

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

APPROVING A PURCHASE AND SALE AGREEMENT OF BUILDING 40, LOCATED AT 800 WEST TOWER AVENUE AT ALAMEDA POINT, WITH BLADIUM, INC, A CALIFORNIA CORPORATION.

WHEREAS, Bladium, Inc. (“Bladium”) entered into a lease agreement to occupy Building 40 on February 1, 2000 with the City of Alameda (the “Bladium Lease”); and

WHEREAS, Bladium is a sports and fitness club operating out Building 40 which consists of approximately 104,000 square feet of rentable space; and

WHEREAS, the Bladium lease, which included an exclusive use clause, will expire on June 30, 2035; and

WHEREAS, The City officially gained title to the property on July 10, 2017 and Bladium subsequently exercised its purchase option for Building 40 for a total purchase price of \$7,900,000; and

WHEREAS, after purchasing the property, Bladium will continue to operate it as a sports and recreational facility, but has requested a reduced exclusive use covenant; and

WHEREAS, after purchasing the property Bladium must comply the Master Infrastructure Plan (MIP) which was adopted on March 31, 2014; and

WHEREAS, the Transportation Demand Management Plan (TDM) was adopted on May 20, 2014 and Bladium, Inc will be required to comply with TDM Plan as required by the Mitigation Monitoring and Reporting Program (MMRP) from the Alameda Point EIR, and the Alameda Point Zoning District in Section 30-4.24; and

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Alameda that by four affirmative votes that:

Section 1. The City Manager of the City of Alameda or her designee is hereby authorized to negotiate, execute, for and on behalf of the City of Alameda, a purchase and sale agreement with Bladium, Inc., a California corporation, for Building 40 at Alameda Point in a form substantially the same as set forth in the draft purchase and sale agreement attached as Exhibit A, subject to such technical or clarifying revisions as are reasonably determined necessary by the City Manager and approved by the City Attorney, and the City Clerk is hereby authorized and directed to attest to the same.

Section 2. If any section, subsection, sentence, clause or phrase of this ordinance if, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council of the City of Alameda hereby declares that it would have passed this ordinance, and

each section, subsections, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases are declared to be invalid and unconstitutional.

Section 3. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("**Agreement**") is made and entered into as of _____, __, 2017 (the "**Effective Date**") by and between the CITY OF ALAMEDA, a charter city and municipal corporation ("**Seller**" or "**City**"), and BLADIUM, INC., a California corporation or Permitted Assignee ("**Buyer**").

RECITALS

A. The Alameda Reuse and Redevelopment Authority ("**ARRA**"), Seller's predecessor-in-interest, and Buyer entered into that certain Agreement of Sublease dated as of February 1, 2000, as amended by that certain Addendum to Sublease of even date therewith the ("**Addendum to Sublease**") and as further amended by that certain Amendment to Sublease dated as of June 16, 2000 and as further amended by that Second Amendment to Sublease dated as of November 2015 (collectively the "**Lease**"), whereby Buyer leased from the ARRA certain premises located at the former Naval Air Station Alameda (the "**NASA**") which premises are located in Building 40, with an address of 800 W. Tower Avenue, Alameda, California (the "**Building**", together with appurtenant land (the "**Premises**").

B. At the time of execution of the Lease, that portion of the NASA upon which the Premises were located was owned by the United States of America acting by and through the Department of the Navy (the "**Government**"). The NASA was closed as a military installation and was subject to disposal pursuant to an accordance with the Defense Base Closure and Realignment Act of 1990 (P.L.101-510), as amended (the "**Act**"). Pursuant to the terms of the Act, the ARRA applied for a conveyance from the Government of a portion of the NASA to be used and developed in accordance with the "NAS Alameda Community Reuse Plan" dated as of January 1996 as amended in September 1997 prepared by the ARRA and approved by the Department of Housing and Urban Development on April 23, 1996.

C. The Government approved the ARRA's application covering portions of the NASA, including the land upon which the Premises was situated and agreed to convey the same pursuant to the Economic Development Conveyance Memorandum of Agreement dated June 6, 2000 (the "**ED MOA**"). Prior to such conveyance, immediate possession of the NASA was granted to the ARRA pursuant to the terms of that certain Large Parcel Lease, originally commencing on March 24, 1996 (the "**Large Parcel Lease**") to which the Lease was subordinate. Pursuant to an Agreement for the Conveyance of Real Property entered into as of June 6, 2000, as amended, between the Government and the ARRA, the Large Parcel Lease was superseded by that certain Lease in Furtherance of Conveyance dated as of June 6, 2000, as amended by that certain Amendment No. 1 dated as of November 28, 2000 and as further amended by that certain Amendment No. 2 dated March 30, 2009 between the Government and the ARRA (the "**LIFOC**").

D. On January 31, 2012, the Governing Board of the ARRA assigned its rights, assets, liabilities and obligations to the City of Alameda and, on February 7, 2012, the City Council accepted the assignment. On March 9, 2012, the U.S. Department of Defense, Office of Economic Adjustment acknowledged the City of Alameda as the Local Reuse Authority for the former Alameda Naval Air Station and on April 4, 2012, the Government acknowledged the City of Alameda as the Local Reuse Authority within the meaning of the Act.

E. The portion of the NASA upon which the Premises are located was conveyed to the City by the Government by a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No.: 2013-199812 of Official Records in the Office of the County Recorder, Alameda County, California (the “**Navy Quitclaim Deed**”). Upon conveyance of the Premises from the Government to the City, the City became both the landowner and the landlord under the Lease and the LIFO terminated as to the Premises.

F. The Navy Quitclaim Deed conveyed the Premises to the City subject to certain covenants, conditions, restrictions, easements and encumbrances as set forth therein. The Premises were further encumbered by those certain restrictions set forth in the Declaration of Restrictions (former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County (“**Declaration of Restrictions**”), and the Covenant to Restrict Use of Property also dated June 4, 2013 as recorded June 6, 2013 as Series No.: 2013-199838 (the “**CRUP**”). Copies of the foregoing documents were delivered to Buyer in connection with the execution of the Second Amendment to Sublease.

G. The Addendum to Sublease included an option to purchase the Premises, which option was to become effective only upon acquisition of fee title to the Premises by the City pursuant to a conveyance from the Government and after restrictions on the use and ownership of the Premises imposed by the State of California Lands Commission on Tidelands Trust property were removed (the “**Purchase Option**”).

H. The land upon which the Premises are located was conveyed by the Government in 2013, as set forth in Recital F above. Pursuant to a Naval Air Station Alameda Title Settlement and Exchange Agreement, dated February 18, 2014, and recorded on June 30, 2014 in the Office of the County Recorder of Alameda County as Series No.: 2014154593 (the “**Exchange Agreement**”) the public trust on certain lands within the NASA, including the property subject to this transaction, was terminated.

I. At the time the Purchase Option was granted, the property upon which the Premises was situated had not been surveyed, subdivided or assigned an Assessor Parcel Number. The City has therefore prepared a Tentative Parcel Map (the “**Tentative Map**”) a copy of which is attached hereto as **Exhibit A**, and draft conditions of approval (the “**Draft Conditions**”) attached hereto as **Exhibit A-1**. The Tentative Map includes the reservation of public right of ways for Saratoga Street to the west of the Premises and Seaplane North, crossing the southern 76 feet of the Premises. Accordingly, the boundaries of the parcel that would be created by the Tentative Map (the “**Tentative Parcel**”) do not match the boundaries of the Premises, but the Tentative Parcel includes approximately the same area as the Premises.

J. For the purpose of improving access to the Parcel from West Tower Avenue, the City will grant Buyer the use of a strip of land, approximately 0.11 acres in size, depicted on the survey (“**Survey**”) attached hereto as **Exhibit A-2** as the Future Transfer Area (the “**Future Transfer Land**”). Buyer acknowledges that the Future Transfer Land is under the City’s possession and control pursuant to the LIFO, but that the Government still owns fee simple title to the Future Transfer Land. As set forth herein below, at such time as that land is conveyed to the City by the Government, the City will convey the same to Buyer. The Parcel and the Future Transfer Land are sometimes collectively referred to herein as the “**Property**”.

K. Buyer has exercised its Purchase Option and Buyer and Seller have agreed upon a Purchase Price and, by this Agreement, wish to more clearly specify the terms and conditions upon which Seller has agreed to sell and Buyer has agreed to buy the Property.

L. Pursuant to Section 3-10 of the Charter of the City of Alameda, the City Council adopted Ordinance ____ authorizing the sale of the Property upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Agreement as though set forth in full herein.

2. The Property. Seller hereby agrees to sell, assign and convey to Buyer, and Buyer hereby agrees to purchase from Seller, all of Seller's right, title and interest in and to the Property, upon all of the terms, covenants and conditions set forth in this Agreement.

3. [Intentionally Omitted]

4. Purchase Price. The Purchase Price for the Property is Seven Million, Nine Hundred Thousand and 00/100 Dollars (\$7,900,000.00) (the "**Purchase Price**") and shall be paid by Buyer to Escrow Holder (as defined at Section 6.1 below) in good, same day funds, on or before the Closing Date.

5. Condition of Property and Risk of Loss.

5.1 Risk of Loss. Until the Close of Escrow, the risk of any loss or damage to the Parcel shall be governed by the terms and conditions of the Lease. The risk of loss or damage to the Parcel shall pass to Buyer upon the recordation of the Quitclaim Deed on the Closing Date.

5.2 Property Sold in an "As-Is" Condition "With All Faults". Seller and Buyer mutually acknowledge and agree that the Property is being sold in an "As-Is" condition "with all faults" known or unknown, contingent or existing, and without any representation or warranty by Seller as to its fitness for any purpose. Buyer has the sole responsibility to fully inspect the Property, to investigate all matters relevant thereto and to reach its own independent evaluation of the risks (environmental or otherwise) or rewards associated with the ownership of the Property. Effective as of the Closing Date, except as otherwise expressly set forth herein, Buyer hereby waives and releases Seller and its successors and assigns from and against any claims, obligations or liabilities arising out of or in connection with the physical condition of the Property.

5.3 Waiver of Environmental Conditions. To the fullest extent permitted by law, and except as expressly set forth in this Agreement, Buyer does hereby unconditionally waive and release the Seller from any present or future claims and liabilities of any nature arising from or relating to the presence or alleged presence of hazardous materials in, on, at, from, under, or about the Property including, without limitation, any claims under or on account of any hazardous materials laws regardless if other such hazardous materials are located in, on, at, from, under, or about the Property prior to or after the date hereof.

5.4 Waiver of Energy Consumption Disclosure. Buyer acknowledges that it will have been in possession of most of the Parcel and will have contracted directly with the providers of any utilities prior to the Effective Date of this Agreement and, to the extent that Seller may have any energy use disclosure requirements under state or federal law implementing regulations promulgated pursuant thereto, Buyer does hereby unconditionally waive and release Seller from any such disclosure requirements.

5.5 Title. Upon and subject to Close of Escrow, Seller shall convey title to the Parcel to Buyer by quitclaim deed, free of monetary encumbrances other than non-delinquent taxes or assessments, and otherwise subject only to the matters described in the following sentence. Buyer acknowledges that the Parcel will be conveyed subject only to all of the Restrictions as described in Recital F, such public and private easements as described in **Exhibit A**, the Reciprocal Easement Agreement described in Section 6, the Declaration of Covenants Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance, recorded on July 3, 2017 in the Official Records of Alameda County as Instrument No. 2017144870 (the "**CC&Rs**") and such laws, ordinances and regulations are referred to in Section 13.14 below.

5.6 Water Infrastructure. Seller represents to Buyer that water at Alameda Point has been supplied by East Bay Municipal Utility District ("**EBMUD**") but the water system itself was designed, installed and historically operated by the Navy. The water system infrastructure at Alameda Point was neither built, nor maintained to the standards of EBMUD, and does not current meet EBMUD standards. Seller hereby agrees that, until the water supply system is improved to EBMUD standards, Buyer cannot become an EBMUD customer. Until EBMUD is prepared to contract directly with Buyer, water will continue to be provided by means of the current water supply system. The City will charge and bill Buyer for water usage at a rate no greater than the rate paid by the City to EBMUD, and may bill Buyer at a lower rate. The City intends to replace the water infrastructure at Alameda Point and, to that end, has entered into a phased water system infrastructure agreement with EBMUD. At such time as the water system is improved to meet the requirements set forth in EBMUD's Regulations Governing Water Service, the City will cease providing water to the Property and Buyer will be required to contract directly with EBMUD. Buyer may be required to satisfy certain EBMUD requirements which may include the establishment of proper frontage on an EBMUD water main, compliance with all water efficiency requirements, and payment of certain fees. The City will be responsible for an amount not to exceed \$526,000 for System Capacity Charges ("**SCC**") and an amount not to exceed \$124,000 for Wastewater Capacity Fees ("**WCF**") assessed by EBMUD necessary for establishing initial EBMUD water services to the Property at the time the SCC and WCF are due to EBMUD. Buyer shall be responsible for the payment of any other fees and costs which may be assessed by EBMUD, including any SCC or WCF in excess of the above-referenced amounts. Before Closing, Seller will deliver a letter to Buyer substantially in the form of **Exhibit D** and Buyer shall sign the acknowledgment and return the same to Seller, either outside of or by deposit with Escrow Holder.

6. Reciprocal Easements.

6.1 Reciprocal Easement Agreement. That approximately 0.64 acre strip of the Premises that is not included in the Tentative Parcel and is designated on the Survey as future Seaplane North right of way (the "**Seaplane North Property**") is currently used by Buyer for ingress, egress and parking. That approximately 0.95 acre area to the west of the Premises which is included in the Tentative Parcel and is designated on the Survey as the "**Additional Land Area**" is currently used by the public as a drive aisle providing access to the Premises and

adjacent properties. Concurrently with the execution hereof, the parties shall execute a Reciprocal Easement Agreement in the form of **Exhibit B** whereby Seller grants to Buyer an easement over the Seaplane North Property for ingress, egress and parking and Buyer grants to the City an easement over the Additional Land Area to remain open as a drive aisle, available for public use. Said Reciprocal Easement Agreement shall terminate upon the development of Seaplane North and Saratoga Street, as set forth therein.

6.2 **Driveways and Sidewalks.** In connection with the construction of any site improvements on the Seaplane North Property or the Additional Land Area, Seller shall modify, at Seller's sole cost and expense, the three (3) existing driveways and adjacent sidewalks on the border of the Property adjacent to West Tower Avenue, as shown on **Exhibit A-2** attached hereto. In addition, Seller shall install, at Seller's sole cost and expense, three (3) additional driveways and adjacent sidewalks on the border of the Property, as shown on **Exhibit A-2** attached hereto, including one driveway on the north side of the Additional Land Area, one driveway on the south side of the Additional Land Area, and one driveway on the east side of the Seaplane North Property. The final locations of said driveways shall be as mutually agreed upon by Buyer and the City of Alameda Public Works Director and Civil Engineer.

6.3 **West Tower Access.** Seller shall grant to Buyer a nonexclusive right to use the driveway and drive aisle to the east of the Parcel in the area depicted on **Exhibit A-2**. (the "**West Tower Access Drive**") Buyer understands and acknowledges that the West Tower Access Drive is currently under the City's possession and control pursuant to the LIFOC. At such time as fee title to that land is conveyed by the Government to the City, the City reserves the right, in its sole discretion, to terminate such access rights and include none, all or a portion of the current drive aisle in a newly created parcel.

6.4 **Existing Parking Spaces.** Seller agrees that until the site improvements on the Seaplane North Property and the Additional Land Area have been completed, Buyer shall retain the right to continue to use the existing parking spaces located on the Parcel but in no event shall Buyer be entitled to the use of more parking spaces than were afforded it under the Lease.

7. **Use Restrictions.** The Lease includes certain use restrictions on property located within the NSA and controlled by the City, whether as the fee owner or as the Tenant under the LIFOC (the "**Exclusive Use Provision**"). Seller has agreed to retain certain Exclusive Use Provisions after Closing through June 30, 2035, which would be the expiration of the Lease Term if Buyer were to exercise its final option for a Third Renewal Term, as defined in the Lease. In consideration thereof, Buyer has agreed to maintain, or cause to be maintained, the Building and the Property (including any in-line hockey, arena soccer, fitness, and rock climbing facilities, restrooms and commons use facilities, if any) in good condition and repair, subject only to normal wear and tear. Such maintenance obligations also include the surface of all parking areas and drive aisles, all surface and storm lateral drainage systems, sanitary sewer lateral connections and exterior lighting fixtures (collectively, the "**Maintenance Standards**"). Buyer's compliance with the Maintenance Standards shall be judged by a comparative standard with the custom and practice generally applicable to comparable high quality sports, recreational and fitness facilities with comparable prices for similar services in Alameda and Contra Costa Counties. Pursuant to the foregoing, concurrently with the execution of this Agreement, the parties shall also execute an Agreement Regarding Use Restrictions, substantially in the form of **Exhibit C**.

8. Compliance with CC&Rs. City acknowledges and agrees that as operated today, the Property satisfy the requirement set forth in Section 10.18 of the CC&Rs that the Property constitute a high quality commercial development consistent with other commercial centers in the Oakland metropolitan area.

9. Closing.

9.1 Establishment of Escrow. Concurrent with the execution of this Agreement, Seller shall establish an escrow with First American Title Company, 1850 Mt. Diablo Boulevard, Suite 300, Walnut Creek, California 94596 ("**Escrow Holder**" or "**Title Company**") and shall promptly give Buyer notice of the escrow number for this transaction.

9.2 Time. The "**Close of Escrow**" or "**Closing**" shall mean and refer to the payment of the Purchase Price to Seller and the concurrent recordation of the Quitclaim Deed, which shall occur through escrow with Escrow Holder, within thirty (30) days after Seller's execution and delivery of this Agreement, or such shorter time as the parties may agree. The "**Closing Date**" shall mean and refer to the date on which the Close of Escrow occurs. The foregoing notwithstanding, Buyer shall have three (3) options to extend the Closing Date in increments not to exceed thirty (30) days each, for a cumulative total of ninety (90) days. Buyer may exercise its extension options by delivering written notice to Seller and Escrow Holder not less than five (5) business days before the then currently scheduled Closing Date. In addition to the foregoing options to extend the Closing Date (which options to extend may be exercised before or after an extension of the Closing Date for Economic Force Majeure (as defined below), Buyer shall have the right to extend the Closing Date for up to an additional two (2) years as a result of Economic Force Majeure. Buyer shall notify Seller as soon as possible prior to the then scheduled Closing Date in the event that Buyer needs to postpone the Closing Date as a result of Economic Force Majeure, and Buyer shall give Seller at least thirty (30) days' prior notice of the new Closing Date. As used herein, "Economic Force Majeure" shall mean a major economic collapse in the United States. "Economic Force Majeure" shall not refer to a mere spike in interest rates or other change in the market that merely makes the economic terms of this Agreement less favorable to Buyer than on the date of Buyer's execution of this Agreement.

9.3 Deposit of Documents by Seller. On or before the Closing Date, Seller shall deposit with Escrow Holder:

- 9.3.1 the final Map, certified and acknowledged for recordation;
- 9.3.2 a duly executed and acknowledged quitclaim deed conveying the Parcel to Buyer;
- 9.3.3 a duly executed and acknowledged Agreement Regarding Use Restrictions;
- 9.3.4 Reciprocal Easement Agreement, with duplicate original signature pages, duly executed and acknowledged by Seller;
- 9.3.5 written instructions to Escrow Holder instructing the Escrow Holder to close the escrow in accordance with the terms of this Article;

9.3.6 any other documents as may be reasonably requested by Buyer or the Escrow Holder as may be necessary to consummate the transaction including, but not limited to, any statement of information requested by the Escrow Holder.

9.4 Deposit of Documents and Money by Buyer. On or before the Closing Date, Buyer shall deposit with Escrow Holder:

9.4.1 the Purchase Price in cash, increased or reduced, as the case may be, by Buyer's share of the closing costs and other prorations;

9.4.2 a duly executed and acknowledged Agreement Regarding Use Restrictions;

9.4.3 Reciprocal Easement Agreement with duplicate original signature pages, duly executed and acknowledged by Buyer;

9.4.4 written instructions to the Escrow Holder instructing the Escrow Holder to close the escrow in accordance with the terms of this Article; and

9.4.5 any other documents or money as may be reasonably requested by the Seller or the Escrow Holder as necessary to consummate the transaction.

9.5 Closing. Escrow shall close by Escrow Holder's performing of the following in the following order:

9.5.1 recording the final Map;

9.5.2 recording the Agreement Regarding Use Restrictions;

9.5.3 recording the Quitclaim Deed conveying the Parcel to Buyer;

9.5.4 recording the Reciprocal Easement Agreement;

9.5.5 payment of the Purchase Price to Seller, less Seller's share of closing costs and prorations as required by this Article; and

9.5.6 obtaining from the Title Company for delivery to Buyer an owner's policy of title insurance in form and with endorsements designated by Buyer in the amount of the Purchase Price showing title to the Parcel vested of record as of the Closing Date in Buyer.

9.6 Closing Costs and Prorations.

9.6.1 Closing Costs. Seller and Buyer shall each pay one half (1/2) of all escrow fees.

Buyer shall pay:

(a) All premium costs and expenses incurred in connection with any policy of title insurance obtained by or on behalf of Buyer;

(b) 50% of any real estate transfer tax;

- (c) Recording fees, if any; and
- (d) The expense of its own counsel.

Seller shall pay:

- (e) 50% of any real estate transfer tax.
- (f) The expense of its own counsel.

Any other closing costs not specified herein shall be divided equally between the parties.

9.7 Prorations and Adjustments. The following shall be prorated and adjusted between Seller and Buyer as of the Closing Date, except as otherwise specified:

9.7.1 It is acknowledged that prior to the Closing Date, the Parcel has not been subject to ad valorem taxes or assessments thus no proration of such taxes is required. The foregoing notwithstanding, Buyer shall remain solely responsible for payment of any Personal Property Taxes or possessory interest taxes for the period prior to Closing;

9.7.2 All maintenance and repair obligations and expenses of Seller pursuant to the Lease shall be prorated effective as of 11:59 p.m. on the day prior to the Closing Date. If the exact amount of any item to be prorated is not known as of the Closing Date, the proration shall be based upon a reasonable estimate thereof made by Seller and Buyer, and, as soon after the Closing as the exact amount of the item is known, the proration shall be adjusted.

9.7.3 There shall be credited against the Purchase Price the amount of any Base Rent paid and attributable to the period from and after the Closing as prorated based upon the number of days in the month in which the Closing occurs.

10. Conveyance of the Future Transfer Land. Seller shall use reasonable efforts to enforce its right to acquire the Future Transfer Land from the Government in accordance with the terms of the EDC MOA and this Agreement. Seller shall not amend the provisions of the EDC MOA that affects the Future Transfer Land without Buyer's prior written consent, which should not be unreasonably withheld, conditioned or delayed. Within twelve (12) months after the Government conveys land which includes the Future Transfer Land, Seller shall convey same to Buyer by means of a new quitclaim deed. It is agreed that the Purchase Price for the Property is adequate consideration for the future conveyance of the Future Transfer Land from Seller to Buyer. Within said twelve (12) month period, Seller and Buyer shall cooperate to effectuate a merger of the Future Transfer Land with the Parcel, by means of a lot line adjustment, or otherwise in accordance with the terms of the Subdivision Map Act (Government Code §§ 66410, et seq.) at Seller's expense.

11. General Provisions.

11.1 Capacities. Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

11.2 Binding on Successors. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Buyer shall have the right to assign this Agreement to a newly formed limited liability company 800 West Tower Avenue, LLC, a Delaware limited liability company (“**Permitted Assignee**”).

11.3 Entire Agreement. This Agreement including all exhibits hereto contains all of the covenants, conditions, and agreements between the parties and shall supersede all prior correspondence, agreements, and understandings both verbal and written. No addition or modification of any term or provision shall be effective unless set forth in writing and signed by both Seller and Buyer.

11.4 Attorney’s Fees. In the event either party to this Agreement institutes an action to interpret or enforce the terms hereof, or to obtain money damages the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as awarded by the court, its attorney’s fees incurred therein. The prevailing party shall include, without limitation, a party who dismisses an action or proceeding for recovery hereunder in exchange for consideration substantially equal to the relief sought in the action or proceeding.

11.5 Brokers’ Commission. Seller and Buyer each represent and warrant to the other that with the exception of Cushman and Wakefield, representing Seller (“**Seller’s Broker**”), neither party has dealt with any other real estate brokers or finders with respect to the transaction contemplated hereby. Each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys’ fees, incurred by the indemnified party in conjunction with any claim or claims of any other broker or brokers to a commission in connection with this transaction as a result of the actions of the indemnifying party. Seller shall pay any commission owing to Seller’s Broker in connection with this transaction.

11.6 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of California.

11.7 Captions. All captions and headings in this Agreement are for the purposes of reference and convenience and shall not limit or expand the provisions of this Agreement.

11.8 Time. Time is of essence of every provision herein contained in this Agreement.

11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all counterparts shall constitute one agreement.

11.10 Notices. All notices, requests or other communications required or permitted to be given in connection with this Agreement shall be in writing and shall be personally delivered (with prompt confirmation by registered or certified mail, postage prepaid), or by commercial courier service, or by registered or certified mail, postage pre-paid, or transmitted by electronic mail addressed to the party whom it is directed at the following addresses, or at such other addresses as may be designated by notice from such party in the manner provided herein:

To Seller: City of Alameda
Alameda City Hall
2263 Santa Clara Ave.
Alameda, CA 94501
Tel: (510) 748-4509
Attn: City Manager

with a copy to: Miller Starr Regalia
351 California Street, Suite 1110
San Francisco, CA 94104
Attn: F. Gale Connor
Email: gale.connor@msrlegal.com

To Buyer: Bladium, Inc.
800 W. Tower Ave.
Alameda, CA 94501
Attn: Brad Shook
Email: brad@bladium.com

With a Copy to: Allen Matkins
3 Embarcadero Center, 12th Floor
San Francisco, CA 94111
Attn: Nancy Lundeen
Email: nlundeen@allenmatkins.com

Notices which are delivered by hand, deposited in the United States Mail in accordance with the terms of this Section or delivered by a commercial courier service shall be deemed received upon actual receipt (unless receipt occurs on a weekend or holiday, in which case notice will be deemed given on the next-succeeding business day) or refusal of receipt during normal business hours. Notices which are delivered by electronic mail shall be deemed to have been delivered on the date sent if sent by 5:00 P.M. Pacific time on any business day, with delivery made after such hours to be deemed delivered on the following business day, provided that the sender does not receive any failure of delivery notice. The foregoing addresses may be changed by notice to the other party as herein provided.

11.11 Escrow Instructions. The parties agree to execute such instructions to Escrow Holder and such other instruments and do such other and further acts as may be reasonably necessary to carry out any of the provisions of this Agreement.

11.12 Construction. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "sections" are the Sections of this Agreement, unless otherwise specifically provided.

11.13 Default. In the event of default by either party hereunder, such party shall have the right to cure such defaults within thirty (30) days after receipt of notice of such default from the other party. In the event the sale of the Property does not close as provided herein because of a default of Buyer that is not cured within the foregoing cure period. Seller may by the giving of written notice to Buyer, terminate all rights of Buyer to purchase the Property. In the event of such termination, Buyer shall be solely responsible for any fees or costs payable to

Escrow Holder or the Title Company. In the event of default by Seller that is not cured within the foregoing thirty (30) day cure period, Buyer may elect one of the following remedies: (a) to terminate this Agreement, in which event (i) Buyer shall be entitled to the return by the Escrow Holder to Buyer of any funds then held by Escrow Holder, (ii) Seller shall be solely responsible for any fees or costs payable to Escrow Holder or the Title Company, and (iii) neither party shall have any further rights or obligations under this Agreement, or (b) to bring a suit for specific performance. Under no circumstances shall Buyer be entitled to actual, special, or consequential damages, including, but not limited to, anticipated profits.

11.14 Laws, Ordinances and Regulations. Buyer shall take title to the Property subject to all laws, ordinances, rules, regulations and codes of all City, county, state and federal authorities relating thereto, including, but not limited to, the restrictions imposed by the Navy Quitclaim Deed, the Declaration of Restrictions, the CRUP, the Alameda Point Master Infrastructure Plan, the Alameda Point Town Center and Waterfront Precise Plan, the Alameda Point Transportation Demand Management Plan and the Environmental Impact Report for Alameda Point and the Mitigation Monitoring and Reporting Program adopted pursuant thereto.

11.15 Authority. Buyer and Seller represent that the person executing this Agreement on their behalf is fully authorized to do so and to bind the respective party to the terms herein.

11.16 Incorporation of Exhibits. **Exhibits A** through **D**, inclusive, attached hereto, are incorporated herein by this reference.

Signatures on following page

IN WITNESS WHEREOF, Seller and Buyer have duly executed this Agreement as of the Effective Date set forth above.

SELLER:

CITY OF ALAMEDA,
a charter city and municipal corporation

By: _____

Jill Keimach
City Manager

Date: _____

BUYER:

BLADIUM, INC.,
a California corporation

By: _____

Name: _____

Date: _____

Approved as to Form

By: _____

Janet Kern
City Attorney

EXHIBIT A

Tentative Parcel Map

EXHIBIT A-1

Draft Conditions of Approval

EXHIBIT A-2

Survey

EXHIBIT B

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

800 West Tower Avenue, LLC
c/o Bladium, Inc.
800 W. Tower Ave.
Alameda, CA 94501

Attn: Brad Shook

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT, entered into as of this ____ day of _____ 2017 ("**Agreement**"), by and between the **CITY OF ALAMEDA**, a charter city and municipal corporation (hereinafter referred to as "**City**") and **800 WEST TOWER AVENUE, LLC**, a Delaware limited liability company, (hereinafter referred to as "**Owner**") is made with reference to the following:

RECITALS:

A. Pursuant to that certain Agreement for Purchase and Sale by and between the City as seller, and Bladium, Inc., a California corporation ("**Bladium**"), as buyer with an effective date of _____, 2017 (the "**PSA**") as assigned by Bladium to Owner, the City has agreed to sell to Owner a certain parcel of real property located at Alameda Point, commonly known as 800 West Tower Avenue, Alameda, California. To create a legal parcel to convey to Owner, the City will file and record a parcel map. In furtherance thereof, the City has prepared parcel map #10600 (the "**Parcel Map**"), a copy of which is attached hereto as **Exhibit A**. The property to be conveyed to Owner at Closing of the PSA is identified on the Parcel Map as Parcel A ("**Owner Parcel**").

B. The Parcel Map includes the reservation of public right of ways for Saratoga Street abutting the western edge of the Owner Parcel and Seaplane North, abutting the southern edge of the Owner Parcel. That approximately 0.64 acre strip identified on the survey (the "**Survey**") attached hereto as **Exhibit B** as the future Seaplane North right of way ("**Seaplane North Property**") is currently used by Bladium for ingress, egress and parking under a lease agreement with the City, dated as of June 16, 2000, as amended (the "**Lease**"), which Lease, as between City and Bladium, was terminated upon closing of the PSA (the "**Closing**"). That approximately 0.95 acre portion of the Owner Parcel abutting Saratoga Street, identified on the Survey as the "**Additional Land Area**" is currently used by the public as a drive aisle, providing access to various properties.

C. It is the intent of the parties hereto that Owner may use the Seaplane North Property for ingress, egress and parking and the Additional Land Area shall remain a drive aisle, available for public use, all as set forth herein below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. RECITALS. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. RECIPROCAL GRANT OF EASEMENTS. The City hereby grants to Owner and Owner's respective employees, agents, representatives, consultants, contractors, customers and invitees (collectively the "**Owner Grantees**") a non-exclusive easement over the Seaplane North Property for ingress, egress and parking, consistent with its historical uses under the Lease. Owner hereby grants to the City, for the benefit of and use by the public (collectively the "**City Grantees**") a non-exclusive easement over the Additional Land Area as a drive aisle, open to the public (each of the easements described in this Section 2 is referred to herein individually as "**Temporary Easement**" and collectively as the "**Temporary Easements**"). The Seaplane North Property and the Additional Land Area are sometimes collectively referred to herein as the "**Temporary Easement**" Areas.

3. TERM OF TEMPORARY EASEMENTS. The term of the Temporary Easements ("**Term**") granted hereby shall commence as of the Closing and shall remain in effect until the earlier of (a) the date upon which the parties agree to terminate the Temporary Easements or (b) the day that is ninety (90) days after that day upon which the City provides a written notice to Owner that the Temporary Easement Areas are required for development of the Saratoga Street and Seaplane North right of ways. It is the intent of the parties that the Temporary Easements reciprocally granted hereby terminate simultaneously.

4. CONSIDERATION. The Temporary Easement granted by the City for use of the Seaplane North Property and the Temporary Easement granted by Owner for use of the Additional Land Area is each deemed to be adequate consideration for the other.

5. RESTRICTIONS. The Temporary Easement Areas are located on property known as the former Naval Air Station Alameda, which was conveyed to the City by the United States of America, acting by and through the Department of the Navy by a quitclaim deed dated June 4, 2013, recorded June 6, 2013 as Series No. 2013-199812 of Official Records in the Office of the County Recorder, Alameda County, California ("**Quitclaim Deed**"). Said Quitclaim Deed conveyed the Temporary Easement Areas subject to certain covenants, conditions, restrictions, easements, and encumbrances as set forth therein. The Temporary Easement Areas are further encumbered by those certain restrictions set forth in the Declaration of Restrictions (Former Naval Air Station Alameda) dated June 4, 2013 and recorded June 6, 2013 as Series No.: 2013-199782 in the Office of the County Recorder of Alameda County ("**Declaration of Restrictions**"). Each party acknowledges receipt of copies of the Quitclaim Deed and Declaration of Restrictions. Use of the Temporary Easement Areas is further restricted by the National Environmental Protection Act Record of Decision ("**ROD**") for the disposal and reuse of the former Naval Air Station Alameda, and all conditions contained therein. The covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances set forth in the Quitclaim Deed, Declaration of Restrictions and the ROD, as they affect the Temporary Easement Areas, are collectively referred to herein as the "**Restrictions**." Any use of the Temporary Easement Areas shall comply with the Restrictions and a failure to so comply shall constitute a default under this Agreement.

6. COMPLIANCE WITH LAWS. The use by Owner of the Seaplane North Property and the City's use of the Additional Land Area shall be in accordance with all applicable laws, ordinances, rules, regulations and codes of the City, county, state and federal authorities, including the Restrictions.

7. HOLD HARMLESS. Owner shall indemnify, defend and hold harmless the City, and its City Council members, officers and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including reasonable attorneys' fees, regardless of the merits or outcome of any claim or suits in any manner connected to use by the Owner Grantees of the Seaplane North Property except if and to the extent caused by the gross negligence or willful misconduct of the City Grantees. The City will indemnify and hold harmless Owner and its officers and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including reasonable attorneys' fees, regardless of the merits or outcome of any claims or suits in any manner connected with the use by the City Grantees of the Additional Land Area except if and to the extent caused by the gross negligence or willful misconduct of Owner or its officers and employees.

8. INSURANCE. Owner shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence form basis with limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence for bodily injury and property damage combined, covering bodily injury and property damage liability. The policy of liability insurance required by this Section shall: (i) contain a cross liability endorsement or separation of insureds clause; (ii) provide that any waiver of subrogation rights or release prior to a loss does not void coverage; (iii) provide that it is primary to and not contributing with, any policy of insurance carried by the City covering the same loss; (iv) provide that any failure to comply with the reporting provisions shall not affect coverage provided to the City, its partners and property managers; and (v) name the City, RiverRock Real Estate Group and such other parties in interest as the City may from time to time reasonably designate to Owner in writing, as additional insureds in an Additional Insured Endorsement. Such additional insureds shall be provided at least the same extent of coverage as is provided to Owner under such policies. The additional insured endorsement shall be in a form at least as broad as endorsement form number CG 20 11 01 96 promulgated by the Insurance Services Office. On or before Closing, Owner shall furnish to the City a certificate of insurance reflecting that the insurance required by this Article is in force, accompanied by an endorsement(s) showing the required additional insureds satisfactory to City in substance and form. Owner shall, from time to time throughout the Term, provide evidence to the City that such insurance requirements remain in effect.

9. PROHIBITION AGAINST TRANSFERS. Except as otherwise set forth in Section 11 below, Owner shall not assign, sublicense, hypothecate, or transfer its Temporary Easement for the use of Seaplane North or any interest therein directly or indirectly, by operation of law or otherwise, except in connection with a sale or conveyance of the Owner Parcel. Any attempt to do so shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, Bladium or any affiliate of Owner may use the Temporary Easement in connection with Bladium's or such affiliate's operation of its business on the Owner Parcel.

10. MAINTENANCE AND ALTERATIONS. During the Term of this Agreement, the City shall maintain the Additional Land Area in its current condition and Owner shall maintain the Seaplane North Property in its current condition. No material changes or alteration shall be made to either the Additional Land Area or Seaplane North Property.

11. LIENS. Except as otherwise expressly set forth herein below, neither party shall permit any mechanic liens or any other liens against the Temporary Easement Areas or any of Owner's interests under this Agreement. Each party shall indemnify, hold harmless and defend the other from any liens and encumbrances arising out of any work performed or materials

furnished by or at the direction of said party. In the event that said party shall not, within ten (10) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, the other party shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien. All such sums paid and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable by the other party on demand. This Section 11 shall not prohibit Owner from recording against the Additional Land Area any deed of trust in connection with any financing obtained by Owner.

12. 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 upon actual delivery (unless delivery occurs on a Sunday or holiday, in which case notice will be deemed given on the next-succeeding business day) or refusal of delivery during normal business hours when sent by United States Certified or Registered Mail, postage prepaid, or by reputable overnight delivery service or personal delivery as follows:

12.1 If to City:

City Manager
City of Alameda
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501-4566
Telephone: (510) 747-4700

12.2 If to Owner:

800 West Tower Avenue, LLC
c/o Bladium, Inc.
800 W. Tower Ave.
Alameda, CA 9501
Attn: Brad Shook
Telephone: (510) 814-4999 ext. 104

12.3 Notwithstanding the addresses provided in subsections 12.1 and 12.2 of this section, any party may from time to time designate an alternate and/or additional address by notice.

13. CONDITION OF TEMPORARY EASEMENT AREAS. The Temporary Easement Areas are delivered in "as is, where is," condition and configuration without any representations or warranties, and subject to all matters of record and all applicable laws, ordinances, rules and regulations.

14. ATTORNEYS' FEES. The prevailing party in any action or proceeding against the other party by reason of a claimed default or otherwise arising out of a party's performance or alleged non-performance under this Agreement, shall be entitled to recover from the other party its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment.

15. AUTHORITY. Each person who signs this Agreement on behalf of a party represents and warrants that he or she has full and complete authority to execute this Agreement and to thereby bind said party to the terms and conditions of this Agreement.

16. NO DEDICATION. Section 2 above notwithstanding, nothing herein contained shall be deemed to be a gift or dedication of the Additional Land Area to the general public or for the general public, it being the intention and understanding of the parties that this Agreement be strictly limited to and for the purposes herein expressed and that any rights the afforded the general public are by and through the authority of the City and shall terminate upon the expiration or earlier termination of the Temporary Easement over the Additional Land Area

17. SEVERABILITY. If any provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement (including the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

18. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties with respect to the subject matter and, except as otherwise provided for in this Agreement, may be terminated prior to its automatic expiration or amended only in a writing signed by both parties.

19. SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided herein, this Agreement, and all of the easements, licenses, rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Agreement shall run with the Owner Parcel and Temporary Easement Areas and shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise), and assigns, and all other persons or entities acquiring any interest in the Owner Parcel or the Temporary Easement Areas, or portion thereof or interest therein, whether by operation of law or in any manner whatsoever.

20. COUNTERPARTS. This Agreement and any amendments hereto may be executed in counterparts, each of which is deemed an original and all of which, when taken together constitute one and the same instrument.

IN WITNESS WHEREOF, the City and Owner have respectively signed and sealed this Agreement as of the day and year first above written.

OWNER:

800 West Tower Avenue, LLC
a Delaware limited liability company

By _____

Name: _____

Title: _____

CITY:

CITY OF ALAMEDA, a charter city and
municipal corporation

By _____

Jill Keimach
City Manager

Approved as to form:

By _____
Janet Kern
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Parcel Map

EXHIBIT B

Survey

EXHIBIT C

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

800 West Tower Avenue, LLC
c/o Bladium, Inc.
800 W. Tower Ave.
Alameda, CA 94501
Attention: Brad Shook

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT REGARDING USE RESTRICTIONS

THIS AGREEMENT REGARDING USE RESTRICTIONS ("**Agreement**") is dated as of _____, 2017, by and between CITY OF ALAMEDA, a charter city and municipal corporation ("**City**"), and 800 WEST TOWER AVENUE, LLC, a Delaware limited liability company ("**Owner**").

R E C I T A L S:

A. The City is the owner of certain improved real property located at 800 W. Tower Avenue as more particularly described and depicted on **Exhibit A** attached hereto and made a part hereof (the "**Parcel**").

B. Concurrently herewith, the City is conveying the Parcel to Owner in accordance with the terms of that certain Purchase and Sale Agreement by and between the City, as seller, and Bladium, Inc. ("**Bladium**"), as buyer, with an effective date of _____, 2017 (the "**PSA**"), as assigned by Bladium to Owner. Owner's fee simple interest in the Parcel is referred to herein as the "**Benefitted Property**".

C. Pursuant to the terms of the PSA, for good and valuable consideration, the City has agreed and does impose upon that certain real property commonly known as Alameda Point, as more particularly described in **Exhibit B** attached hereto and made a part hereof (the "**Burdened Property**") certain use restrictions.

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

1. Maintenance Standards. As consideration for the granting of the Use Restrictions (as defined below), Owner agrees to maintain, or cause to be maintained, the Building and the Property (including any in-line hockey, arena soccer, fitness center and rock climbing facilities, restrooms and commons use facilities, if any) in good condition and repair, subject only to normal wear and tear. Such maintenance obligations also include the surface of all parking areas and drive aisles, all surface and storm lateral drainage systems, sanitary sewer lateral connections and exterior lighting fixtures (collectively, the "**Maintenance Standards**"). Owner's compliance with the Maintenance Standards shall be judged by a comparative standard with the custom and practice generally applicable to comparable high quality sports, recreational and fitness facilities with comparable prices for similar services in Alameda and Contra Costa Counties.

2. Use Restrictions. The Burdened Property shall not be used for the operation of a facility or business that includes any of the following activities: in-line hockey, arena soccer, fitness center and/or rock climbing (collectively the “**Use Restrictions**”).

3. Exceptions. The Use Restrictions shall not apply to: (i) a fitness center in a hotel that is exclusively for the use of its guests; (ii) a fitness center in an apartment or condominium building or complex that is exclusively for the use of its residents and guests; (iii) a fitness center in premises owned or leased by a single company that is exclusively for the use of such company’s employees and guests, including residents of assisted living facilities and employees of physical therapy facilities; (iv) a fitness center operated by a tenant not to exceed 2,000 usable square feet with respect to such tenant and its affiliates in a commercial building or complex for a not to exceed cumulative amount of 6,000 square feet within said building or complex with respect to all tenants that operate a fitness center; (v) public parks, including the 44-acre sports and recreational complex to be constructed on the Public Benefit Conveyance parcel of Alameda Point, whether operated by the City or a private party; or (vi) facilities owned and operated by the City of Alameda or by public or nonprofit schools (excluding any predominately sports training academies, sports camps or similar sports-oriented facilities); or (vii) hospitals, assisted living facilities, physical therapy or other physical rehabilitation facilities, owned or operated by other institutional governmental entities.

4. Restrictions Run with the Land. The Use Restrictions contained in this Agreement shall run with the Burdened Property and shall inure to the benefit of the Benefitted Property.

5. Breach. In the event of a breach or threatened breach of any of the terms, covenants, restrictions or conditions hereof, the non-breaching party shall be entitled forthwith to full and adequate relief by injunction and/or all such other available equitable remedies from the consequences of such breach.

6. Term. All of the Use Restrictions imposed by, and the rights granted Owner in this Agreement shall expire on the earlier of (a) the date Owner conveys, transfers, or alienates (whether voluntarily or involuntarily) its fee simple interest in the Benefitted Property, other than to a trustee under a deed of trust to secure a loan, except in the event of a foreclosure which shall terminate such Use Restrictions, or (b) June 30, 2035. Upon the request of the City, or any successor(s) in interest, Owner, or any successor in interest, shall execute, in a recordable format, such instrument(s) as may reasonably be requested for purposes of confirming the removal of the Use Restrictions from the Burdened Property, or any part(s) or parcel(s) thereof.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and Owner.

8. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument.

CITY:

CITY OF ALAMEDA,
a charter city and municipal corporation

OWNER:

800 West Tower Avenue, LLC
a Delaware company

By: _____
Jill Keimach
City Manager

By: _____
Name: _____

Date: _____

Approved as to Form

By: _____
Janet Kern
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

Description of Benefitted Property

EXHIBIT B

Description of Burdened Property

EXHIBIT D

[CITY OF ALAMEDA LETTERHEAD]

DATE: _____, _____, 2017

800 West Tower LLC
c/o Bladium, Inc.
800 W. Tower Avenue
Alameda, CA 94501
Attn: Brad Shook

**Re: Alameda Point Potable Water System Advisement and
Acknowledgement – Building 40**

Dear Brad:

This letter is an important advisement regarding the Alameda Point Potable Water System (“Water Supply System”) and planned improvements. This letter is delivered in anticipation of the purchase of 800 W. Tower Avenue, Building 40, (the “Property”) by 800 West Tower Avenue LLC (“Buyer”)

Alameda Point’s Water Supply System was designed, installed and operated by the Navy. Water was supplied by East Bay Municipal Utility District (“EBMUD”). However, the Water Supply System at Alameda Point was neither built, nor maintained to the standards of EBMUD. EBMUD does not own the Water Supply System, and the Water Supply System does not meet EBMUD standards. By purchasing property at Alameda Point, Buyer will not automatically become a customer of EBMUD and until the Water Supply System is brought up to EBMUD standards, Buyer cannot become an EBMUD customer, nor will Buyer have any legal access to water from EBMUD. Until such time as the Water Supply System is brought up to EBMUD standards, water will be provided by the City by means of the City’s current water supply system. Buyer will be charged and billed by the City for its water usage at a rate no greater than the rate paid by the City to EBMUD, and may bill Buyer at a lower rate.

The City of Alameda is committed to replacing the water infrastructure at Alameda Point. To that end, the City has entered into that certain Ten-Year Water Infrastructure Agreement Between East Bay Municipal Utility District and City of Alameda Regarding Alameda Point (the “Water System Infrastructure Agreement”), so that at a point in the future the Alameda Point Water Supply System will meet all requirements set forth in EBMUD’s Regulations Governing Water Service and Buyer will be able to become a customer of EBMUD. These requirements include the establishment of proper frontage on a District water main, compliance with all water efficiency requirements, and payment of certain fees. The City will be responsible for an amount not to exceed \$526,000 for

System Capacity Charges (“SCC”) and an amount not to exceed \$124,000 for Wastewater Capacity Fees (“WCF”) assessed by EBMUD necessary for establishing initial EBMUD water services to the Property at the time the SCC and WCF are due to EBMUD. Buyer shall be responsible for the payment of any other fees and costs which may be assessed by EBMUD, including any SCC or WCF in excess of the above-referenced amounts.

Please indicate below, by signing and dating the original of this letter, that you have read and understood the contents of this letter. Please retain a copy of this letter for your files and return the signed and dated original to us.

Very truly yours,

City of Alameda, a municipal corporation

By: _____

Jill Keimach
City Manager

* * * * *

I have read and understand the contents of the above letter concerning Alameda Point’s Potable Water System.

800 WEST TOWER AVENUE, LLC
a Delaware limited liability company

DATE

By: _____

Its: _____

* * * * *

I, the undersigned, hereby certify that the foregoing resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 19th day of September, 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 20th day of September, 2017.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Janet C. Kern, City Attorney
City of Alameda