



William M. Dyer
Real Estate Manager
16051 Addison Road
Suite #220
Addison, Texas 75001

Main: 972-392-4850
Direct: 972-392-4856
Fax: 972-788-9334
bill.dyer@addisonairport.net

- M E M O R A N D U M -

To: Lisa Pyles, Director of Infrastructure & Development Services
From: Bill Dyer, Real Estate Manager
CC: Joel Jenkinson, Airport Director
Date: January 18, 2016
Re: Request of Approval by the Town of Addison Regarding the Assignment of Ground Lease #0330-6803 (William R. White) commonly known as 16101-16111 Addison Road to Dukes Ice House, LLC

Summary of Requested Approval and Recommendation by Airport Manager:

Request is being made for the Town's consideration and consent, as landlord, of the sale and assignment of the ground leasehold interests held by William R. White (White) to Dukes Ice House, LLC, Texas limited liability company (Dukes). Airport Management has reviewed the above matter and recommends the Town give its consent as requested. The city attorney has reviewed the proposed Assignment to Ground Lease Agreement as

to form attached hereto as Exhibit 1 and finds it to be acceptable for the Town's purpose.



Figure 1: Aerial View of Subject Property with approximate boundaries

Background Information:

A Ground Lease was executed on January 19, 1984 between the City of Addison, Addison Airport of Texas, Inc. and William R. White. White previously sought and obtained the Landlord's consent to a sale

and assignment in 2001 to Great Escape Aviation. In 2011 the Town gave notice of default to Great Escape for their failure to pay property taxes as required under the ground lease. White, then a lienholder pursuant to a Deed of Trust, recovered ownership of the leasehold and improvements by way of deed-in-lieu of foreclosure. Mr. White has since subleased the premises to Duke's Ice House, a restaurant and sports bar, and to FlightStar Aeromotive, Inc., an aircraft maintenance facility.

Issues Found During Discovery

Two issues were discovered during airport management's due diligence process in connection with the requested action. White apparently sold and conveyed all or a portion of his rights and interests in the Ground Lease to Dukes and in doing so entered into a Security Agreement with Dukes pursuant to the Asset Purchase Agreement (Purchase Agreement) dated May 27, 2014 without the knowledge or prior written consent of the Landlord. The Security Agreement appeared to encumber some or all of the improvements possibly impacting the Town's interests as the landlord. White's actions constituted an event of default of Section 9 of the Ground Lease by having assigned these rights and encumbered the improvements - all without the prior written consent of the Landlord.

The other issue discovered was a lawsuit filed in Federal Court against both White and Dukes for non-compliance of the Americans with Disabilities Act (ADA) filed in March of 2015. Both suits have been settled but outstanding ADA improvements remain to be completed as a condition of their settlement.

As a practical measure, on November 11, 2015 the Town delivered a Notice of Default to White making demand for White to remedy its default or it could, among other remedies, terminate the Ground Lease. However through subsequent negotiation it was determined it was in best interest of all parties, including the Town, to "effectively unwind" the tenant's prior actions and facilitate a proper conveyance of the White's leasehold interests to Duke's Ice House, LLC. While good faith efforts having been demonstrated by both parties, the cure period has been extended to facilitate these negotiations and the Town's consideration of the recommended action.

As a result of these efforts, a Termination of Security Agreement has been drafted and will be publically recorded in the Dallas County Official Public Records once executed by White and Dukes. It was drafted by their attorneys' and has been reviewed by the city attorney's office. Also as a condition of the Town's consent to the assignment, Dukes is required to escrow 100% of the ADA construction costs, in a manner acceptable to the Town, prior to commencement of the ADA construction to ensure Duke's performance under the aforementioned ADA settlement agreement.

General Status of Ground Lease:

Located at the east most end of taxiway Tango, the subject ground lease consists of 55,560 square feet, or 1.28 acres, of real property located at 16101-16111 Addison Road. The improvement contains 7,000 square feet of metal-clad hangar space, the restaurant space is 4,704 square feet and office space of 1,925 square feet (for a total of 6,629) with excellent

street accessibility (Keller Springs and Addison Road NW corner) and off-street parking and 9,300 square feet of aircraft ramp.

White has sublet the premises. FlightStar Aeromotive (16111 Addison Rd.) leases all of the hangar space and some office space – for an approximate total of 8,400 square feet. FlightStar Aeromotive provides aircraft engine servicing and maintenance and has been a subtenant of this space for over 5 years.

The remaining space (approximately 5,100 square feet) is occupied by Dukes Ice House, LLC (16101 Addison Rd.). Dukes continues to use this space as a restaurant (with food and beverage) and has done so for over a year – opening in August 2014. As the new subtenant, Dukes made improvements to the existing restaurant space. Upgrading the appearance and features inside in order to attract more patrons.

| Property Description | | Ground Lease Information | |
|----------------------|--------------------------|------------------------------|------------------------------|
| Date of Report | 01/12/2016 | Lease # | 0330-6803 |
| Property Number | 0330-68 | Tenant Name | William R. White |
| Property Address | 16101-16111 Addison Road | Doing Business As | William R. White |
| Ramp Address | T-20 | Primary Contact: | Nick Diguseppe |
| Property Type | Multi Use | Primary Contact Phone: | 972-960-9941 |
| Land Area | 55,560 | Lease Type | Ground Lease |
| Hangar Area | 7,000 | Lease Commencement Date | 3/1/1985 |
| Office/Shop Area | 6,629 | Lease Expiration Date | 2/28/2025 |
| Total Building Area | 13,629 | Years Remaining in Term | 9 |
| Year Built | 1985 | Current Monthly Rent | \$2,846.92 |
| Est. Economic Life | 40 | Current Annual Rent | \$34,163.04 |
| End of Eco. Life | 2025 | Annual Rent /SF Land | \$0.61 |
| % Obsolescent | 78% | Est. Remaining Contract Rent | \$368,768 |
| Ramp Area | 9,300 | Next Rent Adjustment Date | 03/01/17 - CPI every 2 years |

Economic Impact:

From an economic/financial perspective, there is little or no change or impact to the Town’s current position with the property. If the requested action is approved, it is expected for the Airport to continue to receive scheduled ground rent from Duke’s until the ground lease expires in February 2025, which then the ownership of the building improvement will revert to the Town of Addison. It is anticipated the Town will commercially lease and operate these facilities until a higher and better use for the land is determined. The Town’s interests are likely improved with the assignment of the ground lease to Duke’s who has a greater vested interest in the property’s performance together with the success of their restaurant.

Background of Proposed Assignee:

Dukes Ice House LLC is a Texas limited liability company and first registered in the State of Texas in 2014. Mr. Mohsen Heidari, the managing and only member of the entity has represented the only assets of the LLC is the Duke’s Ice House restaurant and the underlying ground leasehold interests. Although not an entity under this LLC, Mr. Heidari

is also the owner (since 1988) of Arthur's Prime Steaks and Seafood, a fine dining restaurant for over 60 years. In 2001 it relocated from Campbell Center to Quorum Drive in Addison.

Dukes Ice House has been at its current location since August 2014. Liquor and food service licenses are current. As a relatively new LLC there is limited documentation available to substantiate Duke's creditworthiness except for their operations over the past year and Mr. Hedari's reputation in Addison, which did not present any material concerns to Airport Management.

Duke's acquisition of the leasehold and building improvements will be absent of the creation of any leasehold mortgage.

Conclusion and Recommendation of Airport Manager:

Airport Management recommends the Town give its consent to the requested action and authorize the City Manager, subject to the final review of the city attorney, to execute the Assignment of Ground Lease substantially in the form as proposed herein as Exhibit 1.

With the Town's granting its consent to the requested action, it is believed the events that caused Mr. White's default under the ground lease will be resolved to the Town's satisfaction. At such time, the Notice of Default will be withdrawn and cancelled.

Exhibits

- Exhibit 1: Proposed Assignment of Ground Lease Agreement Form and Consent of Landlord

Exhibit 1

**PROPOSED ASSIGNMENT OF GROUND LEASE
AND CONSENT OF LANDLORD**

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

ASSIGNMENT OF GROUND LEASE

This Assignment of Ground Lease (the “Assignment”) is entered into and effective as of ____ 20____, at Addison, Texas, by and between **WILLIAM R. WHITE** (herein referred to as “Assignor”) and **DUKE’S ICE HOUSE, LLC**, a Texas limited liability company (herein referred to as “Assignee”).

WHEREAS, a Ground Lease was executed on January 19, 1984 between the City of Addison, Addison Airport of Texas, Inc. and William R. White (“Ground Lease”) by the terms of which certain real property located at 16101 Addison Road, Addison Airport, within the Town of Addison, Texas, and owned by the City, was leased to William R. White, recorded in Volume 84227, Page 0026 of the Official Public Records of Dallas County, Texas (the “OPR”); and

WHEREAS, said Ground Lease was amended by that certain Amendment to Ground Lease dated November 30, 2001, recorded in Volume 84227, Page 0021 of the OPR (“First Amendment”); and

WHEREAS, the leasehold interest created under the Ground Lease was conveyed from William R. White to Great Escape Aviation, Inc. pursuant to that Special Warranty Deed with Vendor’s Lien dated October 1, 2001, recorded in Volume 20012332, Page 05145 in the OPR; and

WHEREAS, a Correction Special Warranty Deed with Vendor’s Lien and Correction to Amendment to Ground Lease between the Town of Addison, Texas, William R. White and Great Escape Aviation, Inc., was executed effective October 1, 2001, (filed and recorded as Document #200600013563 on January 12, 2006 in the OPR) correcting references made in error in the November 30, 2001 Amendment referenced hereinabove; and

WHEREAS, said Ground Lease was transferred from Great Escape Aviation, Inc., as Grantor, to William R. White, as Grantee, by way of Deed in Lieu of Foreclosure effective July 1, 2011, recorded in the OPR as Document No. 201100177110; and

WHEREAS, by virtue of such assignments, amendments and/or modifications made to the Ground Lease, Assignor is the Tenant under the Ground Lease (a true and correct copy of said Ground Lease in its entirety with all hereinabove referenced assignments, amendments and/modifications made thereto are attached and incorporated herein by reference as Exhibit "A"); and

WHEREAS, the Ground Lease provides that, upon the expiration or termination of that certain agreement referred to and defined in the Ground Lease as the “Base Lease”

(and being an Agreement for Operation of the Addison Airport between the City and Addison Airport of Texas, Inc.), the City is entitled to all of the rights, benefits and remedies, and will perform the duties, covenants and obligations, of the Landlord under the Ground Lease; and

WHEREAS, the said Base Lease has expired and the City is the Landlord under the Ground Lease; and

WHEREAS, the Ground Lease provides in Section 9 thereof that, without the prior written consent of the Landlord, the Tenant may not assign the Ground Lease or any rights of Tenant under the Ground Lease (except as provided therein), and that any assignment must be expressly subject to all the terms and provisions of the Ground Lease, and that any assignment must include a written agreement from the Assignee whereby the Assignee agrees to be bound by the terms and provisions of the Ground Lease; and

WHEREAS, Assignor desires to assign the Ground Lease to Assignee, and Assignee desires to accept the Assignment thereof in accordance with the terms and conditions of this Assignment of Ground Lease.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, the sufficiency of which are hereby acknowledged, the parties hereto each intend to be legally bound and agree as follows:

AGREEMENT

1. Assignor hereby assigns, bargains, sells, and conveys to Assignee, effective as of the date above, all of Assignor's right, title, duties, responsibilities, and interest in and to the Ground Lease, attached hereto as Exhibit A, and incorporated herein for all purposes, TO HAVE AND TO HOLD the same, for the remaining term thereof, and Assignor does hereby bind himself, and his successors and assigns to warrant and forever defend the same unto Assignee against every person or persons lawfully claiming an part thereof through Assignor.

2. Prior to the effective date of this Assignment, Assignee agrees to pay an Assignment Fee in the amount of Four Hundred Fifty Dollars and no/100 (\$450.00) to Landlord.

3. Assignee hereby agrees to and shall be bound by and comply with all of the terms, provisions, duties, conditions, and obligations of tenant under the Ground Lease. For purposes of notice under the Ground Lease, the address of Assignee is:

Duke's Ice House, LLC
c/o Mohsen Heridari, Member
16101 Addison Road
Addison, Texas 75001

and:

Mr. Daks Richards
Travis Daxon Howard Richard
2926 Maple Avenue, Suite 200
Stoneleigh P Building
Dallas, Texas 75201

4. Nothing in this Agreement shall be construed or be deemed to modify, alter, amend or change any term or condition of the Ground Lease, except as set forth herein.

5. This Assignment is subject to the consent and filing requirements of the Town of Addison, Texas.

6. The above and foregoing premises to this Assignment and all other statements made herein are true and correct, and Assignor and Assignee both warrant and represent that such premises and statements are true and correct, and that in giving its consent, Landlord (as defined in the Consent of Landlord attached hereto) is entitled to rely upon such representations and statements.

7. The undersigned officers and/or agents of the parties hereto are the properly authorized persons and have the necessary authority to execute this Assignment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

8. All parties acknowledge that the Property Boundary Survey dated January 17, 1984 is the true and correct Boundary Survey depicting the leased Premises' 1.275 acres (or 55,559.60 Sq. Ft.), attached hereto as Exhibit B, and incorporated herein for all purposes.

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment on the day and the year first set forth above.

| | |
|--|---|
| ASSIGNOR: William R. White, an Individual _____ | ASSIGNEE: Duke's Ice House, LLC a Texas limited liability corporation _____ <u>Mohsen Heridari, Member</u> |
|--|---|

ACKNOWLEDGMENT

STATE OF TEXAS §

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COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared William R. White, Individual, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this _____ day of _____, 20____.

[SEAL]

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Mohsen Heridari, Member of Duke’s Ice House, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein stated.

GIVEN under my hand and seal of office this _____ day of _____, 20____.

[SEAL]

Notary Public, State of Texas

CONSENT OF LANDLORD

The Town of Addison, Texas ("Landlord") is the Landlord in the Ground Lease described in the Assignment of Ground Lease (the "Assignment") entered into and effective as of _____ 20__, at Addison, Texas, by and between William R. White, Individual (herein referred to as "Assignor") and Duke's Ice House, LLC, a Texas limited liability company, (herein referred to as "Assignee"). In executing this Consent of Landlord ("Consent of Landlord"), Landlord is relying upon the warranty and representations made in the aforementioned Assignment by both Assignor and Assignee, and in relying upon the same, Landlord hereby consents to the aforementioned Assignment from Assignor to Assignee.

This Consent of Landlord is contingent upon, as solely determined by the Landlord, the Assignee causing the property under the Ground Lease, during the Term, to be brought into and remain in compliance with the rules, regulations and requirements of the Americans with Disabilities Act of 1990, as amended, at Assignee's sole cost and expense ("Improvements"). Failure to obtain and/or remain in compliance with this Consent of Landlord shall constitute a Default Event under the Ground Lease. To further guarantee and assure Landlord that the Assignee will fulfill its obligation hereunder, prior to Assignee submitting an application for a construction permit with the Town of Addison, Texas, Assignee shall present substantial written documentation, including but not limited to contractor's original bid and/or final bid, Assignee's acceptance and bank documentation, evidencing an escrow account in the full amount of the cost of the Improvements ("Escrowed Funds"). The Escrowed Funds may only be accessed to satisfy payment for construction and completion of the Improvements; Assignee shall provide Landlord written notice prior to receiving a distribution from the Escrowed Funds to pay for the completed Improvements. Assignee's failure to use the Escrowed Funds solely for the payment of completed Improvements, without the Landlord's prior written consent, shall constitute a Default Event under the Ground Lease. Alternatively, and at Assignee's election, Assignee shall cause to be issued in favor of Landlord, and kept in full force and effect at all times during any period of construction, an irrevocable, stand-by letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the amount of one hundred percent (100%) of the construction costs, such stand-by letter of credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred under this Lease with respect to the construction of the Building Improvements. Upon written approval by Landlord on not less than ten (10) days written notice to Landlord from Assignee, Assignee shall have the right to reduce the amount of the stand-by letter of credit on a calendar quarterly basis by an amount equal to the construction costs incurred and paid by Assignee during the immediately preceding calendar quarter as demonstrated by the Construction Value Evidence submitted to Landlord.

Notwithstanding this Consent of Landlord, Landlord does not waive any of its rights under the Ground Lease as to the Assignor or the Assignee, and does not release Assignor from its covenants, obligations, duties, or responsibilities under or in connection with the Ground Lease, and Assignor shall remain liable and responsible for all such

covenants obligations, duties, or responsibilities. In addition, notwithstanding any provisions of this Consent of Landlord or the above and foregoing Assignment to the contrary, this Consent of Landlord shall not operate as a waiver of any prohibition against further assignment, transfer, conveyance, pledge, change of control, or subletting of the Ground Lease or the premises described therein without Landlord's prior written consent.

This Consent of Landlord shall be and remain valid only if and provided that, by no later than 6:00 o'clock p.m. on _____, _____, 20__:

(i) the Assignment has been executed and notarized by both Assignor and Assignee,

(ii) all other matters in connection with the transfer, sale, and/or conveyance by Assignor to Assignee of the Assignor's interest in the Ground Lease have been fully consummated and completed and the transaction closed as reasonably determined by Landlord (such matters including, without limitation, the full execution and finalization of this Assignment and any other documentation so required by Landlord relating to this transaction) and delivered to Landlord c/o Mr. Bill Dyer, Addison Airport Real Estate Manager, at 16051 Addison Road, Suite 220, Addison, Texas 75001. Otherwise, and failing compliance with and satisfaction of each all of paragraphs (i) and (ii) above, this Consent of Landlord shall be null and void *ab initio* as if it had never been given and executed.

Signed this _____ day _____, 20_____.

**LANDLORD:
TOWN OF ADDISON, TEXAS**

By: Wesley S. Pierson, City Manager