

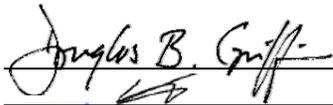
**CITY OF PALMER  
ACTION MEMORANDUM NO. 13-049**

**Subject:** Authorize City Manager to Negotiate and Execute an Assumption of Proprietary Lease from George J. Gallagher and Peggy J. Gallagher to David B. Allen for Palmer Hangars Owners Association Unit No. 4 Lot 11 Block 3 at the Palmer Municipal Airport

**Agenda of: July 9, 2013**

**Council Action:** Authorized

**Approved for presentation by:**

<b>City Manager</b> <b>City Attorney</b> <b>City Clerk</b>	 _____  _____
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**Certification of Funds:**

Total amount of funds listed in legislation:	\$ <u>          0          </u>
This legislation (✓):	
<input checked="" type="checkbox"/> Has no fiscal impact	
Creates:	
<input type="checkbox"/> A negative fiscal impact in the amount of:	\$ _____
<input type="checkbox"/> A positive fiscal impact in the amount of:	\$ _____
<input type="checkbox"/> Funds are budgeted.	
Funds originally budgeted:	\$ _____
Difference in budgeted funds:	\$ _____
Funds are budgeted from this (these) line item(s):	
➤	\$ _____
➤	\$ _____
<input type="checkbox"/> Funds are not budgeted.	
Budget amendment required in the total amount of:	\$ _____
Affected line item(s):	
➤	\$ _____
➤	\$ _____
Unrestricted/undesignated fund balance (after budget modification)	\$ _____
Director of Finance signature certifying funds:	 _____

**Attachment(s):**

- Lease Assumption Documents

**Summary statement:** Palmer Hangars Association is the lessee for the 9-unit T-Hangar

complex constructed on Yukon Drive at the Palmer Municipal Airport. Palmer Hangars Association has a proprietary lease agreement with George J. Gallagher and Peggy J. Gallagher, for Unit 4. They are assigning this lease to David B. Allen. The administration recommends that the Council authorize the City Manager to negotiate and execute an assumption of this proprietary lease with the condition that the City receives the following: (1) Copy of fully executed proprietary lease assumption; and (2) Completed tenant contact information sheet.

The Palmer Hangars Owners Association maintains liability insurance on this entire T-Hangar complex. The lease agreement is between the City of Palmer and the Palmer Hangars Association.

**Administration recommendation:** Approve action memorandum 13-049.

**ASSIGNMENT AND ASSUMPTION OF PROPRIETARY LEASE  
AND TRANSFER OF CERTIFICATE OF MEMBERSHIP**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND TRANSFER OF CERTIFICATE OF MEMBERSHIP (the "Assignment") is made and entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between GEORGE J. GALLAGHER and PEGGY J GALLAGHER, husband and wife, ("Assignor"), whose address is 7210 East Chester Heights Circle, Anchorage, AK 99504, and DAVID B. ALLEN, a(n) \_\_\_\_\_ person, ("Assignee"), whose address is 20244 Glacier Park Circle, Eagle River, AK 99577.

**RECITALS**

**WHEREAS**, Assignor is currently the lessee under that certain Proprietary Lease Agreement (the "Lease") between Assignor and Palmer Hangars Owners Association, dated October 5, 2007, recorded October 12, 2007, Reception Number 2007-027127-0, with respect to certain airplane hangar space described as

Unit No. 4, Lot 11, Block 3, Preliminary Plat for the Palmer Municipal Airport, Palmer Recording District, Third Judicial District, State of Alaska, and

**WHEREAS**, by mesne Assignments Palmer Hangars Owners Association obtained a lease from the City of Palmer at the Palmer Airport as to the following described property

Lot 11, Block 3, Preliminary Plat for the Palmer Municipal Airport, Palmer Recording District, Third Judicial District, State of Alaska;

and all terms and conditions of said Airport Lease and compliance therewith apply to this Assignment and Assumption of Proprietary Lease and Transfer Of Certificate Of Membership, all as more fully set forth in said Proprietary Lease; and

**WHEREAS**, Assignor desires to assign their right, title, and interest under the Proprietary Lease to Assignee, and further transfers the Certificate of Membership in and to said Unit 4, and Assignee desires to accept and assume the right, title, and interest of Assignor under the Proprietary Lease and Certificate of Membership;

**NOW, THEREFORE**, in consideration of the foregoing and the covenants and agreements contained herein, the parties agree as follows:

Dalrymple Law, P.C. • 927 S. Cobb Street, Palmer AK 99645 • 907-745-6332 • [www.matsulaw.com](http://www.matsulaw.com)

Assignment and Assumption of Proprietary Lease and Transfer of Certificate of Membership, Page 1

**Section 1. Assignment of Proprietary Lease and Transfer of Certificate of Membership.** Assignor hereby grants, transfers, conveys and assigns to Assignee all of their right, title and interest as Lessee under the Proprietary Lease and Certificate of Membership, and Assignee accepts such assignment, and except as provided in Section 2 below, assumes all obligations of Assignor thereunder, as of the effective date of this Assignment. Except as provided in Section 2 with respect to Claims (as such term is hereinafter defined), Assignee shall defend, indemnify and hold harmless Assignor from and against all Claims arising or occurring under the Proprietary Lease and Certificate of Membership after the effective date of this Assignment.

**Section 2. Continued Liability of Assignor.** Notwithstanding the provisions of Section 1 above, Assignor expressly agrees that they shall remain liable for all obligations and claims (the "Claims"), including, but not limited to, indemnity obligations, arising or occurring under the Proprietary Lease and Certificate of Membership prior to the effective date of this Assignment, irrespective of whether a Claim is made after the effective date of this Assignment. Assignor shall defend, indemnify and hold harmless Assignee from and against such Claims.

**Section 3. Permits, Laws, and Taxes.** The assignee shall acquire and maintain, in good standing, all permits, licenses and other entitlements necessary to the performance under this Agreement. All actions taken by the assignee under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations, including, but not limited to the Palmer Municipal Code, and all state and/or federal laws and regulations. The assignee shall pay all taxes pertaining to its performance under this Agreement.

**Section 4. Other Instruments/Actions.** The parties agree to execute such further reasonable instruments, to take such further reasonable actions, and to make any additional reasonable transfers as may be necessary to carry out the purpose and intent of this Assignment.

**Section 5. Miscellaneous.**

**5.01. Governing Law/Remedies.** This Assignment and the rights of the parties under it will be governed by and construed in all respects in accordance with the laws of the State of Alaska without giving effect to principles or provisions thereof relating to choice of law or conflict of laws. In any action to enforce the provisions of this Assignment, the prevailing party shall be entitled to reasonable attorney fees and court costs.

**5.02. Waiver/Amendments.** Any waiver must be in writing, and any waiver by any party of a breach of any provision of this Assignment shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Assignment. The failure of a party to insist upon strict adherence to any term of this Assignment on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Assignment. This Assignment shall not be altered, modified or otherwise amended except by an instrument in writing signed by both parties.

**5.03. Binding Effect; Assignment.** This Assignment and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**5.04. No Partnership, Joint Venture, Etc.** Nothing in this Assignment shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.

**5.05. No Third Party Beneficiaries.** This Assignment does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Assignment.

**5.06. Severability.** If any provision of this Assignment or any application thereof shall be held invalid, illegal or unenforceable, the remainder of this Assignment or any other application of such provision shall not be affected thereby.

**5.07. Counterparts.** The Assignment may be executed in one or more counterparts, including by facsimile, all of which counterparts taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties have executed this Assignment as of the date and year first written above.

**ASSIGNOR:**

\_\_\_\_\_  
GEORGE J. GALLAGHER

\_\_\_\_\_  
PEGGY J GALLAGHER

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
2013, by GEORGE J. GALLAGHER and PEGGY J GALLAGHER.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_  
DAVID B. ALLEN

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
2013, by DAVID B. ALLEN.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

**Approved by CITY OF PALMER:**

The City Of Palmer, Lessor under the original Airport Lease dated June 5, 2005, hereby approves of this Assignment And Assumption Of Proprietary Lease and Transfer Of Certificate Of Membership and the provisions thereof.

DATED: \_\_\_\_\_, 2013

**CITY OF PALMER:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Record in Palmer Recording District.  
Return to:  
DAVID B. ALLEN  
20244 Glacier Park Circle  
Eagle River, AK 99577

**ESTOPPEL CERTIFICATE**

To: MAT-SU TITLE AGENCY LLC  
Attn: Terri Wesley

Re: Order No. MS94916

The undersigned certifies as follows:

1. The City of Palmer ("Lessor") and Palmer Hangers LLC ("Lessee"), entered into a lease agreement on June 5, 2005, under Lease Agreement 05-02, in which Lessor leased to Lessee, and the Lessee leased from Lessor, the real property described below (the "Premises"), and Palmer Hangars Owners Association acquired the interest of Lessee by Assignment and Amendment of Palmer Municipal Airport Lease Agreement No. 05-02 recorded April 11, 2006:

Real Property:

Lot 11, Block 3, of the preliminary plat for the Palmer Municipal Airport, located in the Palmer Recording District, Third Judicial District, State of Alaska.

2. The Lease constitutes the only agreement between Lessor and Lessee with respect to the Premises. A full copy of the Lease [and all amendments, both recorded and unrecorded] is attached hereto.

3. The Lease is in full force and effect; Lessee has accepted the Premises and presently occupies them, and is paying rent on a current basis; and Lessor has no setoffs, claims or defenses to the enforcement of the Lease.

4. As of the date of this certificate, Lessee is not in default in the performance of the Lease, and has not committed any breach of the lease, and no notice of default has been given to the Lessee.

Dated: \_\_\_\_\_, 2013

Lessor: CITY OF PALMER

By \_\_\_\_\_

Its \_\_\_\_\_