

REPORT**DATE ISSUED:** February 3, 2009**REPORT NO:** HCR 09-024**ATTENTION:** Chair and Members of the Housing Commission
For the Agenda of February 20, 2009**SUBJECT:** K&A Pacific, Inc. Leasing Arrangements

REQUESTED ACTION: Approval by the Housing Commission Board and the Housing Authority (HA) of the proposed leasing arrangement between the San Diego Housing Commission (HC) and K&A Pacific, Inc. to lease space at the Smart Corner building.

STAFF RECOMMENDATION: That the President & Chief Executive Officer (CEO) or designee be authorized to execute lease documents between HC and K&A Pacific, Inc., for retail space at the Smart Corner building located at 1122 Broadway, on terms set forth in this report and Attachment 1 and in a lease form as approved by General Counsel to the Commission. The lease would have a four (4)-year initial term and two (2) additional four (4)-year options to renew.

BACKGROUND: On July 23, 2003 and July 29, 2003 the HC Board and the HA, respectively, approved a Purchase and Sale Agreement (PSA) between the HC and Lankford & Associates, Inc., for the HC's new office facility located at 1122 Broadway in San Diego. Further, the HA delegated responsibility for all cardinal issues related to the acquisition of the office facility to the HC.

On November 1, 2006, the HC took title to the parking garage and office building on time and on budget. The HC occupies three of the five floors in the Smart Corner building. The ground floor is available for lease to retail businesses and the second floor is available for lease to other organizations. The HC retained the leasing services of CB Richard Ellis to negotiate leasing arrangements with potential tenants.

DISCUSSION:

Attachment 1 is a term sheet for the proposed lease between the HC and K&A Pacific, Inc. K&A Pacific, Inc. will lease approximately 1,825 square feet of space on the first floor of the Smart Corner building located at 1075 11th Avenue in San Diego and will operate a Cricket Wireless cellular store. The initial term of the lease will be for four (4)-years; the lease includes two (2) successive options to extend the term of the lease for four-(4) years for each option for a total potential lease term of twelve (12)-years.

Space is being rented on a "triple net" basis, meaning that, in addition to base rent, K&A Pacific, Inc., will also pay a share of the ongoing operating costs of the building (janitorial service, utilities, taxes). The per square foot (P.S.F.) rent for the first year (1) of the lease term will be \$2.00 (on a triple net basis), equaling a monthly rent of \$3,650 (\$43,800 annually) plus applicable common area charges, hourly charge for after hours HVAC usage, and Possessory Interest Taxes. During the term of the lease and all option periods, the base rent shall increase by two percent (2%) annually. "Triple net" charges shall be capped at \$.50 for the first two (2)-years of the initial term of the lease. Thereafter, triple net

charges shall increase annually by the change in Consumer Price Index (CPI) or three percent (3%) whichever is less.

The HC shall deliver the premises to K&A Pacific, Inc., in its current "as is" condition on the lease commencement date and will provide no tenant improvement allowance.

The obligation to pay rent shall commence three (3) months from the lease commencement date. In addition, K&A Pacific, Inc. shall receive free rent in months 25, 26, and 37, including "triple nets." K&A Pacific, Inc. shall have a one time right to terminate the Lease between months 18 through 24 of the initial lease term by giving written notice to the HC of its desire to cancel. If K&A Pacific, Inc. elects to terminate its lease, K&A Pacific, Inc. shall pay three (3) months rent to the HC.

K&A Pacific, Inc., is required to provide commercial general public liability and property damage insurance of not less than \$2,000,000 per single occurrence and the HC and the HA of the City of San Diego will be named as additional insureds (with cross liability endorsements).

The lease allows K&A Pacific, Inc., the use of up to four (4) unreserved parking spaces at monthly market rates throughout the term of the lease and K&A Pacific Inc. shall also have the right to purchase parking validations for customers at the then monthly market rate.

The proposed lease terms have been negotiated by the HC's broker CB Richard Ellis, Duhs Commercial (representing K&A Pacific, Inc.) and HC staff. The HC is requesting that authority to approve the form of the lease, provided that it meets the deal points outlined in Attachment 1, be delegated to the President & CEO and the General Counsel of the HC.

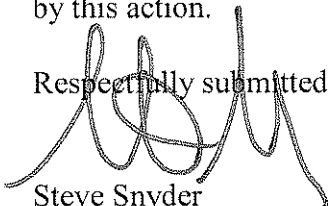
FISCAL CONSIDERATIONS:

No impact as tenant will not be provided with a tenant improvement allowance. The premises shall be delivered to K&A Pacific, Inc., in its current "as is" condition.

ENVIRONMENTAL REVIEW:

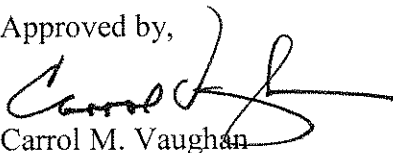
This action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to State CEQA Article 19 Guidelines, Section 15301 (existing facilities). This activity is also exempt from National Environmental Policies Act (NEPA) since no federal funds are implicated by this action.

Respectfully submitted,



Steve Snyder
Director of Development
& Asset Management

Approved by,



Carrol M. Vaughan
Executive Vice President &
Chief Operating Officer

Attachment 1: K&A Pacific, Inc. Letter of Intent

Hard copies are available for review during business hours at the Housing Commission offices at 1122 Broadway, San Diego, CA 92101, Main Lobby and at the Office of the City Clerk, 202 C Street, San Diego, CA 92101. You may review complete docket materials on the San Diego Housing Commission website at www.sdhc.org.

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February 4, 2009

K&A Pacific, Inc.
c/o Mr. Craig Duhs
Duhs Commercial
3026 University Avenue, Suite B
San Diego, CA 92104

**RE: COUNTER PROPOSAL
LETTER OF INTENT TO LEASE, "SMART CORNER"
SAN DIEGO, CALIFORNIA 92101**

Dear Craig:

In response to your email today, the Lessor (San Diego Housing Commission) would be willing to present the following summary of Terms to its Board Committee with respect to the Lessor's building at 1075 11th Avenue (the "Building"). Lessor does not own or control the building, including without limitation the ground floor retail space, located directly northeast (across the trolley tracks) from 1075 11th Avenue, which is commonly known as 1080 Park Blvd. This letter is not intended to be a binding contract, a lease or an offer to lease, but is intended only to provide the basis for negotiations for lease documents between Lessor and Lessee.

1. LESSEE:

K&A Pacific Inc, (please provide financials for Lessor's review and approval). A personal guaranty will be required.

2. PERMITTED USES:

Lessee shall have the right to use the Premises for purposes of a cellular store operating a Cricket Wireless and retail sales and other ancillary purposes associated therewith.

Retail 24/7.

© 2008 CB Richard Ellis, Inc. The information above has been obtained from sources believed reliable. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty or representation about it. It is your responsibility to independently confirm its accuracy and completeness. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property. The value of this transaction to you depends on tax and other factors which should be evaluated by your tax, financial and legal advisors. You and your advisors should conduct a careful, independent investigation of the property to determine to your satisfaction the suitability of the property for your needs.
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Lessee shall not to use all or any portion of the premises in any manner that would violate the 7-Eleven uses and Lessee agrees to indemnify Lessor for any violation by the same. A copy of said use clauses shall be provided in forthcoming lease document. Landlord shall not lease other space in the "Building" to another cellular store.

3. PREMISES:

Approximately 1,825 rentable square feet.

4. BASE MINIMUM RENT:

\$2.00 per SF/month NNN plus applicable common area charges, (see Section 5 herein) and applicable Possessory Interest Taxes (see Section 13 herein). Lessee's Base Minimum Rent shall increase annually by a fixed two percent (2%) including option periods.

5. TAXES, INSURANCE AND COMMON AREA MAINTENANCE COSTS:

Lessee shall pay its pro-rata share of the insurance, utilities and common area maintenance costs. (Landlord to provide for tenant review, prior to lease execution). Said charges shall commence upon lease commencement. The NNN shall be capped at \$.50 for the first two (2) years of the term of the lease, then they shall increase annually by the change in CPI or three percent (3%), whichever is less.

6. LEASE COMMENCEMENT:

The lease commencement date shall be approximately April 1, 2009 or upon Lessor's delivery of space, (including Landlord's removal of contingencies) whichever is later. Tenant shall have early occupancy if a lease is signed prior to April 1, 2009 and all contingencies are removed.

7. RENT ABATEMENT:

The obligation to pay rent shall commence three (3) months from the lease commencement date. In addition, Lessee shall receive free rent in months 25, 26 and 37, including NNN.

8. TERM:

Initial lease term shall be four (4) years. Lessee shall have one time right to terminate the Lease between months 18 through 24 or the initial term by giving written notice to Landlord of its desire to cancel. . If Lessee elects to terminate the Lease, Lessee shall pay three (3) months rent. If Lessee fails to give written notice during months 18 through 24, said Termination Right shall be null and void.

9. OPTIONS:

Lessee shall be given the option to renew said lease for two (2) additional four (4) year terms. Rent shall increase in accordance with Paragraph 4 herein.

10. SECURITY DEPOSIT/ADVANCE RENTAL:

Upon Lease execution, Lessee shall pay an amount equal to One (1) month's Base Minimum rent as a Security Deposit to be held by Lessor throughout the term of the Lease and any options should Lessee choose to exercise such. In addition, Lessee agrees to pay the first month's rent upon lease execution.

11. LESSEE IMPROVEMENTS:

It is anticipated that Lessor shall deliver the Premises to Lessee in its current "as is" condition (including doors) on the lease commencement date concurrently with Lessor's execution and delivery of the Lease.

Lessee, at Lessee's sole cost and expense, shall apply for and obtain any and all final and non appealable permits and/or licenses (including but not limited to the building permits, and all other necessary approvals of the City of San Diego, the Centre City Development Corporation and any other applicable government entities) that are required by applicable laws to enable Lessee to legally construct the Lessee

improvements (if any) and conduct its business at the Premises.

12. SIGNAGE:

Lessor shall allow Lessee the right to place signage on the premises for maximum visibility consistent with the balance of the Lessees in the Building and the maximum allowable per city codes in accordance with Lessor's sign criteria. All signage shall be done at the sole cost of the Lessee, with all proper permits and in accordance to all applicable municipal codes and regulations. Lessee shall submit to Lessor proposed signage for Lessor approval prior to installation.

13. POSSESSORY INTEREST TAXES:

Lessee shall be liable for and agrees to pay all taxes levied upon personal property leasehold improvements, additions, alterations and fixtures including trade fixtures and inventory locations on the Premises. Lessee shall pay said taxes directly to the respective taxing authorities.

14. UTILITIES:

Lessee shall be responsible for all separately metered utilities and an hourly charge for after hours HVAC usage.

15. PARKING:

Lessor shall provide Lessee with up to four (4) unreserved parking spaces at monthly market rates throughout the term of the Lease. In addition, Lessor shall sell Lessee 15-minute parking validations at the then monthly market rates.

16. BROKERAGE:

Lessor and Lessee acknowledge that CB Richard Ellis, Inc. represents Lessor and that Duhs Commercial represents Lessee in this proposed transaction. CB Richard Ellis, Inc. and Duhs Commercial shall split the leasing commission per a separate listing agreement between Lessor and CB Richard Ellis, Inc.

17. CONTINGENCIES:

The lease of the premises from Lessor to Lessee is contingent upon: (i) Lessor reviewing and approving Lessee's financial statements; (ii) the parties agreeing to and executing a Lease; and (iii) the final Lease agreement is approved by the Board of Commissioners of the San Diego Housing Commission and its counsel and the Housing Authority and the City of San Diego.

THIS LETTER/PROPOSAL IS INTENDED SOLELY AS A PRELIMINARY EXPRESSION OF GENERAL INTENTIONS AND IS TO BE USED FOR DISCUSSION PURPOSES ONLY. THE PARTIES INTEND THAT NEITHER SHALL HAVE ANY CONTRACTUAL OBLIGATIONS TO THE OTHER WITH RESPECT TO THE MATTERS REFERRED HEREIN UNLESS AND UNTIL A DEFINITIVE AGREEMENT HAS BEEN FULLY EXECUTED AND DELIVERED BY THE PARTIES. THE PARTIES AGREE THAT THIS LETTER/PROPOSAL IS NOT INTENDED TO CREATE ANY AGREEMENT OR OBLIGATION BY EITHER PARTY TO NEGOTIATE A DEFINITIVE LEASE/PURCHASE AND SALE AGREEMENT AND IMPOSES NO DUTY WHATSOEVER ON EITHER PARTY TO CONTINUE NEGOTIATIONS, INCLUDING WITHOUT LIMITATION ANY OBLIGATION TO NEGOTIATE IN GOOD FAITH OR IN ANY WAY OTHER THAN AT ARM'S LENGTH. PRIOR TO DELIVERY OF A DEFINITIVE EXECUTED AGREEMENT, AND WITHOUT ANY LIABILITY TO THE OTHER PARTY, EITHER PARTY MAY (1) PROPOSE DIFFERENT TERMS FROM THOSE SUMMARIZED HEREIN, (2) ENTER INTO NEGOTIATIONS WITH OTHER PARTIES AND/OR (3) UNILATERALLY TERMINATE ALL NEGOTIATIONS WITH THE OTHER PARTY HERETO.

A Sale Lease Disclosure is attached for your files.

Sincerely,

CB Richard Ellis, Inc.



Reg Kobzi
Senior Vice President



Matt Shope
Associate

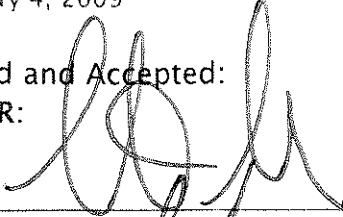
Mr. Craig Duhs
February 4, 2009
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Agreed and Accepted:

LESSOR:

By:

Date:

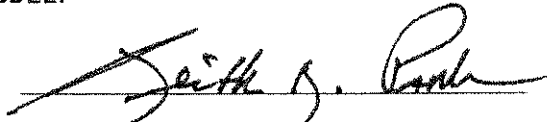


2/5/09

LESSEE:

By:

Date:



Feb. 04 - 2009

EXHIBIT A

