

# PURCHASE AND SALE AGREEMENT

Date: December \_\_, 2012

**SELLER:** Gabriel A. Lujan, Member  
Denali Unlimited, LLC.  
907 E. Dowling Rd., Suite 26  
Anchorage, AK, 99518 ("Property Seller")

**PURCHASER:** Mike Navarre, Mayor  
Kenai Peninsula Borough, State of Alaska

Brokerage: Matthew Fink, Dynamic Properties, Inc., (907) 261-7620

## I. PURCHASE PRICE AND EARNEST MONEY:

Upon mutual acceptance of this Agreement, the Purchaser shall deposit the sum of Fifty Thousand Dollars and no cents (\$50,000.00) into the trust account of Dynamic Properties, Inc., as Earnest Money on and part payment for the real property and improvement located at **108 East Corral Street, Soldotna, Alaska 99669** and **260 Caviar Street, Kenai, Alaska 99611** all collectively known as the "**Property**" and as described in further detail below, which property the payer of the above deposit herewith agrees to purchase for the total price of **One Million Six Hundred and Eighty Two Thousand Five Hundred Dollars (\$1,682,500.00)**, on which sum the above deposit will apply.

## II. DESCRIPTION OF PROPERTY:

1. Real Property and Improvements located at 108 East Corral Street, Soldotna, Alaska 99669; Parcel No. 05912122 and 260 Caviar Street, Kenai, Alaska 99611; Parcel No. 04320014.

## III. PURCHASE TERMS:

Purchaser shall pay **One Million Six Hundred and Eighty Two Thousand Five Hundred Dollars (\$1,682,500.00)**, for the **Property** including earnest money at closing.

## IV. CLOSING:

A) The consummation of the purchase and sale of the Property (Closing) shall be coordinated by and take place at the office of First American Title Company on or before **January 31, 2013**, with a **simultaneous closing of the Business with CPGH, Inc.** Closing can be extended by mutual written consent.

Purchaser Initials \_\_\_\_\_ Sellers Initials \_\_\_\_\_

B) The Purchase Price shall be paid and all documents necessary for the consummation of this transaction shall be executed and delivered on or prior to the Closing Date, and Seller shall deliver possession of the Property to Purchaser on recording.

C) At or prior to Closing, Seller shall deposit the following documents in escrow with the Title Company:

i. A Warranty Deed in recordable form executed on behalf of Seller, conveying good title to Purchaser of the Property described above;

ii. Such conveyance or transfer tax forms, if any, as are required to be delivered or signed by Seller by applicable state and local law in connection with the conveyance of the Property.

iii. Evidence of the existence, organization and authority of Seller and the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the underwriter for the Title Policy.

iv. Any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

D) At or prior to Closing, Purchaser shall deposit the following in escrow with the Title Company:

i. The remainder of the Purchase Price.

ii. Such conveyance or transfer tax forms, if any, as are required to be delivered or signed by Purchaser by applicable state and local law in connection with the conveyance of the Real Property.

iii. Evidence of the existence, organization and authority of Purchaser and of the authority of the persons executing documents on behalf of Purchaser reasonably satisfactory to the underwriter for the Title Policy.

iv. Any additional documents that Seller or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

**V. PURCHASE PRICE ALLOCATION:**

The allocation of the total purchase price shall be as follows:

- (i) 108 East Corral Street, Soldotna, Ak. \$935,000.00
- (ii) 260 Cavier Street, Kenai, Ak. \$747,500.00

Purchaser Initials \_\_\_\_\_ Sellers Initials \_\_\_\_\_

Total Purchase Price:

\$1,682,500.00

**VI. PURCHASERS FINANCING:**

Purchaser shall provide Seller a qualifying letter from a financial institution or verification of funds to close this transaction by no later than **December 31, 2012**.

**VII. PURCHASERS DUE DILIGENCE:**

The Purchaser shall have a period up to **January 20, 2013** to complete their due diligence which began August 1, 2012. The Purchaser shall notify the Seller prior to the expiration of the due diligence period, in writing, in the event the Purchaser, in its sole discretion, declines the property for *any reason* in which event this transaction shall be terminated and the earnest money refunded in full to the Purchaser.

This Agreement is specifically subject to the Purchase being approved by the Board of Directors of the CPGH, Inc. and the Kenai Peninsula Borough Assembly and Mayor, and is specifically subject to the availability and appropriation of funds for payment of the purchase price from the CPGH, Inc. Plant Replacement and Expansion Fund ("PREF"). If the CPGH, Inc. Board of Directors fails to approve by resolution the Purchase and the transfer of funds for the purchase price from the PREF or if the Kenai Peninsula Borough Assembly fails to enact an ordinance approving the Purchase and appropriating funds from the PREF for payment of the purchase price, this agreement shall be terminated without penalty.

This Agreement is subject to a simultaneous sale of the Business of Frontier Therapy Services to CPGH, Inc. located on the Property.

All additional information requested of Seller shall be provided as soon as possible to effectuate Purchasers due diligence completion. All Purchaser contingencies to be either accepted completed and/or waived by the timeline above, but in no event later than **January 20, 2013**. Should Purchaser want to extend the timeline in any of the contingencies, Purchaser to request the same in writing prior to its expiration. Seller, at its sole discretion, may agree to extend the due diligence period. The earnest money will become non-refundable as of **January 21, 2013**.

**VIII. PURCHASE TERMS AND CONDITIONS:**

1. All the Property is being sold "AS IS, WHERE IS". Seller is not making any representations, implied or expressed, as to the condition or of any aspect of the Property. Purchaser is advised to conduct all of its own inspections prior to purchasing this Property. Purchaser is purchasing the Property in its current condition and configuration. Although this is an "AS IS" sale, Purchaser's obligation to purchase the Property is expressly conditioned on the Purchaser's approval, in its sole discretion, of the condition of the Property, including the physical and environmental condition of the

Purchaser Initials \_\_\_\_\_

Sellers Initials \_\_\_\_\_

property. In addition, purchase of the property is subject to the Purchaser's review of leases, if any, affecting the Property; and such leases being satisfactory to Purchaser.

2. Seller shall pay the following closing costs where applicable to each:

- a) 1/2 recording fee
- b) 1/2 documentation preparation fee
- c) 1/2 escrow closing fee
- d) Own attorney's fees
- e) Standard Title Insurance
- f) Brokerage fee to Dynamic Properties, Inc.

3. Purchaser shall pay the following closing costs:

- a) 1/2 recording fee
- b) 1/2 documentation preparation fee
- c) 1/2 escrow closing fee
- d) All Purchasers financing fees including appraisals, if applicable.
- e) All other fees associated with Purchaser's due diligence inspections
- f) Own attorney fees
- g) Extended Coverage Title insurance, if applicable

4. Evidence of Title. Within ten (10) days of mutual acceptance, Seller shall provide Purchaser a copy of a preliminary title reports for a standard owners policy of title insurance (commitment) issued by First American Title Agency. Prior to the expiration of the Due Diligence Period, Purchaser shall deliver written notice to Seller of Purchaser's objections, if any to such commitment. Seller shall cure any an all financing liens of an amount created by, under or through Seller, which liens Seller shall cause to be released at or prior to Closing (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose), and Seller shall deliver the Property free and clear of any such financing liens. Seller further agrees to remove any exceptions or encumbrances to title which are voluntarily created by, under or through Seller after the Effective Date without Purchaser's consent (if requested, such consent shall not be unreasonably withheld or delayed). The term "**Permitted Exceptions**" shall mean: the specific exceptions in the Commitment that the Title Company has not agreed to remove from the Commitment and that Seller is not required to remove as provided above; matters created by, through or under Purchaser. In the event that Purchaser shall object to the title, Seller shall notify Purchaser within five (5) Business Days following the date of Purchaser's notice of such objections that either: a) the exceptions have been removed from the Commitment, or will be removed at or prior to Closing or b) are or will be insured over by the Title Company pursuant to an endorsement to the Commitment. Alternatively, within said five (5) Business Day period, Seller may notify Purchaser that the objections will not be removed or insure over, and Purchaser may elect to either:

Purchaser Initials \_\_\_\_\_

Sellers Initials \_\_\_\_\_

a. terminate this Agreement, in which event the Earnest Money shall be returned to Purchaser; or

b. take title "as is, where is"; which election must be made by Purchaser within five business (5) days following the notice from Seller.

5. Property taxes shall be prorated to the date of closing, except as otherwise expressly provided in this Agreement, all prorations provided for shall be final. For purposes of all prorations provided for in this Agreement, Seller shall be responsible for all days up to the Closing Date, and Purchaser shall be responsible for Closing Date and all days after Closing.

6. All Property shall be transferred to the Purchaser by warranty deed free and clear of any liens or encumbrances.

7. Seller hereby indemnifies and holds the Purchaser harmless from and against any loss, cost claim, liability, or expense suffered or incurred by Purchaser from and after the date of closing arising from or connected to Seller's ownership of Property prior to the closing.

8. Purchaser hereby indemnifies and holds the Seller harmless from and against any loss, cost claim, liability, or expense suffered or incurred by Seller from and after the date of closing arising from or connected with Purchasers ownership of the Property purchased herein.

9. This document and the referenced attachment(s), if any, consisting of Eleven (11) pages, contain the entire Agreement between the parties. There are no understandings, oral or written, which in any manner change or enlarge what is set forth herein. The plural shall include the singular. It may not be modified except in writing signed by both parties.

10. It is mutually agreed upon by all parties that the Broker and/or their Licensee shall not be held liable in any manner whatsoever for damages arising from defaults or acts by or upon the part of either party to this Agreement.

11. In the event that the Broker is unable to determine to his satisfaction which party is responsible for failing to perform the requirements of this Agreement, the Broker shall request the Parties to execute an agreement for release of the earnest monies to one or the other party. Broker need not disburse earnest monies until an Agreement is signed. Alternatively, Broker may: (a) with Purchaser's and Seller's consent, submit the matter to an agreed upon arbitrator or mediator; or (b) interplead the earnest money with the courts for determination of who is entitled to the earnest monies. The Broker shall be entitled to an award, from the earnest monies, of reasonable attorney's fee and cost for interpleading the earnest money.

Purchaser Initials \_\_\_\_\_

Sellers Initials \_\_\_\_\_

12. Due to varied methods of measuring square footage, Brokers/Licensee make no guarantee of the accuracy of figures quoted. Purchaser should independently measure square footage if exact calculations are desired.

13. All parties agree that a facsimile transmission of any original document shall have the same effect as an original. Any signature required on an original document shall be completed when a facsimile copy has been signed, except for documents to be recorded which required original signatures. The parties agree that facsimile copies of documents shall be appended to the original thereof, integrated therewith and given full effect as if an original.

14. Seller and Purchaser hereby acknowledge Dynamic Properties, Inc. as licensee for the Seller and will provide the Purchaser with specific assistance in this transaction. Both parties acknowledge the Alaska Consumer Pamphlet here attached. **The Purchaser and Seller are hereby formally advised to seek legal and tax advice regarding this document and the financial outcome of this transaction. Dynamic Properties, Inc. / Matthew Fink are not authorized and have not given any legal or tax advice.**

15. This transaction shall close in the escrow offices of **First American Title**.

16. Seller represents and warrants, based upon its actual knowledge, and without obligation to conduct additional investigation, as of the date hereof and as of the Closing Date that:

a. To the best of Seller's knowledge, Seller has received no notice from any governmental authority of any pending or threatened i) zoning, building fire, or health code violations or violations of other governmental requirements or regulations with respect to the Property that have not previously been corrected, or (ii) any condemnation of the Property. Seller further warrants and represents that in the event it receives any such notice prior to the Closing Date, it will provide to Purchaser copies of any such notice immediately.

b. The lease agreements in place for both buildings will be cancelled as of the recording date of the sale with a simultaneous sale of the Business to CPGH, Inc.

c. That they are duly qualified and authorized to do business and are in good standing in the State of Alaska.

d. That they have paid all income, and other taxes which are payable by it relative to the Property herein to all United States (federal, state and local) taxing authority.

e. Seller is the owner of the Property and has full power to transfer the Property free and clear of all liens, encumbrances, security interests, equities, options, claims,

Purchaser Initials \_\_\_\_\_

Sellers Initials \_\_\_\_\_

charges, and restrictions.

f. Seller has and on the date of closing will have complied with all material laws, rules, regulations and orders applicable to the operations of Seller's business and the sale of the Property.

The representations and warranties contained in this Section shall survive Closing.

17. Seller's Covenants. Between the date of the execution of this Agreement and the Closing, Seller shall:

a. Maintain the Property in its present condition, and not permit any changes or alterations to or upon the Property.

b. Not permit any lien or other encumbrance affecting the Property to be foreclosed.

18. Purchaser represents and warrants, based upon its actual knowledge, and without obligation to conduct additional investigation, as of the date hereof and as of the Closing Date that:

a. That they are financially qualified to purchase this Property and are in good standing in the State of Alaska.

b. Purchasers are currently not in any type of Bankruptcy proceedings or any other type of litigation that could hamper their ability to purchase this Property.

c. Purchaser has and on the date of closing will have complied with all material laws, rules, regulations and orders applicable to the purchase of this Property.

19. Risk of Loss. Seller shall bear all risk of loss with respect to the Property up to the earlier of the date upon which either possession or title to the Property is transferred to Purchaser in accordance with this Agreement. Notwithstanding the foregoing, in the event material damage of the Property prior to the Closing Date occurs, Purchaser may:

a. Terminate its obligations under this Agreement and receive a full refund of the earnest money; or

b. Proceed with the Closing, in which event Seller shall assign all Seller's right, title and interest in and to any insurance proceeds to Purchaser if applicable.

20. In the event Purchaser fails to perform the obligations set forth in this Agreement, (except as excused by Seller's default), Seller will make written demand for performance. If the Purchaser fails to comply with such written demand within Ten (10) days after receipt hereof, Seller will have option to waive such default, demand specific

Purchaser Initials \_\_\_\_\_ Sellers Initials \_\_\_\_\_

performance, or terminate this Agreement and, on such termination, all the earnest money will be forfeited to the Seller.

21. In the event Seller fails to perform the obligations set forth in this Agreement, (except as excused by the Purchaser's default), Purchaser will make written demand for performance. If the Seller fails to comply with such written demand within Ten (10) days after receipt hereof, Purchaser will have option to waive such default, demand specific performance, or terminate this Agreement and, on such termination, the earnest money will be refunded to the Purchaser.

22. Purchaser, Seller, and Broker agree that in the event any litigation is instituted to collect any sum due broker to enforce or interpret any of the provisions of this agreement, the prevailing party or parties shall be entitled to recover from the other(s) their reasonable attorneys fees and court costs including appeals, as determined by the court in such action or suit.

23. Purchaser and Seller hereby authorize the lending institution to furnish Broker / Licensee with closing statements upon request. Purchaser and Seller authorize all lenders, escrow Agents and appraisers to furnish the listing licensees, on request, any and all information and copies of documents, concerning the status, progress, and final disposition of: loans, credit, appraisal, closing, conveyances and any and all other matter related to this sale.

24. Notices. All notices, waiver, election, approvals and demands required or permitted to be given hereunder shall be in writing, via email with confirmation of receipt, mailed postage prepaid, certified mail, return receipt requested, or transmitted by facsimile to the address for each party as designated herein. Either party hereto may, by proper notice to the other designate any other address for the giving of notice. Any notice shall be effective when personally delivered or, if mailed as provided herein, on the earlier of actual receipt or three (3) days after the date deposited in the mail, or in the case of facsimile notice or email, when sent, if answered back or confirmation is received.

Notice for Seller and Purchaser: Matthew Fink / Dynamic Properties, Inc.  
3111 C Street, Suite 100  
Anchorage, Alaska 99503

25. Time is of the essence in this contract. Time periods specified in this Agreement shall expire at midnight on the date stated unless the parties agree in writing to a different date/or/time.

25. Gender. Words of any gender used in this Agreement will be held and construed to include any other gender, and words in the singular number will be held to include the plural and vice versa, unless the context requires otherwise.

Purchaser Initials \_\_\_\_\_

Sellers Initials \_\_\_\_\_



26. Construction: Severability. No provisions of this Agreement will be construed by any court or other judicial authority against any party by reason of such party being deemed to have drafted or structured such provisions. If any provisions of this Agreement or application to any party or circumstances is determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which is so determined invalid or unenforceable, will not be affected and every other provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.

27. Governing Law. This Agreement will be construed, and the obligations of the parties, will be determined in accordance with the laws of the State of Alaska.

28. Attorney's Fees. In the event either party hereto employs an attorney in connection with claims by one party against the other arising under this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such claims.

29. IRC Section 1031 Cooperation. Each party understands that the other party may structure the sale of the property to assure that the transaction qualifies as a 'like-kind exchange' of real estate pursuant to Section 1031 of the Internal Revenue Code of 1986, in accordance with the terms and provisions hereinafter provided. Such cooperation may include purchasing the property from a qualified intermediary, as such term is defined in the Code and the Regulations promulgated there under; establishing an escrow account (with appropriate escrow executing such further documentation as may be reasonably necessary, to qualify the transaction as a 'like-kind exchange,' allowing the qualified intermediary to convey the Property to Purchaser; establishing an escrow account to hold the proceeds from the Purchaser's purchase of the Property in the event exchange property is not acquired on or before the acquisition of the Property; and executing all documentation reasonably required to allow the qualified intermediary to acquire the real estate identified by Seller and transfer the same to Seller. Such cooperation shall not be deemed to require waiver of any rights under other provisions of this Agreement.

30. Third Parties. The provisions of this Agreement and of the documents to be executed and delivered at closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

31. All the final sale documents to be reviewed and approved by the Seller's and Purchaser's attorneys prior to closing. Purchaser hereby designates \_\_\_\_\_ as its lawful attorney to review and approve all legal documents necessary to complete this transaction. Seller hereby designates \_\_\_\_\_ as its lawful attorney to review and approve all legal documents necessary to complete this transaction.

Purchaser Initials \_\_\_\_\_ Sellers Initials \_\_\_\_\_

32. EXPIRATION: This offer will expire if not signed by both parties by **December \_\_\_\_**, **2012**.

**AS TO PURCHASER:** By signing this agreement, PURCHASER, hereby acknowledges that PURCHASER is relying solely on PURCHASER'S own inspection of the Property and the representations of SELLER not of Broker/Licensee and all other material facts of SELLER in making this offer. PURCHASER acknowledges that the Broker/Licensee have not verified, and will not verify, the representations of SELLER and should any such representations be untrue, PURCHASER agrees to look solely to SELLER for relief and to indemnify Broker/Licensee and hold Broker/Licensee harmless in connection with all losses and damages caused PURCHASER thereby.

**AS TO SELLER:** SELLER acknowledges that Broker/Licensee has made no representations concerning the credit worthiness or ability of PURCHASER to complete this transaction, and relies solely on PURCHASER representations and not Broker/Licensee with respect thereto. SELLER agrees to look solely to PURCHASER for relief and to indemnify Broker/Licensee and hold Broker/Licensee harmless in connection with all losses and damages caused SELLER thereby.

**ACCEPTANCE BY PURCHASER**

I/We understand that this is a legally binding contract. Purchaser has read the foregoing Offer and accepts it as representing the terms and conditions communicated to the Broker and accept full responsibility for the completeness and accuracy thereof.

**Purchaser herein acknowledges that this agreement has significant legal and financial consequences and that he/they have been advised to seek independent legal and financial counsel. The broker or licensee cannot give legal advice. The person(s) executing below has (have) the authority and believe they are financially qualified to enter into this agreement for the purchase of the properties described herein.**

**PURCHASER:**

**Kenai Peninsula Borough**

\_\_\_\_\_  
By: Mike Navarre  
Its: Mayor

\_\_\_\_\_  
Date

Purchaser Initials\_\_\_\_\_

Sellers Initials\_\_\_\_\_

Approved by KPB Res. 2013- \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Borough Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Borough Attorney

**ACCEPTANCE BY SELLER**

I/We understand that this is a legally binding contract. Seller has read the foregoing Offer and accepts it as representing the terms and conditions communicated to the Broker and accept full responsibility for the completeness and accuracy thereof.

**Seller herein acknowledges that this agreement has significant legal and financial consequences and that they have been advised to seek independent legal and financial counsel. The broker or licensee cannot give legal advice. The person(s) executing below has (have) the authority to enter into this agreement on behalf of the entities in ownership of the properties described herein.**

**SELLER:** Denali Unlimited, LLC.

\_\_\_\_\_  
By: Gabriel A. Lujan  
Its: Member

\_\_\_\_\_  
Date

Purchaser Initials \_\_\_\_\_

Sellers Initials \_\_\_\_\_