of-way over, across, in and upon the Leased Premises as it shall reasonably determine to be in the public interest; provided that any such additional easement or right-of-way shall not unreasonably interfere with the access to, and the use and possession of, the Leased Premises by Sublessor or any sublessees, or other occupants who are legitimately in possession or occupancy of the Leased Premises through Sublessor or any sublessee of Sublessor, and shall be conditioned on the assumption by the grantee thereof of liability to Sublessor for such damages as Sublessor shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder.

29. INGRESS AND EGRESS. Subtenant, its agents, employees and members, have a nonexclusive right of ingress to and egress from the Leased Premises to public rights of way as shown on Exhibit H. Subtenant acknowledges that Section 30 of the Prime Lease provides for reasonable access being granted by Government to the Leased Premises, with such access being coordinated with the local representative of Government. As required under the Prime Lease, Subtenant agrees to adhere to all base rules and regulations regarding Station security, ingress, egress, safety and sanitation as may be prescribed from time to time by Government, with the understanding that such base rules and regulations regarding Station security, ingress, egress, safety and sanitation shall not, except for military security and emergency situations, unreasonably interfere with reasonable use and access of Subtenant, its employees, contractors, invitees in the normal activities and uses permitted under this Sublease and the Prime Lease. In the event Sublessor or Government modifies the existing means of ingress and egress to the Leased Premises, Sublessor shall provide an acceptable alternative means of ingress and egress and cooperate with Subtenant to provide locations for Subtenant to place appropriate signage within the Station directing users to the Leased Premises provided Sublessor has the legal right to do so.

30. ADMINISTRATION. Except as may be otherwise provided in the Prime Lease or this Sublease, Government's point of contact, as identified in Section 20 of the Prime Lease and Section 20 of this Sublease, shall, under the direction of the Commander, Naval Facilities Engineering Command, have complete charge of the administration of the Prime Lease and any interests Government has under this Sublease, and shall exercise full supervision and general direction thereof insofar as the interest of Government are affected. Day-to-day administration of the Prime Lease and any interest Government has under this Sublease shall be under the supervision and direction of the Director, Real Estate Center (Code 24), Engineering Field Activity West, San Bruno, CA 94066-5006.

31. SURRENDER. Upon the expiration of this Sublease or its prior termination by Subtenant, Subtenant shall quietly and peacefully remove itself and its property from the Leased Premises and surrender the possession thereof to Sublessor on the expiration date, or the date of such

prior termination by Subtenant; provided, in the event Sublessor terminates this Sublease for a breach of this Sublease by Subtenant, or because of a termination of the Prime Lease not caused by Sublessor, Subtenant shall be allowed a reasonable period of time, as determined by the Local Government Representative, but in no event less than ninety (90) calendar days from receipt of notice of termination, in which to remove all of its property from and terminate its operations on the Leased Premises. During such period prior to surrender, all obligations assumed by Subtenant under this Lease shall remain in full force and effect. Sublessor or Government may, in its discretion, declare any property, which has not been removed from the Leased Premises upon termination provided for above, as abandoned property upon an additional thirty (30) calendar days notice.

32. **QUIET POSSESSION.** Upon Subtenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Subtenant's part to be observed and performed hereunder, Subtenant shall have quiet possession of the Leased Premises and shall not be unreasonably disturbed or interfered with by Sublessor or Government or by any person claiming by, through or under Sublessor or Government for the entire Term hereof, subject to all the provisions of this Sublease.

33. **CERTAIN RIGHTS RESERVED TO SUBLESSOR.** Sublessor reserves the following rights:

33.1 **Keys.** To hold copies of all keys and passkeys to the Leased Premises, other than to vaults, safes, or restricted areas within the Leased Premises.

33.2 **Inspections and Showings.** On reasonable prior written notice to Subtenant, no less than forty-eight (48) hours in advance, to show the Leased Premises to prospective tenants during the last six months of the Term, and to any prospective purchaser, mortgagee, or assignee of any mortgage or ground lease on the Leased Premises and to others having a legitimate interest in the Leased Premises at any time during the Term.

33.3 **Entry.** At any time in the event of an emergency, and otherwise at reasonable times by giving Subtenant forty-eight (48) hour advance written notice, to take any and all measures, including making any inspections, repairs, alterations, additions, and improvements to the Leased Premises, as may be necessary or desirable for the safety, protection, or preservation of the Leased Premises, or Sublessor's interests, or as may be necessary or desirable in the operation or improvement of the Leased Premises, or in order to comply with all laws, orders, and requirements of governmental or other authorities, using reasonable efforts not to interfere with the use and occupancy of the Leased Premises by Subtenant. Sublessor shall not be in default hereunder nor have any liability to Subtenant, nor shall Subtenant have any right to terminate this Sublease or claim an offset against or reduction in Rent payable hereunder, due to any damage, annoyance or inconvenience resulting from any such inspections, repairs, alterations, additions or improvements, or the failure of Sublessor to make any such inspections, repairs, alterations, additions or improvements; provided however that Sublessor shall be liable for its gross negligence or willful misconduct. In the event Subtenant is unable to use all or a portion of the Leased Premises or

conduct regularly scheduled programs and activities due to any such inspections, repairs, alterations, additions or improvements, then Subtenant shall have the right to offset against or reduction in Rent payable hereunder, due to any damage, annoyance or inconvenience resulting from any such inspections, repairs, alterations, additions or improvements. Subtenant shall reasonably cooperate with Sublessor or Sublessor's agents or contractors in carrying out any such inspections, repairs, alterations, additions or improvements.

34. **COVENANTS OF SUBTENANT.**

34.1 **Use of the Leased Premises.** Subtenant shall not make or permit to be made any use of the Leased Premises or any part thereof (i) which would directly or indirectly violate any federal, state or local law, ordinance, rule or governmental regulation; (ii) which would invalidate or unreasonably increase the premium cost of any policy of insurance carried on the Leased Premises or covering its operation (unless such increase is paid for by Subtenant); or (iii) which will suffer or permit the Leased Premises or any part thereof to be used in any manner or permit anything to be brought into or kept therein which, in the reasonable judgment of Sublessor, shall unreasonably impair or interfere with any of the services required to be performed by Sublessor, if any, for the Leased Premises.

34.2 **Exterior Signs.** Subtenant shall not display, inscribe, print, maintain or affix on any place on or about the exterior of the Buildings any sign, notice, legend, direction, figure or advertisement, except similar sign, notice, legend, direction, figure or advertisement completed by other Subtenants at the Station or as may be approved by Sublessor in writing (which approval Sublessor shall not unreasonably withhold, condition or delay) and, if required, by local governing authorities. Notwithstanding the forgoing Sublessor and Government shall not interfere with Subtenant's ability to install directional signs to the Facility within the Station and at the front entrance to the Station directing traffic to the Leased Premises. All signs will comply with existing code requirements.

34.3 **Locks.** Subtenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, change any locks, without providing to Sublessor one set of keys therefore. All keys must be returned to Sublessor at the expiration or termination of this Sublease.

34.4 **Overloading.** Subtenant shall not overload any floor.

34.5 **Machinery.** Subtenant shall not install or operate any machinery, refrigerating or heating device or air conditioning apparatus in or about the Leased Premises, which would impose unreasonable substantial additional loads on the facilities of the buildings. Machinery expressly authorized by ARRA shall not be deemed to violate this provision.

34.6 **No Obstruction.** The exits, entrances, elevators and stairways of the Buildings shall not be obstructed by Subtenant or used for any purpose other than for ingress to and egress

from the Leased Premises. Subtenant and its employees or invitees shall not go upon the roof of the Buildings without Sublessor's prior consent, except for repairs, regular maintenance or inspections, which approval is not required.

34.7 No Animals. Subtenant shall not permit any animals, except those required to be allowed by law, such as guide dogs, to be brought in or kept in or about the Leased Premises without Sublessor's prior written consent.

34.8 Rules. Subtenant shall comply with the rules and regulations referred to in Section 35. Subtenant shall comply with all reasonable rules and regulations of Sublessor and Government.

34.9 Compliance with Laws. Subtenant shall comply, in all material respects, with all laws, enactments, rules, ordinances and regulations of all governmental authorities relating or applicable to Subtenant's occupancy of the Leased Premises and all covenants, easements and restrictions governing the Leased Premises.

34.10 Outside Storage Prohibited. Outside storage or activities are not permitted unless expressly authorized in writing by Sublessor. Any outside storage authorized by Sublessor shall be properly screened.

35. **RULES AND REGULATIONS**. Sublessor shall have the right to make such rules and regulations as in the reasonable judgment of Sublessor may from time to time be necessary for the safety, appearance, care and cleanliness of the Leased Premises and for the preservation of good order therein, provided that such rules do not unreasonably interfere with the operations of Subtenant which otherwise comply with the terms of this Sublease.

36. **HOLDING OVER**. If Subtenant retains possession of the Leased Premises or any part thereof after the expiration or termination of the Term, Subtenant shall pay to Sublessor immediately on demand, a monthly sum equal to 120 percent of the amount of the monthly Base Rent and Additional Rent for the last full calendar month of the Term for the time Subtenant thus remains in possession and, in addition thereto, shall pay Sublessor for all direct damages sustained by reason of Subtenant's retention of possession. The provisions of this section do not exclude Sublessor's rights to re-entry or any other right under this Sublease.

37. **DEFAULT**. It shall constitute an event of default ("**Event of Default**") under this Sublease if any of the events describes in the following subsections occurs:

37.1 Rent. Subtenant fails to pay when due Base Rent, Additional Rent, or other amounts due hereunder and such failure continues for a period of ten days after written notice to Subtenant from Sublessor.

37.2 Assignment/Subletting. Subtenant assigns or sublets, or purports to assign or sublet the Leased Premises or any part thereof other than in the manner and upon the conditions set forth herein.

37.3 Other Agreements. Subtenant fails to perform or observe any of its other obligations, covenants or agreements hereunder within fifteen (15) calendar days after written notice of any such failure has been given by or on behalf of Sublessor, or, if more than fifteen (15) calendar days are required to cure such failure, within said fifteen working days, Subtenant shall advise Sublessor in writing of Subtenant's intended course of action to cure and the estimated date as to when said action will be completed, and if Subtenant fails to commence such cure as promptly as practical as stated in its notice to Sublessor and thereafter diligently to pursue such cure and thereafter fails to diligently pursue such a cure and complete such cure within a reasonable time thereafter, or within the period of time as may be otherwise required under the Prime Lease.

37.4 Bankruptcy. Subtenant liquidates its business, becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it a petition of bankruptcy, bill in equity, or other proceedings for the appointment of a receiver or other custodian for its property, or if proceedings for reorganization or composition with creditors under any law are instituted by or against Subtenant or if any levy or sale or execution of any kind is made upon or of any property of Subtenant in the Leased Premises.

37.5 Vacation/Abandonment. Subtenant abandons or vacates the Leased Premises or Subtenant removes or attempts to remove or manifests an intention to remove Subtenant's goods or property from or out of the Leased Premises otherwise than in the ordinary and usual course of business.

37.6 Fail to Locate. Subtenant fails to vacate the Leased Premises at the end of the Term of this Sublease unless this Sublease is otherwise renewed or extended.

38. SUBLESSOR'S REMEDIES.

38.1 Sublessor's Options. If an Event of Default hereunder shall have occurred, Sublessor may, at its option, exercise any one or more of the following remedies:

38.1.1 Termination of Sublease. Sublessor may terminate this Sublease, by written notice to Subtenant. Upon such termination, Subtenant shall immediately surrender possession of the Leased Premises to Sublessor, and Sublessor shall immediately become entitled to receive from Subtenant an amount equal to the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of the award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of section 1951.2 of the California Civil Code.

38.1.2 Reletting. With or without terminating this Sublease, as Sublessor may elect, Sublessor may re-enter and repossess the Leased Premises, or any part thereof, and lease them to any other person upon such terms as Sublessor shall deem reasonable, for a term within or beyond the Term; provided, that any such reletting prior to termination shall be for the account of Subtenant, and Subtenant shall remain liable for (i) all Base Rent, Additional Rent and other sums which would be payable under this Sublease by Subtenant in the absence of such expiration, termination or repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Subtenant after deducting from such proceeds all of Sublessor's expenses, reasonable attorneys' fees and expenses, employees' expenses, alteration costs, expenses of preparation for such reletting and all costs and expenses, incurred as a result of Subtenant's breach of this Sublease. If the Leased Premises are, at the time of default, sublet or leased by Subtenant to others, Sublessor may, as Subtenant's agent, collect rents due from any subtenant or other tenant and apply such rents to the Rent and other amounts due hereunder without in any way affecting Subtenant's obligation to Sublessor hereunder. Such agency, being given for security, is hereby declared to be irrevocable.

38.1.3 Removal of Contents by Sublessor. With respect to any portion of the Leased Premises which is vacant or which is not physically occupied by Subtenant, Sublessor may remove property therefrom, and store such property in a public warehouse or elsewhere at the cost of and for the account of Subtenant, in such manner as may be permitted by applicable law, without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

38.2 Survival of Subtenant's Obligations. No early expiration or termination of this Sublease (except as expressly provided herein) and no repossession of the Leased Premises or any part thereof shall relieve Subtenant of its liabilities and obligations to pay rent hereunder, all of which shall survive such expiration, termination or repossession, and Sublessor may, at its option, sue for and collect all Rent and other charges due hereunder at any time as when such charges accrue.

38.3 Not Exclusive. No right or remedy herein conferred upon or reserved to Sublessor is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or after existing at law or in equity or by statute.

38.4 Expenses. In the event that Sublessor commences suit for the repossession of the Leased Premises, for the recovery of Rent or any other amount due under the provisions of this Sublease, or because of the breach of any other covenant herein contained on the part of Subtenant to be kept or performed, and a breach shall be established, Subtenant shall pay to Sublessor all expenses incurred in connection therewith, including reasonable attorneys' fees. In the event that Subtenant commences suit because of the breach of any covenant herein contained on the part of Sublessor to be kept or performed, and a breach shall be established, Sublessor shall pay to Subtenant all expenses incurred in connection therewith, including reasonable attorneys' fees.

39. **SEVERABILITY.** If any of the provisions of this Sublease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

40. **TRAFFIC MITIGATION FEES.** The Traffic Mitigation Fees set forth in the Use Permit shall not be paid by Subtenant.

IN WITNESS WHEREOF, Sublessor and Subtenant have respectively signed and sealed this Sublease as of the day and year first above written.

SUBTENANT:

Bladium, Inc.
a California Corporation

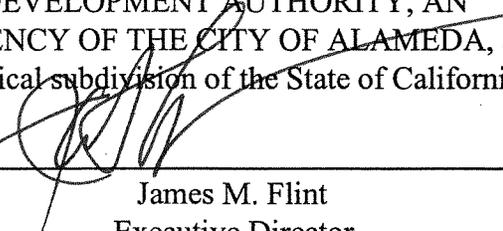
By 
Its Pres

and

By _____
Its _____

SUBLESSOR:

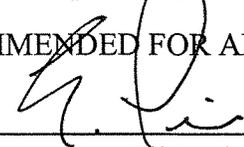
ALAMEDA REUSE AND
REDEVELOPMENT AUTHORITY, AN
AGENCY OF THE CITY OF ALAMEDA, a
political subdivision of the State of California

By 
James M. Flint
Executive Director

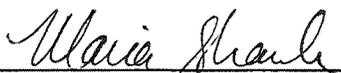
RECOMMENDED FOR APPROVAL:


David A. Berger
Deputy City Manager

RECOMMENDED FOR APPROVAL:


Ed Levine
Facilities Manager

Approved as to form:


Maria Shanle
Deputy General Counsel

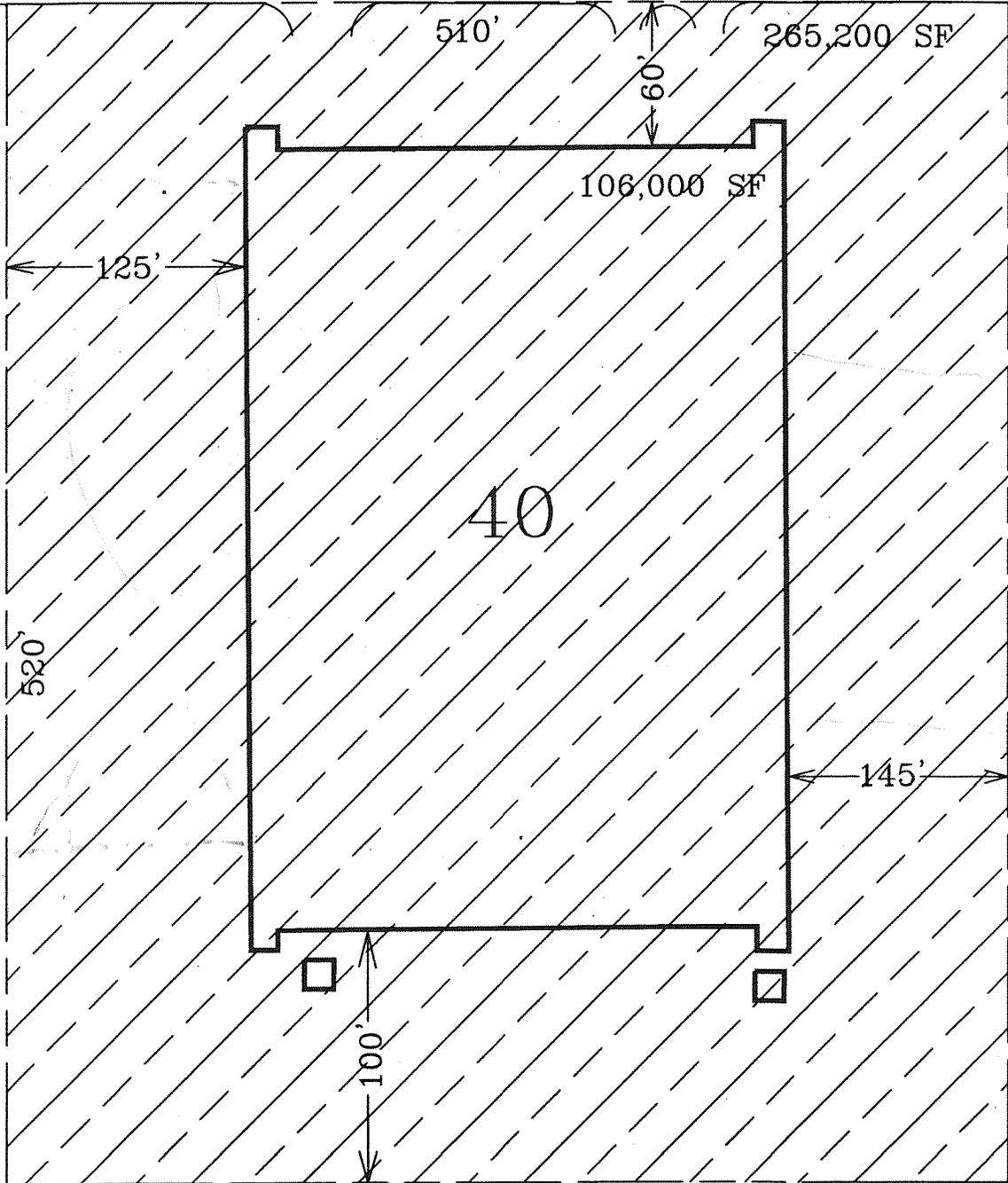


EXHIBIT A

NAVY/ARRA JOINT INSPECTION

Facility Address: 800 W. Tower Avenue
(formerly Building 40)

Date of Inspection: 15 November 1999

Tenant: Bladium

Building Description:

The ARRA is securing a lease of 800 W. Tower Avenue (Building 40) on board Alameda Point (formerly Naval Air Station Alameda). Building 40 was built in 1941 and has approximately 118,190 square feet of aircraft hangar and office spaces. It is a two-story concrete and steel-framed structure constructed on concrete slab on grade, with steel framed windows and hangar doors, and ethylene propylene diene monomer (EPDM) membrane roofing (main roof), and sheet metal roofing (above the hangar doors) over wooden roof decking. It was used primarily as an aircraft maintenance hangar.

Building Condition:

Interior:

The interior of the building is in fair condition with the following items being noted for the record:

1. Sections of the interior wall finishes including plaster, sheet-rock, fiberboard panels, wood paneling, metal panels, and concrete, have a number of nicks, holes, gouges, cracks, dirt and rust stain, dents, and scratch marks. The plaster walls in several locations are damaged, and sections of the wood paneling are loose, missing, and are also damaged.
2. Pieces of 6" x 6", 9" x 9", and 12" x 12" asphalt floor tiles are missing, chipped, broken, loose, cracked, stained, and dirty. White powdery residue and staining is seeping out of the asphalt tile joints in several locations. Sections of the flooring have water/rusty stain from moisture intrusion, possibly from previous window leaks, cracks in the walls, utility pipe and roof/roof drain leaks.
3. Several office spaces have carpeting over asphalt floor tiles. The carpeting is heavily stained and dirty with several tears, holes, and excessive wear. Sections of the carpet tiles in various locations are also missing, stained, and lifting at the seams.
4. Pieces of ceiling tiles (drop-in tiles and glued type) are missing, loose, broken, bowed, and cracked. A number of light fixture diffusers are also missing and broken. Sections of the ceiling tees are missing and bent.
5. Paint on walls, ceilings, and doors are peeling, flaking, blistering, and cracking. There are also signs of moisture damage in several locations.
6. Plumbing systems in the bathrooms were not checked but most of the fixtures and plumbing are old and show evidence of previous leaks. Parts of the valves and fittings are broken, missing and appear to be inoperative. The terrazzo floor in the rest room on the north side of the building has minor cracks and stain.

EXHIBIT D

7. A number of electrical fixture covers are missing, broken, and chipped. There are exposed wires from disconnected lighting fixtures, outlets, and equipment.
8. A number of the steel-framed window locks are missing and inoperative. Some of the handlebars are broken and missing, and a few windowpanes are also cracked. Bottom sections of the window frames and mullions, particularly in the south side of the building, are corroded in several locations. Sections of the caulking and glazing are also deteriorated and crumbling.
9. The wooden structure in the center section of the hangar, separating the north and south halves of the hangar bay, is in poor condition. Sections of the transite siding and fiberboard panels are damaged, and have a number of large holes, nicks, and gouges. Sections of the flooring are also badly deteriorated.
10. A number of personnel doors have nicks, dents, scratch marks, and have broken, missing, and or inoperative locks and hardware.
11. The modular building located in the north half of the hangar bay is in good condition with minor nicks, and dents on wall surfaces. A few pieces of the ceiling tiles are broken and missing. The chain link fencing on the north side of the modular building is in good condition.
12. The concrete floor has many nicks and gouges, and sections of the joint sealant in the concrete floor joints are deteriorated. The asphalt paving outside the office spaces and adjacent to the hangar doors has many dips, nicks, cracks, and gouges, and is unraveling in several locations.

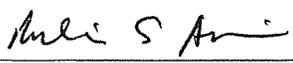
Exterior:

The exterior of the building is in fair condition with the following items being noted for the record:

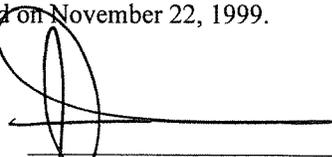
1. The exterior metal surfaces particularly the steel-framed windows and hangar doors, show sign of corrosion.
2. The asphalt pavement on the north and south sides the building has cracks.

Additional Notes For The Record:

1. The membrane roofing appears to be in good condition, although, there are signs of moisture intrusion from previous roof leaks, roof drain and pipe leaks. An eight-foot section of roof cap flashing over the westside parapet wall is peeled off and folded at the lap joint.
2. The hangar bay, second floor hallways, and a few of the office spaces on the north side and center section of the hangar are provided with fire sprinkler systems.
3. The building is equipped with a 400 Hz. cycle power converter.
4. A building floor plan, Exhibit (A), and site plan, Exhibit (B) are attached for reference purposes only.
5. The joint inspection was performed by M. Hampen (ARRA), D. DeLong, and M. Asuncion (Alameda Point NTO). The videotape inspection was conducted on November 22, 1999.

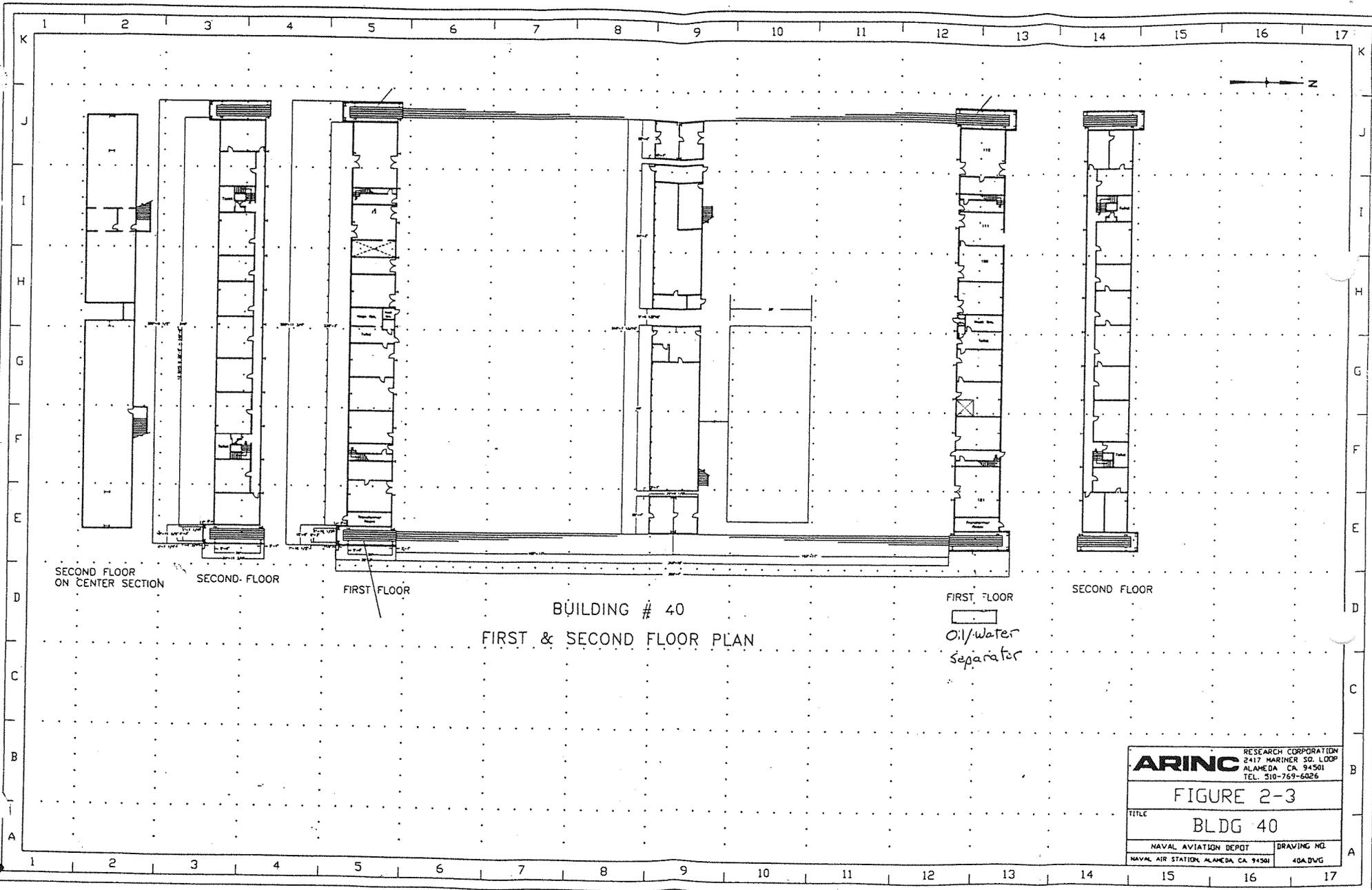
 11/23/99

 Signature Date
 M. Asuncion
 NAVY

 11/24/99

 Signature Date
 M. Hampen
 ARRA

EXHIBIT (A)



ARINC RESEARCH CORPORATION 2417 MARINER SQ. LOOP ALAMEDA CA 94501 TEL. 510-769-6026	
FIGURE 2-3	
TITLE BLDG 40	
NAVAL AVIATION DEPOT	DRAWING NO.
NAVAL AIR STATION ALAMEDA, CA 94501	40A.DWG

EXHIBIT E
Sublease of Building 40
Qualified Shell Improvement Costs

The cost of the following items of work performed by Subtenant shall qualify as Qualified Shell Improvement Costs ("QSIC") and deemed to be part of Leased Premise shell improvements related to general requirements for use and occupancy of the Leased Premises.

Hazardous Materials and Asbestos Abatement

- Remove and dispose of any hazardous materials, including but not limited to asbestos insulation, PCB transformers, lead paint, asbestos floor and ceiling tile.
- Supervision, certification and testing fees relating to such abatement.

Demolition

- Remove and dispose of structures, fencing and equipment in the open hangar space.
- Remove partitions, walls, ceilings and fixtures in the two story structure located on the south and north side of the Building.
- Saw cut, break and remove concrete for handicap entrances.
- Saw cut, break and remove asphalt for electrical, gas, water and fire sprinkler services.
- Any exterior modifications required for exiting.

Grading and Paving

- Compact, base rock and patch pave parking lot for water service, fire service and electrical service.

Site Work, Stripes & Bumpers

- Parking stalls, sign and parking lot striping.
- Provide clear pedestrian routes from north edge of leased area to entry on south side of building as required by City of Alameda Planning Dept.
- Furnish and install perimeter fence around the Building as required by the City of Alameda Planning Dept.

Concrete Work

- Form, reinforce, place and finish handicap ramps and any interior and exterior sloping.
- Dowel and patch plumbing trenches.
- Form, reinforce, place and finish electrical transformer pads and other utility pads.
- Form, reinforce, place level landings at door exists to meet code.

Miscellaneous Iron

- Bollards.
- Railing at handicap ramps.
- Handrails and railing at stairs.

Carpentry

- Structure and framing for hot water/boiler rooms.
- Backing for handrails.
- Backing for toilet partitions and equipment.
- Replace front counter reception area.
- Repair/replace second story railing.

Roofing

- Patch and repair existing roof to ensure no leaks.
- Provide roof penetrations for necessary equipment.
- Work required to repair, maintain replace the roof, if required.

Caulking & Sealants

- Allowance for fire caulking penetrations in fire rated areas.

Doors/Frames/Hardware

- Remove and/or replace doors to meet ADA and Title 24 requirements.
- Door hardware to meet ADA and Title 24 requirements.
- Furnish, install or repair exit doors as required.

Glass, Glazing and Weatherproofing

- Replace all broken and leaking windows.
- Replace glazing subject to lead abatement.
- Seal and repair windows and doors.
- Repair and/or replace existing roof drains.
- Install tempered glazing as required by code.

Drywall

- Replace sheet rock in restrooms.
- Cased opening for handicap access.
- Patching throughout areas for existing conditions and repair of new construction.

Walls and Flooring

- Furnish and install tile in toilet areas.
- Provide and install FRP in janitor's closets.
- Provide floor covering in north and south two story areas.
- Paint interior of north and south two story areas.
- Paint as required repairing and or maintaining any of the buildings exterior walls.

Toilet Partitions and Accessories

- Repair and/or replace toilet partitions.
- Furnish and install Bobrick or equivalent; soap dispensers, seat cover dispensers, grab bars, toilet paper dispensers and feminine sanitary products dispensers and receptacles.

Fire and Life Safety

- Furnish and install fire alarm, life safety system, and security systems.
- Furnish and install rechargeable hand held fire extinguishers as required.

Hangar Doors

- Allowance to seal and waterproof hangar doors and tracks.

Plumbing

- Replace plumbing and fixtures in restrooms.
- Provide new domestic water service and distribution.
- Provide new gas service and distribution.
- Replace flushometers in existing fixtures.
- Replace handicap water fountains.
- New hot water heaters (Qty 2).
- If required by EBMUD to reduce water connection from two to one, then provide water supply to opposite side of building from supply source.

Fire Sprinklers

- Remove existing risers.
- Upgrade and convert existing deluge system to wet pipe system including any modifications.
- Upgrade existing hangars and bracing to seismic code requirements.

Mechanical

- Rework existing steam heat system to gas system including piping, heating, and conditioning units.
- Provide air balance, make up air units and start up.
- Controls, Thermostats and power to units.

Electrical

- Demo existing electrical system.
- Furnish and install new electrical service.
- Saw cut, core drilling, removal, trenching and finish.
- Electrical distribution and panels.
- Repair, replace and add where missing high bay fixtures including wire and conduit.
- Furnish and install 1 outlet per 300-sf for north and south two story area.
- Furnish and install 1 light fixture per 90-sf for north and south two story area.
- Furnish and install exist and emergency lights as required.
- Repair, replace and add where missing exterior security lighting including timer.
- Replace any unsafe wire as required by code.

Temporary Utilities

- Installation of temporary utilities.

Utilities and Metering

- All work to verify, establish and repair utilities and distribution including water, gas, sewer, electrical and telephone and communications.
- Any trenching.
- Separate utility meters, if applicable pursuant to the Sublease.

Permits and Fees

- Costs of any special studies, reports or other fees and expenses that may be required in order to occupy the Building including but not limited to traffic impact study, ongoing traffic monitoring, soils report, use permit, inspection, legal expenses, initial study and any performance and payment bonding requirements.

Architectural, Engineering and Construction Management

- All architectural, construction management, consultant's fees, design, plan, permit and inspection fees and expenses.

Equipment Rental

- Equipment rentals.

Americans with Disabilities Act

- All costs of upgrades and compliance with current uniform building code under the Americans with Disabilities Act, as required by the City of Alameda Building Department.

Joint Inspection Report

- All work within the Leased Premises, to correct safety or health hazards, identified in the Joint Inspection, required as part of the Sublease.

Structural Improvements

- Structural or seismic upgrade work as required by the Government or the City of Alameda Building Department.



March 27, 2000

Mr. Mike Hampen
Alameda Point Assistant Facilities & Property Manager
950 West Mall Square
Building One, Suite 100
Alameda, Ca. 94501-7552

RE: Hanger #40 Condition Inspection

Dear Mr. Hampen:

At your request, the subject property was inspected. The inspection date was March 23, 2000. The purpose of the inspection was to establish the exact condition of the building and interior improvements at that time.

As a result of the inspection, it was noted that some demolition of the interior improvements had begun. This consisted primarily in removal of the electrical wiring, circuit breakers and circuit breaker boxes.

A general description of the building improvements is as follows:

Exterior: The exterior reflected generally good condition with no considerable deferred maintenance noted. The parking area and yard area are of concrete slab and are also in good condition. There is a cyclone fence with gates separating the building and parking/storage yard from the street. It is also in average to good condition.

Interior: The interior condition and related tenant improvements was broken into two categories, Structural and Tenant Improvements. The structural portion of the building reflected generally average condition. It consists of a slab foundation with steel truss roof support and wood sub-roof decking. Each end is access with floor to ceiling rolling hanger doors. Overall the structure appears to be in average condition considering the age of the improvements.

The interior improvements consist of mostly areas that have been previously used as office and or shop. The interior of this space is in poor condition and has suffered considerable deferred maintenance. Walls have been kicked in, ceiling tiles have been removed or fallen out, carpet or vinyl floors have been partially or totally removed etc. The restrooms appear to be generally in tact but have been "secured". It is clear if the plumbing and fixtures are still operable.

As they exist, the office improvements have finishes that include the following:

Floors:	Vinyl and carpet.
Walls:	Wood Panel, Sheet Rock and Wallboard.
Ceilings:	Sheet Rock, Acoustical Panels
Lighting:	Fluorescent
Heat:	Steam Radiators

EXHIBIT F

Mike Hampen
March 26, 2000
Page Two

The attached Photo Key provides location and direction of the photos taken during the inspection. They should provide a good example of the actual materials and condition of the improvements as of the date of inspection.

Please call with any questions.

Respectfully,

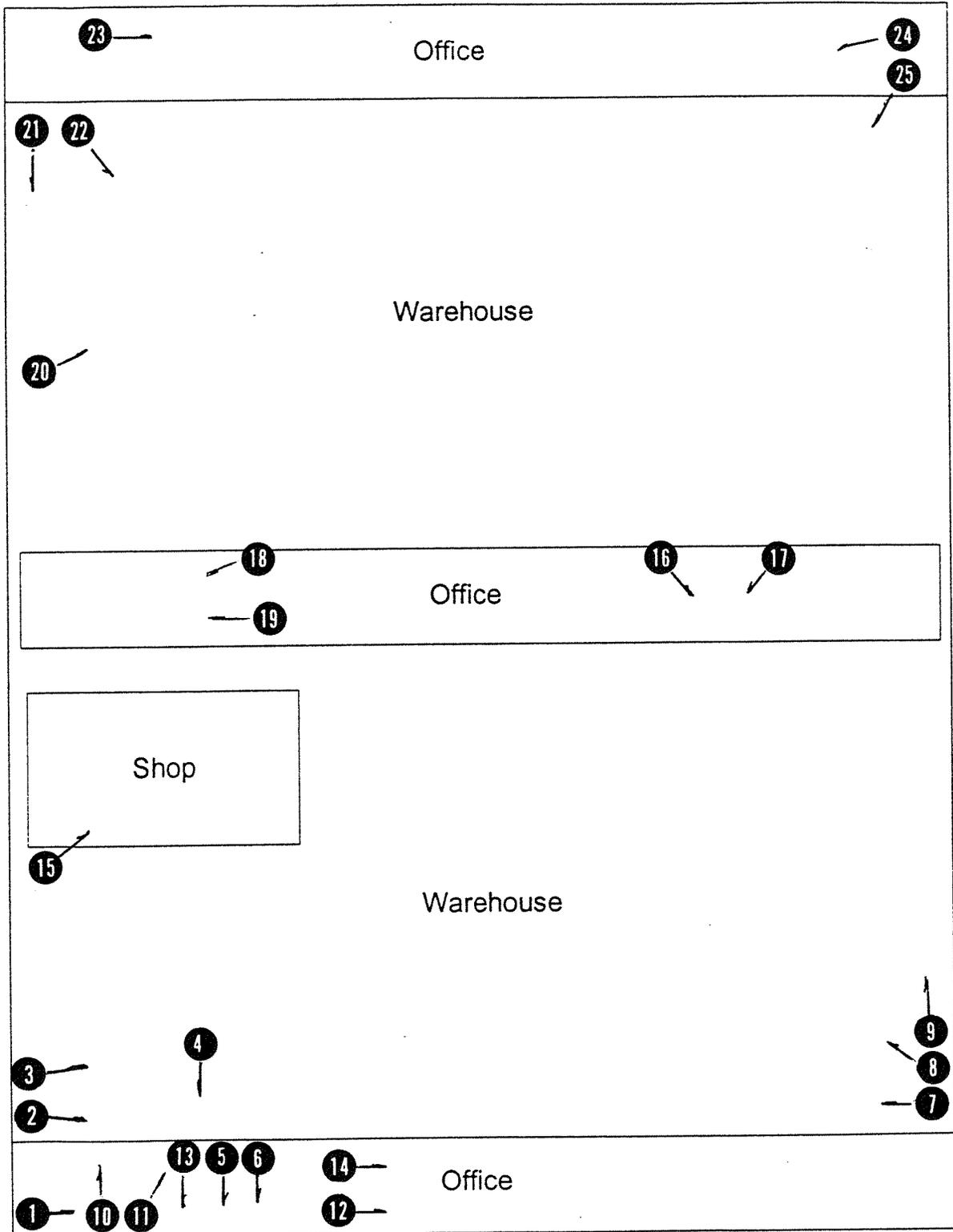


Dennis L. Smith, MAI
Smith & Associates, Inc.

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AIRCRAFT HANGER #40, ALAMEDA PHOTO KEY / LAYOUT



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Avenue F

Hanger #40 Condition Inspection



Photograph #1

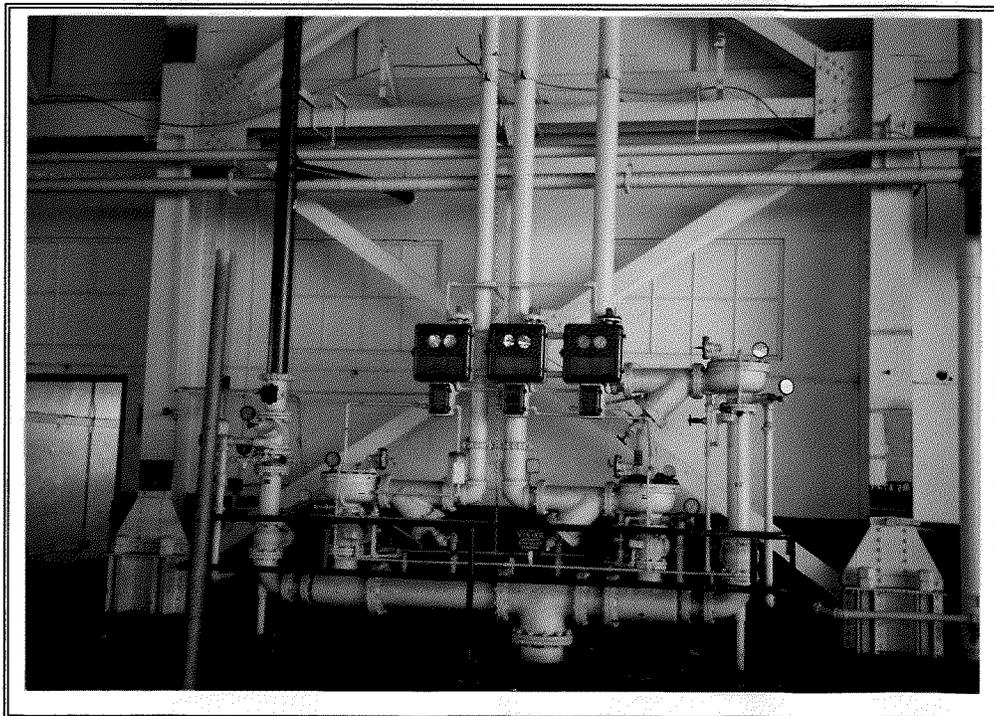


Photograph #2

Hanger #40 Condition Inspection



Photograph #3



Photograph #4

Hanger #40 Condition Inspection



Photograph #5



Photograph #6

Hanger #40 Condition Inspection



Photograph #7



Photograph #8

Hanger #40 Condition Inspection



Photograph #9



Photograph #10

Hanger #40 Condition Inspection



Photograph #11



Photograph #12

Hanger #40 Condition Inspection



Photograph #13



Photograph #14

Hanger #40 Condition Inspection



Photograph #15



Photograph #16

Hanger #40 Condition Inspection



Photograph #17



Photograph #18

Hanger #40 Condition Inspection



Photograph #19



Photograph #20

Hanger #40 Condition Inspection



Photograph #21



Photograph #22

Hanger #40 Condition Inspection



Photograph #23



Photograph #24

Hanger #40 Condition Inspection



Photograph #25



Photograph #26

Hanger #40 Condition Inspection



Photograph #27



Photograph #28

Hanger #40 Condition Inspection



Photograph #29



Photograph #30

Hanger #40 Condition Inspection



Photograph #31



Photograph #32

Hanger #40 Condition Inspection



Photograph #33



Photograph #34

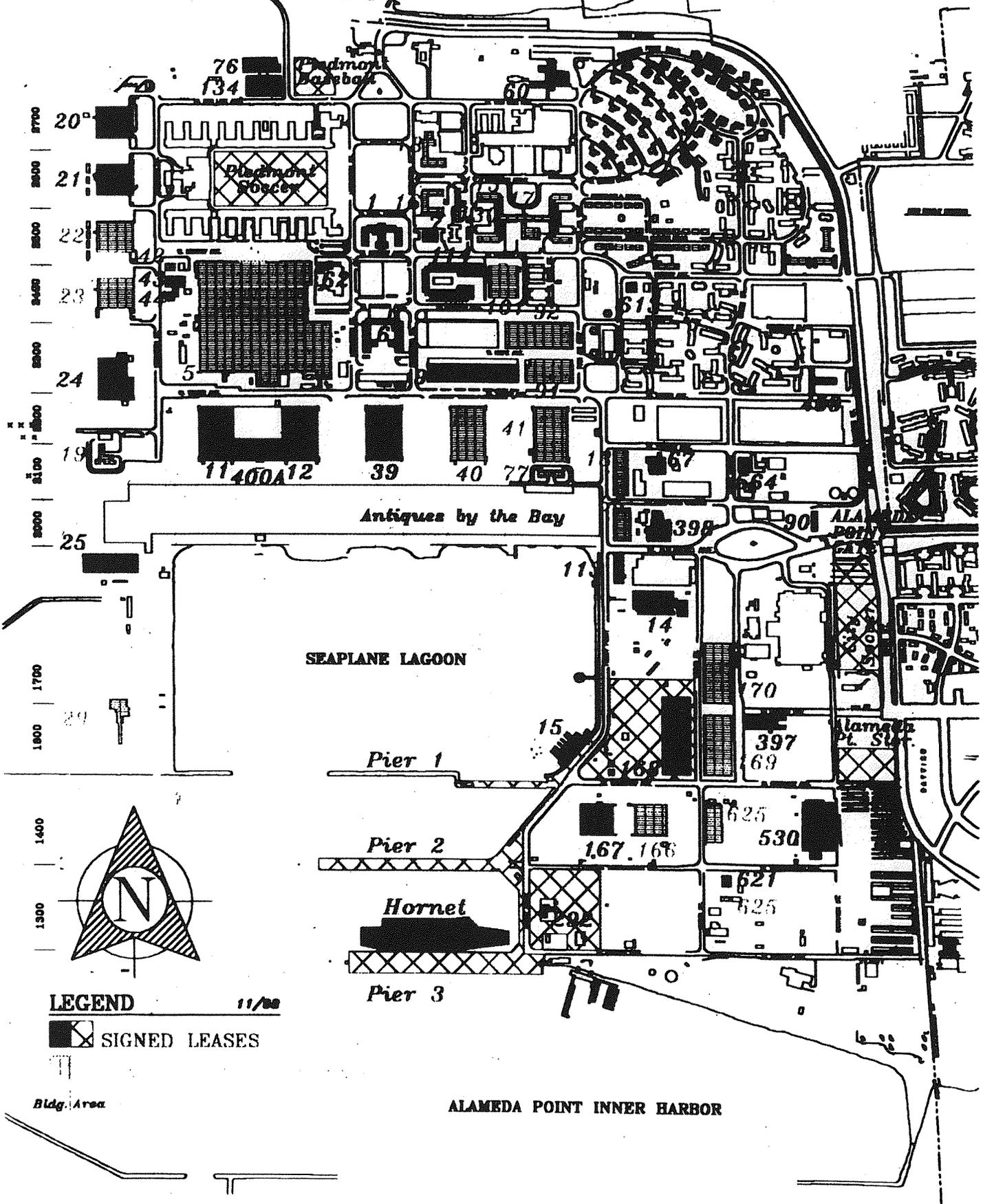
Exhibit G
Sublease Revisions in the
Event of Transfer of Fee Title to the Sublessor

This Exhibit G is attached to the Sublease by and between the Alameda Reuse and Redevelopment Authority ("Sublessor") and Bladium, Inc. ("Subtenant") (the, "Sublease") to document the revisions that shall be made to the Sublease upon the transfer of the Leased Premises from Government to Sublessor and/or the City of Alameda ("City") ("Transfer"). All defined terms provided for herein shall be consistent with the definitions included in the Sublease. The following modifications shall be made to the terms, conditions, provisions and covenants of the Sublease upon Transfer of the Leased Premises:

1. The Sublease shall become the primary agreement between Sublessor and Subtenant.
2. The Sublease shall no longer be subject to or subordinate to the Prime Lease.
3. Other than the rights expressly identified in the Sublease, Sublessor shall not have or assume the same rights as the Government as described in the Sublease or Prime Lease.
4. The terms, conditions, provisions and covenants of the Sublease shall be modified to delete any reference to the Prime Lease, the Government, Department of Defense and the Secretary of Defense. Notwithstanding the foregoing, Section 13.14 of the Sublease shall remain in effect in which the Government shall remain liable and indemnify and hold harmless the Subtenant for any toxic or other environmental claims in accordance with Public Law 102-484, the National Defense Authorization Act for Fiscal Year 1993, Section 330, as amended.
5. Sections 1.1 through 1.6 shall be deleted.
6. Section 10: No Interference With Navy Operations shall be deleted.
7. Sections 12.5 and 12.7 shall be deleted.
8. Sections 12.15 shall be modified to replace the Government with the ARRA and/or City.
9. Sections 13.1, 13.2, 13.3, 13.4 shall be deleted.
10. Section 14 shall be deleted.
11. Section 15.2 and Section 15.4 shall be deleted.
12. Section 18.1.2 through 18.1.7 shall be deleted.
13. Section 19.3 shall be deleted.
14. Section 28.2 shall be deleted.
15. Section 30 Administration shall be deleted.

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OAKLAND INNER HARBOR



ALAMEDA POINT INNER HARBOR

Exhibit H