

CITY OF SAN DIEGO
USE AND OCCUPANCY AGREEMENT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY AGREEMENT ("Agreement") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **INTERCAM FINANCIAL SERVICES**, a California corporation ("LESSEE"), to be effective as of **May 1, 2015** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall be defined as follows:

1.1 **"Monthly Rent"** shall mean monetary consideration to CITY as follows:

1.1.1 Year One - \$3,515.00 per month;

1.1.2 Year Two - \$3,620.00 per month; and

1.1.3 Year Three - \$3,729.00 per month.

1.2 **"Premises"** shall mean that certain CITY-owned real property, commonly known as right-of-way within the Border Village Road lying adjacent, of the west boundary of 360-399 E. San Ysidro Road, San Diego, CA 92173, consisting of approximately 9,972 square feet and more particularly depicted in **Exhibit A: Premises**, attached hereto.

1.3 **"Administrative Fee"** shall mean a one-time, non-refundable Agreement processing fee in the amount of Seven Hundred Twenty-Seven Dollars (\$727).

1.4 **"Allowed Use"** shall mean the exclusive use of the Premises solely for parking for LESSEE's leased Premises at 360-390 E. San Ysidro Boulevard, San Diego, CA 92173.

1.5 **"LESSEE's Address for Notices"** shall be: **Mr. Raul Hernandez**
Intercam Financial Services
364 E. San Ysidro Blvd.
San Diego, CA 92173

1.6 **"Security Deposit"** shall mean an amount equal to Thirty Five Hundred Fifteen Dollars (\$3,515) of which Two Thousand Nine Hundred Seventeen Dollars (\$2,917.00) is currently held on account. Five Hundred Ninety-Eight Dollars is the balance owed upon execution of this Agreement.

1.7 **"Term"** shall mean month-to-month for up to three (3) years, commencing on the Effective Date.

2. **Occupancy.** Subject to the terms and conditions of this Agreement, CITY hereby grants permission to LESSEE and its officers, employees, agents and contractors to enter upon and occupy the Premises solely for the Allowed Use.
3. **Use of Premises.** LESSEE may use the Premises solely for the Allowed Use and for no other purpose whatsoever without CITY's prior written consent in each instance. LESSEE shall continuously occupy and use the Premises throughout the Term.
4. **Governmental Approvals.** By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to LESSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance or restoration of the Premises. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
5. **CITY's Consent, Discretion.** CITY's consent or approval under this Agreement shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
6. **Term.** The Term shall not exceed three (3) years unless authorized by the San Diego City Council.
7. **Non-obligation for Termination of Lease.** The parties hereto specifically agree that the Agreement may be revoked at will by CITY, in its sole discretion: (a) if for LESSEE's breach of any of LESSEE's obligations under this Agreement; and (b) if for CITY's convenience, upon thirty (30) days prior written notice delivered to LESSEE. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by LESSEE as a result of such revocation or the termination of this Agreement.
 - 7.1 **LESSEE's Waiver.** LESSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's revocation or termination of this Agreement.
8. **No Holdover.** If LESSEE continues to occupy the Premises after the expiration or earlier termination of this Agreement, such occupancy shall neither constitute a renewal or extension of this Agreement, nor give LESSEE any rights in or to the Premises. Subject to the Late Removal provisions of this Agreement, if LESSEE continues to occupy the Premises after the expiration or earlier termination of this Agreement, CITY may demand and receive from LESSEE rent for the Premises calculated on a per diem basis using up to two (2) times the fair market rental rate to be determined as of the date of the expiration or

termination of this Agreement by a qualified CITY staff, selected by CITY in its sole discretion. CITY's acceptance of such rent shall neither constitute a renewal or extension of the license, nor give LESSEE any rights in or to the Premises.

9. Termination. LESSEE may terminate this Agreement for any reason upon thirty (30) days prior written notice delivered to CITY.
10. Restoration of Premises. Except as otherwise provided in this Agreement, prior to the expiration or as soon as practicable after termination of this Agreement, LESSEE shall restore the Premises to its condition on the Effective Date, normal wear and tear excepted.
11. Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, Agreements and licenses, easements and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, Agreements and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
12. Administrative Fee. LESSEE shall pay the Administrative Fee to CITY upon execution of this Agreement.
13. Rent. LESSEE shall pay the Monthly Rent in advance on the first day of each month during the Term. If the Effective Date is not the first day of a calendar month, then the Monthly Rent payable for the partial month at the beginning of the Term shall be prorated on a per diem basis.
14. Invoicing Courtesy. CITY may invoice LESSEE for amounts payable under this Agreement. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Agreement on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Agreement.
15. Place of Payment. All payments to be paid by LESSEE under this Agreement shall be made payable to "City Treasurer" and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza

1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

16. Delinquent Payments. If LESSEE fails to make any payment under this Agreement when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Agreement may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
17. Security Deposit. Upon execution of this Agreement, LESSEE shall deliver the Security Deposit to CITY as security for the performance of LESSEE's obligations under this Agreement. CITY shall not be liable to LESSEE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the Security Deposit, but shall be and remain the property of CITY. All or any portion of the Security Deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Agreement by LESSEE, or for expenses incurred by CITY as a result of LESSEE's breach or default of this Agreement. LESSEE shall maintain the Security Deposit throughout the Term. Notwithstanding any other provision of this Agreement to the contrary, if LESSEE fails or refuses to deposit or maintain the Security Deposit as required by this Agreement, CITY may terminate this Agreement immediately upon such breach. Upon such termination, LESSEE shall immediately cease its use of the Premises and commence and diligently pursue the removal of its property from the Premises.
 - 17.1 Utilization. If CITY utilizes all or any portion of the Security Deposit, then upon ten (10) days prior written notice, LESSEE shall reimburse the Security Deposit to the full required amount.

- 17.2 Increase. Upon thirty (30) days prior written notice by CITY, LESSEE shall deliver to CITY such additional funds as CITY may reasonably require to adequately secure LESSEE's obligations under this Agreement.
- 17.3 Return. Provided LESSEE is not in breach or default of this Agreement, CITY shall return the Security Deposit, or any balance thereof, to LESSEE within sixty (60) days after the expiration or termination of this Agreement.
18. Maintenance of the Premises. LESSEE shall maintain the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. LESSEE shall keep the Premises free and clear of rubbish, debris, litter, weeds and brush to CITY's reasonable satisfaction. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises.
19. Entry and Inspection. CITY may at all times enter and inspect the Premises.
20. Utilities. LESSEE shall order, obtain and pay for all utilities and all utility service and installation charges in connection with its use of the Premises. All newly-installed utilities shall be subject to CITY's prior approval and, at CITY's option, installed underground.
21. Improvements/Alterations. LESSEE shall not construct any improvements, structures or installations on the Premises, and shall not alter the Premises without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Premises.
22. Improvements and Personal Property.
- 22.1 Improvements. Upon expiration or termination of this Agreement, LESSEE shall remove any and all improvements, fixtures, structures and installations or additions to the Premises that were constructed or installed on the Premises by LESSEE ("LESSEE Improvements"). LESSEE shall, at LESSEE's sole cost and expense, remove LESSEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Agreement. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of LESSEE Improvements as required by this Agreement. If LESSEE fails to remove LESSEE Improvements as required, CITY may, at its option, remove them at LESSEE's sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any LESSEE Improvements as of the expiration or earlier termination of this Agreement, at no cost to CITY. If CITY elects to assume ownership of all or any LESSEE Improvements, LESSEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to effect such transfer of ownership to CITY.

- 22.2 Personal Property. LESSEE shall remove from the Premises all LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Agreement. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- 22.3 Post-Agreement License. CITY grants permission to LESSEE to enter upon the Premises, under the same terms and conditions of this Agreement, after the expiration or earlier termination of this Agreement solely for the purpose of removing LESSEE Improvements and LESSEE's personal property as provided by this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.
- 22.4 Late Removal. Notwithstanding any provision of this Agreement to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Agreement needed to remove LESSEE Improvements or personal property as required by this Agreement, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Agreement.
- 22.5 CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Agreement, CITY shall have the first right to acquire such personal property.
23. Insurance. LESSEE shall obtain and maintain throughout the term of this Agreement, at its sole cost and expense, all insurance required by this Agreement. LESSEE's liabilities under this Agreement, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Agreement. Notwithstanding any provision of this Agreement to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Agreement. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):
- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death,

and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

- (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement.
- (c) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees who are subject to this Agreement, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- (d) Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the Premises.
- (e) Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.
- (f) Severability of Interest. Each policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- (g) Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State

of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

- (h) Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- (i) Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- (j) Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Use.
- (k) Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- (l) Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Use of the Premises under this Agreement or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

24. Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or LESSEE's occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.
25. Compliance with Laws. LESSEE shall at all times in its use, occupancy, maintenance, and restoration of the Premises comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at LESSEE's sole cost and expense. At least annually, LESSEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspections, if applicable).
26. Permits & Approvals. LESSEE, at LESSEE's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation from CITY.
27. California Public Records Act. CITY shall determine, in its sole discretion, whether this Agreement or information provided to CITY by LESSEE pursuant to this Agreement is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA. Upon CITY's request, LESSEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely, in CITY's sole discretion, for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs

related thereto, including without limitation reasonable attorney fees and costs.

- 27.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of this Agreement or LESSEE information requested pursuant to the CPRA. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS AGREEMENT OR ANY LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
28. No Discrimination. LESSEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, ethnicity, age, marital status or disability in LESSEE's use of the Premises, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
29. Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all of LESSEE's contracts for work related to this Agreement so that such provisions will be binding upon each of LESSEE's contractors. LESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.
30. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Agreement. LESSEE's failure to maintain equal benefits shall be a material breach of this Agreement.
31. Disabled Access Compliance. LESSEE shall comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

- (a) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
- (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE;
- (c) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- (d) Where required by law, LESSEE shall, at LESSEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Premises which deny access to disabled persons; and
- (e) LESSEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

LESSEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. LESSEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Agreement.

- 32. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
- 33. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Agreement and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 34. LESSEE's Risk. LESSEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with LESSEE's use or occupancy of the Premises and any damages to the improvements on, under or in the vicinity of the Premises resulting directly or indirectly thereby.
- 35. No Nuisance. LESSEE shall not use the Premises in any manner which creates a nuisance

or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.

36. Assignment and Sublicense. LESSEE shall not assign or sublicense any rights granted by this Agreement or any interest in this Agreement without CITY's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this Agreement.
37. Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LESSEE's cost.
38. Encumbrances. LESSEE shall keep the Premises and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with LESSEE'S use or occupancy of the Premises. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property in connection with such encumbrances and/or liens, including without limitation LESSEE'S failure or the failure of any contractor or subcontractor hired by LESSEE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.
39. Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the Premises during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by LESSEE, or levied by reason of LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation licensing and permitting costs and fees. LESSEE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on that interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
40. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations, obtain all required Agreements from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of

container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- 40.1 Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- 40.2 Hazardous Substance. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 40.3 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- 40.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and Agreements to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Agreement. Upon CITY's request, LESSEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 40.5 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 40.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency in compliance with California Code of Regulations Title 19 and all other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after

receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

41. Water Quality Assurances. LESSEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (including the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Agreement (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

- (a) Stormwater Management. LESSEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by the City of San Diego, in its governmental capacity, under its Stormwater Management Program.

42. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).
43. Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of LESSEE's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
44. Cumulative Remedies. CITY's rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
45. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
46. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Agreement.
47. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
48. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Agreement and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Agreement shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Agreement is binding upon such party in accordance with its terms.
49. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall

Constitute one and the same instrument.

50. Notices. Any notice required or agreed to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to LESSEE at LESSEE's Address for Notices, and to CITY as follows:

THE CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

51. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.
52. Acceptance of Premises. By signing this Agreement, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Allowed Use. LESSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises or its suitability for the Allowed Use, and that LESSEE is relying solely on its own and independent inspections, tests, investigations and observations of the Premises in entering into this Agreement. LESSEE accepts the Premises in its current condition. LESSEE acknowledges and agrees that unless set forth in this Agreement, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Premises at any time either prior to, on or after the Effective Date. LESSEE shall not hold CITY responsible for any defects in the Premises. LESSEE accepts and assumes all risk of harm to all persons and property, including without limitation LESSEE's employees, from any defects in the Premises, and shall be solely responsible therefor.
53. Defaults and Remedies.
- 53.1 Default. LESSEE shall be in default of this Agreement if any of the following occurs:
- 53.1.1 LESSEE fails to make any payment required under this Agreement when due;
- 53.1.2 LESSEE breaches any of its obligations under this Agreement, other than those requiring payment to CITY, and fails to cure the breach within thirty

(30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

53.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

53.1.4 LESSEE is adjudicated a bankrupt; or

53.1.5 LESSEE makes a general assignment for the benefit of creditors.

53.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Agreement and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

53.2.1 the worth at the time of any unpaid rent that was due at the time of termination;

53.2.1 the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;

53.2.2 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 award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;

53.2.3 any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and

53.2.4 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 53.2.1 and 53.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 53.2.3, above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Agreement.

53.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Agreement, and the same mortgagee or

beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- 53.3.1 CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- 53.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and,
- 53.3.3 CITY may terminate this Agreement as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Agreement. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Agreement will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Agreement with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Agreement.

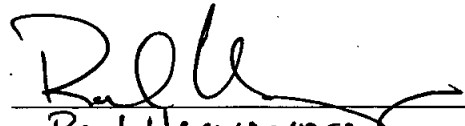
- 53.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Agreement shall continue in effect as long as CITY does not terminate this Agreement, and CITY may enforce all of its rights and remedies under this Agreement, including without limitation the right to recover rent as it becomes due, plus damages.

53.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Agreement. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

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IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

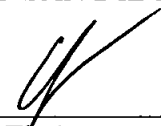
INTERCAM FINANCIAL SERVICES, a California corporation

BY: 

Name: RAUL HERNANDEZ

Title: PRESIDENT

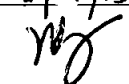
THE CITY OF SAN DIEGO, a California municipal corporation

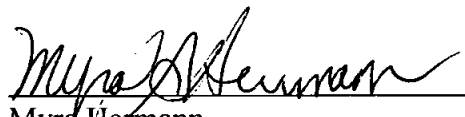
BY: 

Cybele Thompson, CCIM
Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

This project is exempt pursuant to the California Environmental Quality Act Section 15301 (Existing Facilities).

Date: 9/16/15


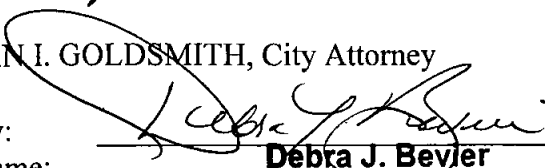
By: 

Name: Myra Hermann

Title: Senior Planner, Planning Department

Approved as to form this 28 day
of Sept, 20 15.

JAN I. GOLDSMITH, City Attorney

By: 

Name: Debra J. Bevier

Title: Deputy City Attorney

Exhibit A: Premises

Exhibit A: Permit Area

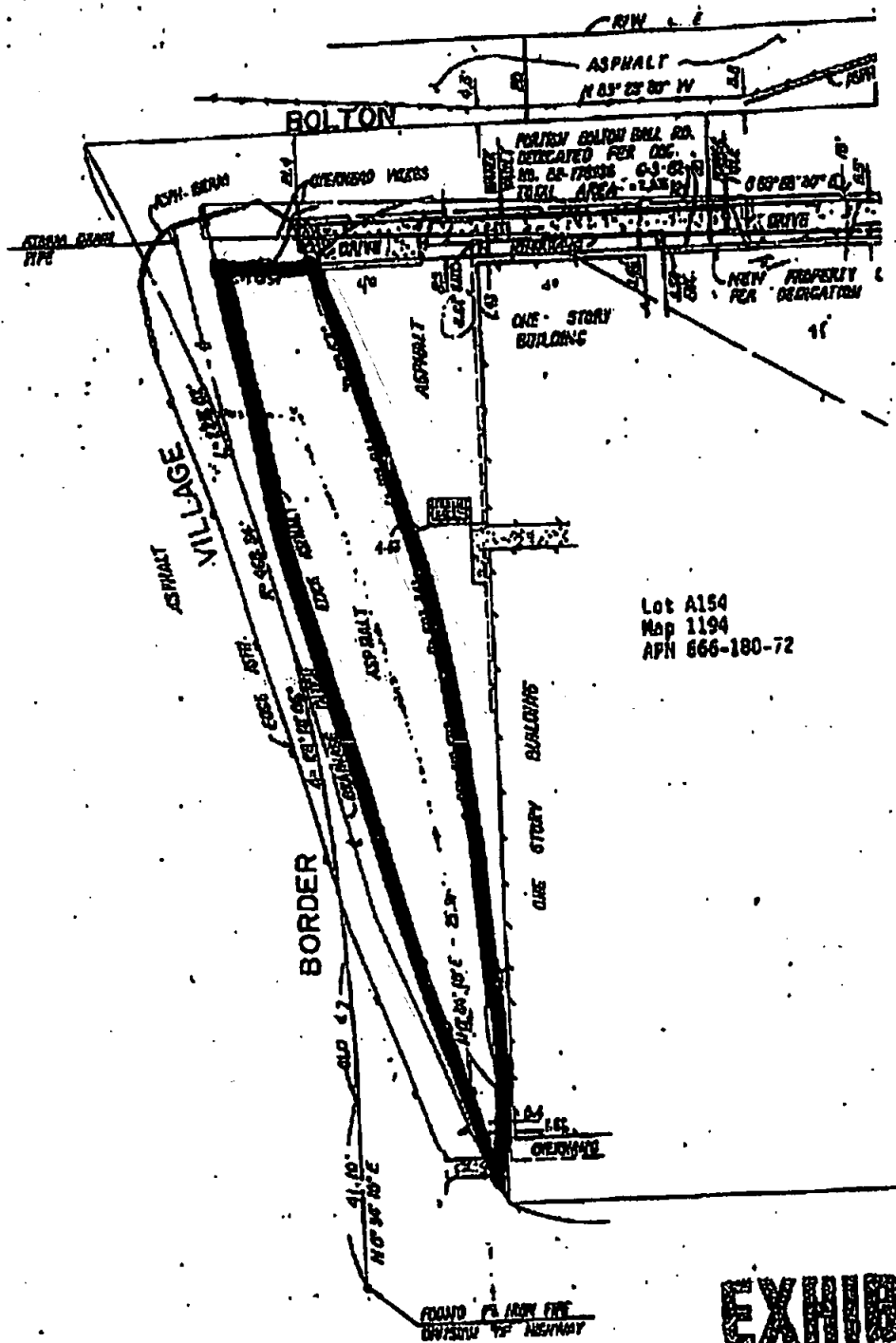


EXHIBIT A



THE CITY OF SAN DIEGO

Date of Notice: August 31, 2015

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT
Internal Order or WBS No. N/A

PROJECT NAME/NUMBER: USE AND OCCUPANCY PERMIT – Intercam Financial Services

COMMUNITY PLAN AREA: San Ysidro

COUNCIL DISTRICT: 8

LOCATION: City-owned property located at 360-399 E. San Ysidro Boulevard, San Diego, CA 92173

PROJECT DESCRIPTION: Use and Occupancy Permit for the nonexclusive use of the Permit Area solely for the purpose of providing parking in connection with PERMITTEE's adjacent business operations. The days and hours of operation and the use of the Permit Area will be PERMITTEE'S normal business hours. This permit requires the applicant to implement Stormwater Best Management Practices and does not allow any person to clean vehicles or perform any mechanical work on-site.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego MAYOR-APPOINTED
DESIGNEE

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: CEQA Section 15301 (Existing Facilities) allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use. This permit will allow use of a limited area where no environmental impacts would result; and where none of the exceptions listed in CEQA Guidelines Section 15300.2 would apply.

PROPERTY AGENT:
MAILING ADDRESS:
PHONE NUMBER:

Robert Zolezzi
1200 3RD Avenue, Suite 1700
San Diego CA 92101
619- 236-6264

On August 31, 2015 the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**September 15, 2015**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

CITY ATTORNEY
15 SEP 23 PM 2:32
CIVIL DIVISION

CITY ATTORNEY
15 SEP 17 AM 10:25
CIVIL DIVISION