

"W2170214"

WHEN RECORDED, PLEASE RETURN TO:

David E. Gee, Esq.
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111-1537

EN 2170214 PG 1 OF 18
DUG CROFTS, WEBER COUNTY RECORDER
31-MAR-06 336 PM FEE \$44.00 DEP JPM
REC FOR: HOME ABSTRACT

(Tax Parcel No. 12-203-0003)

**PARKING EASEMENT AGREEMENT
(250 Non-Exclusive Parking Spaces)**

THIS PARKING EASEMENT AGREEMENT (this "Agreement") is executed as of the 31st day of March, 2006 (the "Effective Date"), by and among **OGDEN CITY**, a Utah municipal corporation, with an address of 2549 Washington Boulevard, Suite 900, Ogden, Utah 84401-2319 ("Ogden"), **BOYER BDO, L.C.**, a Utah limited liability company with an address of 90 South 400 West, Suite 200, Salt Lake City, Utah 84101 ("Boyer BDO"), (Ogden, Boyer BDO and their respective successors being referred to sometimes collectively, as the "Grantor") in favor of **NUTRACEUTICAL CORPORATION**, a Delaware corporation, with an address of 1400 Kearns Boulevard, 2nd Floor, Park City, Utah 84060 ("Nutraceutical").

RECITALS

A. Ogden, as landlord, and Boyer BDO, as tenant, entered into a certain Lease Agreement for Existing Facilities and Grant of Option to Lease Future Development Land dated December 28, 1999, as amended (the "Lease").

B. Ogden and Boyer BDO entered into an agreement for the development of the former Defense Depot Ogden, now known as Business Depot Ogden (the "BDO") pursuant to that certain Master Development Agreement, dated as of December 29, 1999 (the "Master Development Agreement").

C. As contemplated by the Master Development Agreement, the City, as declarant, caused the recording of that certain Master Declaration of Covenants, Conditions, and Restrictions, dated as of December 28, 1999, recorded on December 30, 1999, as Entry No. 1682125 in Book 2051 at Page 1301 of the official records of Weber County, Utah, county recorder, as amended from time to time (as amended, the "CC&Rs").

D. Nutraceutical owns the following described tract of land located in Weber County, State of Utah (the "Nutraceutical Parcel"):

All of Lot 21, BUSINESS DEPOT OGDEN PLAT 10, Ogden City, Weber County, Utah, according to the official plat thereof.

Tax Parcel No. 12-203-0003^{1/4}

E. When Nutraceutical leased the Nutraceutical Parcel, that parcel was subject to the CC&Rs, but the Nutraceutical Parcel was released from the CC&Rs when Nutraceutical acquired it.

F. Grantor has agreed to grant a perpetual non-exclusive parking easement in the Specified Parking Area for the benefit of the Nutraceutical Parcel.

NOW, THEREFORE, for and in consideration of the terms and conditions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions. In addition to the capitalized terms previously defined in this Agreement, the following capitalized terms shall have the following meanings:

"1B Parking Area" means that portion of the Parking Area located east of Building 1B of the BDO, on which Ogden shall complete or cause to be completed certain Parking Facilities in accordance with its capital improvement plan on or prior to December 31, 2006, with respect to the actual parking surface, and June 30, 2007 with respect to the balance of the Parking Facilities, subject in all events to force majeure.

"Arbitration" means the dispute resolution procedure set forth in Section 14 to be employed to resolve any disputes arising under this Agreement.

"Assessment Lien" means an instrument executed and acknowledged by Boyer BDO which refers to this Agreement and which shall set forth the then delinquent amount of Reimbursement Obligation.

"Electrical Utility Facilities" means underground conduits, wires, lines, pipes and mains and other underground electrical utility structures and improvements necessary for the transmission and/or provision of electricity and electrical services to the BDO.

"Gas Utility Facilities" means underground pipes and mains and other underground gas utility structures and improvements necessary for the transmission and/or provision of natural gas to the BDO.

"Generally Available" means, with respect to the Number of Non-Exclusive Parking Spaces Allocated to Owner, that parking stalls are available to the Licensed Users on a regular basis without unreasonable delay seven (7) days a week, twenty-four (24) hours each day; provided that, because Owner and other Persons entitled to park in the Specified Parking Area may have unanticipated or unusual numbers of employees, guests and invitees on any given day

or at any given time, "Generally Available" shall not mean that a parking space is always immediately available to all 250 Licensed Users and that a parking space may be unavailable on a limited number of days to some Licensed Users due to unusual and non-recurring circumstance such as, without limitation, Owner or other occupants of the BDO holding simultaneous meetings, etc. or an overlap in "shifts" of workers during temporary repairs, maintenance and replacement, or on heavy snow days.

"Governmental Authorities" means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over the use, operation, maintenance or development of a specified matter.

"Governmental Requirements" means all laws, ordinances, rules, codes, requirements, resolutions, policy statements and regulations of Governmental Authorities in respect of a specified matter including, without limitation, such items relating to land use, subdivision, zoning, environmental, hazardous materials or other toxic substance, occupational health and safety, water, earthquake hazard reduction, and building and fire codes, but does not include Ogden in its capacity as Owner of the BDO after the termination.

"Interest Rate" means the prime lending rate as published in The Wall Street Journal, from time to time, plus four percent (4%), with such rate changing with each change in the prime lending rate published by The Wall Street Journal.

"Late Payment Fee" means five percent (5%) of a Reimbursement Obligation under Section 7.

"Licensed Users" means Owner, and its employees, customers, guests, invitees, and tenants of Owner that use the Parking Facilities in the Specified Parking Area in connection with the operation of Nutraceutical's business on the Nutraceutical Parcel.

"Mediation" means the dispute resolution procedure set forth in Section 14 to be employed to resolve all disputes arising under this Agreement and to be employed to attempt to resolve a disputes arising under this Agreement prior to submitting the same to Arbitration.

"Mortgage" means a mortgage, deed of trust or other security instrument Recorded in Recording Office with respect to the Nutraceutical Parcel or any portion thereof.

"Mortgagee" means the mortgagee, beneficiary or other Secured Party under a Mortgage Recorded in the Recording Office with respect to the Nutraceutical Parcel or any portion thereof.

"Number of Non-Exclusive Parking Spaces Allocated to Owner" means no less than 250 individual parking spaces located in the Specified Parking Area that shall be Generally Available to the Licensed Users of the Nutraceutical Parcel on a non-exclusive basis in accordance with the terms of this Agreement.

"Operate the Business" means Nutraceutical or a successor Owner (or a tenant of either Nutraceutical or a successor Owner) is continuously conducting business activities in and from

the Nutraceutical Parcel, except during a Suspension Period, that: (a) involve light manufacturing, manufacturing, or distribution; or (b) regularly involve two hundred fifty (250) total individuals working at the Nutraceutical Parcel (whether as employees or independent contractors).

"Owner" means Nutraceutical upon execution of this Agreement, and the Person that, at a specified later time, is the owner of a fee or an undivided fee interest in the Nutraceutical Parcel, as evidenced by an instrument Recorded in the Recording Office, but the term "Owner" expressly does not include the holder of a leasehold interest in the Nutraceutical Parcel. In addition, notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, a Mortgagee shall not constitute an Owner unless and until such Mortgagee has acquired fee title to the Nutraceutical Parcel (or some interest therein) pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu of such foreclosure or trustee's sale, as evidenced by an instrument of conveyance Recorded in the Recorder's Office.

"Parking Area" means the parking areas of the BDO described on Exhibit "A" attached to this Agreement, including, without limitation, the 1B Parking Area after completion of Parking Facilities thereon not later than the date set forth in the definition of that term, the portions of which Boyer BDO shall designate as Specified Parking Area from time to time.

"Parking Facilities" means paved pedestrian sidewalks and walkways, the driveways, the parking stalls and related parking facilities and improvements located on, under or over the Parking Area at any time and from time to time including, without limitation, parking structures, garages, parking decks, curbs, traffic control signs, lighting equipment and landscaping, and as the same may be modified, reconstructed or altered from time to time.

"Person" or "person" means any one or more natural persons, corporations, partnerships (general or limited), limited liability companies, firms, trusts, trustees, governments, governmental authorities or other entities.

"Recorded" means filed for record in the land records of Weber County, Utah.

"Recording Office" means the office of the County Recorder for Weber County, Utah.

"Reimbursement Obligation" is defined in Section 7.

"Sewer Utility Facilities" means such underground pipes and mains and other underground sanitary sewer structures and improvements necessary for the provision of sanitary sewer services to the BDO.

"Short Operation Period" is defined in the definition of Suspension Period.

"Specified Parking Area" means the portions of the Parking Area designated at any time and from time to time by Boyer BDO as the portion of Parking Area to be used on a non-exclusive basis by the Licensed Users pursuant to this Agreement, which need not include all of the Parking Area. The portion of the Parking Area that is not designated a Specified Parking

Area may be used for any purpose including, without limitation, being designated by Boyer BDO as being for the exclusive use by other Persons for parking.

"Suspension Period" means a period during which Boyer BDO may not terminate this Agreement on account of the failure of Owner or a tenant of Owner to Operate the Business, and which shall be a period of three hundred and sixty five (365) consecutive days commencing on the first calendar day on which neither Owner nor a tenant of Owner is Operating the Business, it being understood that normal and customary closures on weekends and federal and state holidays shall not be deemed a failure to Operate the Business provided that the Owner or a tenant of the Owner Operates the Business during the week in which such holiday or weekend occurs; provided, if Owner and/or a tenant of Owner ceases to Operate the Business at any time and from time to time, thereafter recommences to Operate the Business, but again ceases to Operate the Business within three hundred and sixty five (365) consecutive calendar days after such commencement (a "Short Operation Period"), the days during which neither Owner nor any of its tenants Operated the Business prior to and after such Short Operation Period shall be deemed to be consecutive. Because the foregoing calculation of the Suspension Period is intended to be a cumulative number of calendar days in the foregoing circumstance, there may be multiple Short Operation Periods.

"Telecommunications Facilities" means such underground conduits, wires, lines and pipes and other underground telephone and telecommunications structures and improvements necessary for the transmission and/or provision of telephone and telecommunications services to the BDO.

"Water Utility Facilities" means such underground pipes and mains and other underground water utility structures and improvements necessary for the provision of water and water services to the BDO.

2. Easement.

(a) Grant of Easements for Pedestrians and Vehicles. Grantor hereby creates and grants the following easements to the Owner with respect to the Parking Facilities in the Specified Parking Area for the benefit of the Nutraceutical Parcel and of the Licensed Users:

(i) Non-exclusive easements across the sidewalks and walkways located from time to time in the Specified Parking Area and providing access to the Specified Parking Area for pedestrian use by the Licensed Users;

(ii) Non-exclusive easements across the traffic lanes and roads located from time to time in the Specified Parking Area or providing access to the Specified Parking Area for the vehicles of the Licensed Users; and

(iii) Non-exclusive easement across the Specified Parking Area located in the Specified Parking Area from time to time for parking the vehicles of the Licensed Users, but such Licensed Users shall not have the right at any time to use parking spaces which exceed the Number of Non-Exclusive Parking Spaces Allocated to Owner.

(b) Non-exclusive. The Grantor shall have the right to grant similar easements, leases and licenses to other Persons to the use of the Parking Facilities located in the Specified Parking Area as shall be determined in the sole discretion of the Grantor to be necessary, appropriate or desirable in connection with the use, operation and enjoyment of the BDO or any part thereof, provided, however, that the granting of such easements, leases and licenses shall not materially impair the rights of the Licensed Users of the Nutraceutical Parcel regarding the use of the Number of Non-Exclusive Parking Spaces Allocated to Owner in the Specified Parking Area in accordance with the terms of this Agreement. The Grantor and such other Persons to whom the Grantor may have granted easements, leases or licenses for the exclusive or non-exclusive use of the parking spaces in the Specified Parking Area shall have the right to park on a non-exclusive basis in common with the Licensed Users of the Nutraceutical Parcel, but such other rights or use shall not impair Owner's right to the use by Owner of the Number of Non-Exclusive Parking Spaces Allocated to Owner. In addition, the Grantor hereby reserves the right to: (i) reconfigure the layout of any Parking Facilities (or any part thereof) located in the Parking Area or relocate the same to other locations in the Parking Area; (ii) close temporarily any portion of the Parking Facilities located in the Parking Area, including the Specified Parking Area (but only for maintenance, reconstruction or safety purposes and only so long as required for such purposes); (iii) permanently close and/or remove Parking Facilities located in the Parking Area including the Specified Parking Area; (iv) convey or lease to any Person any portion of the Parking Area from which the Parking Facilities have been or will be closed or removed subject to the terms of this Agreement; (v) construct, or permit to be constructed, additional Parking Facilities in the Parking Area, or any part thereof, including the Specified Parking Area; and (vi) construct or permit or cause to be constructed and installed, additional buildings, structures and other improvements including, but not limited to Electric, Gas, Sewer, Telecommunications and Water Utility Facilities on, in or under any portion or portions of the Parking Area including the Specified Parking Area; provided, however, that the sum of the Number of Non-Exclusive Parking Spaces Allocated to Owner after any such reconfiguration or permanent closure or removal of parking spaces, shall remain equal to the Number of Non-Exclusive Parking Spaces Allocated to Owner. In the event of a temporary closure of any Parking Facilities in the Specified Parking Area, which shall only occur in the event of necessary repairs or emergencies, Grantor shall use commercially reasonable best efforts to make available as soon as possible to the Licensed Users a similar number of replacement parking stalls of similar size within other parts of the Parking Area, or if no such parking stalls are available in other parts of the Parking Area, then the replacement parking stalls shall be located in as close proximity to the Nutraceutical Parcel as possible. In all events such Licensed Users shall be treated on a non-discriminatory basis vis-à-vis other non-exclusive users of the Specified Parking Area.

(c) Specified Parking Area. The following provisions shall govern the Specified Parking Area:

(i) Except for parking spaces within the Specified Parking Area that are leased or rented on a weekly (or longer) basis or marked "reserved" or "exclusive", all parking spaces within the Specified Parking Area shall be available to Owner and applicable Licensed Users on a first-come, first-served, non-exclusive and unreserved basis and without time limits.

(ii) For purposes of Owner's and the Licensed User's rights hereunder, the number of parking spaces that are leased or rented on a weekly (or longer) basis or marked "reserved" or "exclusive" for other tenants or licensed users of the BDO shall not be counted toward the number of Non-Exclusive Parking Spaces Allocated to Owner.

(d) Rules and Regulations. Grantor may promulgate reasonable rules and regulations regarding the use of the Parking Area including the Specified Parking Area, and may modify such rules and regulations at any time and from time to time. These rules and regulations may include earmarking specific spaces for invitees or guests of Owner, requiring the Licensed Users to use only Specified Parking Area and to display stickers, decals or other indicators of being a Licensed User. Failure of the Licensed Users to comply with such rules and regulations shall be enforced by Boyer BDO against the violating Licensed User by customary enforcement mechanisms including, without limitation, fines, towing, booting and banishment from future use. All rules and regulations will be consistently promulgated, applied and enforced on a non-discriminatory basis vis-à-vis other non-exclusive users of the Specified Parking Area.

3. Maintenance of Parking Facilities. Grantor shall keep and maintain all of the Parking Facilities now or hereafter located in the Specified Parking Area (but not including Parking Facilities located on the Nutrapeutical Parcel which shall be maintained by Owner), including, without limitation, all paved parking areas, curbs, landscaping, drives and lighting equipment, in good condition and repair, except for ordinary wear and tear, and Grantor shall make all repairs, replacements and renewals, foreseen and unforeseen, ordinary or extraordinary in order to maintain the same in such condition and repair as is comparable to the state of condition and repair of the driveways, sidewalks, walkways and parking areas now in good condition and located on the BDO less ordinary wear and tear and, in the case of existing facilities, taking into account the age and year of construction of such facilities; provided, that except as required by this Agreement with respect to the 1B Parking Area, this provision shall not require Boyer BDO to install any specific parking areas, curbs, landscaping, drives and lighting equipment. In addition, the Grantor shall keep and maintain the Specified Parking Area in a safe, clean and attractive condition consistent with the standards of maintenance and cleanliness in effect with respect to the recently constructed or refurbished parking areas within the BDO and shall keep the Specified Parking Area free from any accumulations of dirt, trash, and other debris. Owner shall comply with and shall cause all of its Licensed Users to comply with all reasonable rules and regulations adopted from time to time by the Grantor relating to the direction and flow of traffic, the delineation of areas wherein parking and standing are not permitted and otherwise governing the use and operation of such parcels and the safety and security of pedestrians, operators and their automobiles and other property. Furthermore, Grantor shall have the right to install barriers and other devices to control the use of and access to the Specified Parking Area, but this right shall not unreasonably interfere with Owner's or Licensed Users' access to and from the Specified Parking Area pursuant to this Agreement. In the event that any parking deck, parking structure or parking garage is constructed in the Parking Area by Boyer BDO, or any lessee, assignee or other transferee of Grantor, Owner shall not be required to pay the cost of constructing such new Parking Facilities.

4. Remedy of Owner. If any of the Number of Non-Exclusive Parking Spaces Allocated to Owner is not Generally Available on a given day, Owner may notify Boyer BDO of

such occurrence in writing, which notice shall describe the occurrence, and Boyer BDO shall promptly use its diligent commercially reasonable best efforts to remedy the problem which may include designating additional portions of the Parking Area to be Specified Parking Area. In addition, if Owner believes that the Number of Non-Exclusive Parking Spaces Allocated to Owner are not Generally Available to the Licensed Users, Owner may notify Boyer BDO of such claim in writing setting forth the basis for the claim and any recommendations for the steps which, if taken, would resolve the claim. Boyer BDO and Owner shall resolve any dispute regarding compliance by Boyer BDO with its obligations under this Agreement pursuant to the dispute resolution mechanism in Section 14.

5. Obligations of Owner.

(a) Compliance with Law. In connection with the use and enjoyment of the easements, licenses and rights granted and declared herein for the benefit of Owner and the Licensed Users, they shall comply with all applicable laws, regulations, orders and requirements of all Governmental Authorities.

(b) Indemnification. Owner shall indemnify and save Boyer BDO and Ogden harmless from and against any and all losses, costs, damages, expenses, liabilities, demands and causes of action and any expenses incident to the defense thereof incurred by Boyer BDO and/or Ogden arising as a result of the exercise, use or enjoyment of any rights, easements or licenses granted or declared herein for the benefit of Owner or arising out of any violation by Owner of any of the terms or provisions of this Agreement. Furthermore, Owner shall indemnify and save Boyer BDO and Ogden harmless from and against any and all loss, costs, damages, expenses, liabilities, demands and causes of action and any expenses incidental to the defense thereof by Boyer BDO and Ogden resulting from any injury or death of Persons or damage to property that occurs in the Parking Area or in any manner directly or indirectly grows out of or in connection with the use, occupancy or condition of the portions of the Parking Area by Owner and the Licensed Users; provided, however, Owner shall not so indemnify and save harmless Boyer BDO or Ogden from the consequences of any acts of Boyer BDO or Ogden constituting negligence or willful misconduct or from the consequences of Persons other than Owner, its invitees, and Licensed Users.

(c) Insurance. Prior to allowing any of the Licensed Users to enter into the Parking Area, Owner shall obtain and maintain a policy of general commercial liability insurance insuring against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Parking Area, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00). Boyer BDO and Ogden shall be endorsed as an additional insured on such policy and Owner shall provide a certificate evidencing such coverage and endorsement to Boyer BDO and Ogden.

6. Insurance. Owner shall keep in effect at its sole cost and expense satisfactory comprehensive general liability insurance covering its use of the Parking Facilities. Each such policy shall name Boyer BDO, Ogden, and Owner as an additional insured, and the Grantor shall furnish Owner with certificates of current policies evidencing such insurance.

7. Damage to Parking Facilities. If, in connection with the use, occupation and enjoyment of the Parking Facilities in the Parking Area any improvements in the Parking Area are damaged or destroyed by Owner or any Licensed User, then Owner shall be liable and obligated to pay the reasonable cost of repairing or replacing such damaged or destroyed improvements, other than the repair or replacement of any parking structure, to a condition substantially identical to that existing before such damage or destruction. If Owner has not completed such repairs or replacements within thirty (30) days after written notice from Grantor, Boyer BDO shall have the right to make the required repairs and replacements and invoice Owner for the cost thereof (the "Reimbursement Obligation"). Owner shall pay the full amount of the invoice, without offset or deduction, not later than thirty (30) days after the same is delivered to it.

8. Assessment Lien.

(a) If Owner fails to pay the full amount of an invoice described in Section 7 within such thirty (30) day period, then:

- (i) The Late Payment Fee shall automatically be added to the invoice; and
- (ii) The unpaid balance shall thereafter accrue interest at the Interest Rate.

In addition then Boyer BDO shall have the right to Record an Assessment Lien in the Recording Office against the Nutraceutical Parcel for the purpose of securing the obligation of Owner to pay the Reimbursement Amount.

(b) Upon Recording the Assessment Lien, the delinquent Reimbursement Obligation, together with interest at the Interest Rate and the Late Fee, shall be secured by a lien upon the Nutraceutical Parcel. After the Assessment Lien has been Recorded, Boyer BDO may enforce payment of the amount due pursuant to the Assessment Lien, or enforce the Assessment Lien against the Nutraceutical Parcel or Owner by taking any or all of the following actions, concurrently or separately:

- (i) Bringing an action at law against Owner.
- (ii) Foreclosing the Assessment Lien against the Nutraceutical Parcel in accordance with the then prevailing applicable law relating to the foreclosure of mortgages (including the right to recover any deficiency); or
- (iii) Pursuing any other remedy against Owner as may be available at law or in equity.

(c) The Assessment Lien shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon the Nutraceutical Parcel; provided, however, that such Assessment Lien shall be subject and subordinate to:

(i) Liens for taxes and other public charges which by applicable law are expressly made superior; and

(ii) The lien of any Mortgage Recorded in the Recording Office prior to the date the Assessment Lien is Recorded, but not the lien of a Mortgage Recorded after the date the Assessment Lien is Recorded.

(iii) Upon the curing of all defaults for which an Assessment Lien was Recorded, Boyer BDO shall immediately record an appropriate release of such Assessment Lien. Such release shall occur notwithstanding the fact that any other disputes not covered by the Assessment Lien may exist between Grantor and Owner.

9. Term of Agreement. The rights and obligations created by this Agreement shall be perpetual; provided, Grantor may terminate this Agreement upon thirty (30) days written notice (which notice may be delivered prior to the end of the Suspension Period), if an Owner ceases to Operate the Business and the Suspension Period expires.

10. No Assignment. The rights, easements and licenses granted and declared herein for the benefit of the Nutraceutical Parcel and the Licensed Users are intended to create rights only in Owner and the Licensed Users. Owner may not assign or sublease any of its rights under this Agreement. Any attempted assignment or sublease of its rights under this Agreement shall be null and void, except Owner may lease all or any portion of the Nutraceutical Parcel to third Persons and designate such lessee and its employees, customers, guests and invitees as Licensed Users without Boyer BDO's consent, but with prior written notice to Boyer BDO.

11. Eminent Domain.

(a) In the event that a portion of the Specified Parking Area is taken for a public purpose by the exercise of the power of eminent domain, or is transferred or conveyed in a negotiated transaction to a Person vested with the power of eminent domain under threat of eminent domain and thereafter used for public purposes, but, after taking into account the rights of other Persons to exclusive or non-exclusive use of the Parking Area, sufficient Parking Facilities remain in the Parking Area to provide the Number of Non-Exclusive Parking Spaces Allocated to the Owner, then the easements and licenses granted above with respect to the portion of the Specified Parking Area taken or conveyed, shall terminate at the effective time of the taking or conveyance, or, if earlier, the date that the condemning authority takes possession of such portion of the Parking Area, and Boyer BDO shall adjust the Specified Parking Area to comply with the requirement to supply the Number of Non-Exclusive Parking Spaces Allocated to Owner.

(b) In the event that a portion of the Specified Parking Area is taken for a public purposes by the exercise of the power of eminent domain or is transferred or conveyed in a negotiated transaction to a Person vested with the power of eminent domain under threat of eminent domain and thereafter used for public purposes, such that, after taking into account the rights of other Persons to exclusive or non-exclusive use of the Parking Area, the remaining Parking Facilities and Parking Area are not sufficient to provide the Number of Non-Exclusive Parking Spaces Allocated to the Owner, then the easements and licenses granted above with

respect to the portion of the Parking Area taken or conveyed, shall terminate at the effective time of the taking or conveyance, or, if earlier, the date that the condemning authority takes possession of such portion of the Parking Area, and Boyer BDO shall adjust the Specified Parking Area or designate other parking spaces for use by Owner pursuant to Section 11(d) such that Boyer BDO complies with the obligation to provide the Number of Non-Exclusive Parking Spaces Allocated to Owner.

(c) In the event that all of the Parking Area is taken for a public purpose by the exercise of the power of eminent domain or is transferred or conveyed in a negotiated transaction to a Person vested with the power of eminent domain under threat of eminent domain and thereafter used for public purposes, then the easements and licenses granted above with respect to all of the Parking Area shall terminate at the effective time of the taking or conveyance, or, if earlier, the date that the condemning authority takes possession of such portion of the Parking Area, and Boyer BDO shall adjust the Specified Parking Area or designate other parking spaces for use by Owner pursuant to Section 11(d) such that Boyer BDO complies with the obligation to provide the Number of Non-Exclusive Parking Spaces Allocated to Owner.

(d) If the Number of Non-Exclusive Parking Spaces Allocated to Owner is not available within the Parking Areas as a result of eminent domain, Boyer BDO shall promptly replace the parking stalls taken pursuant to power of eminent domain with the same number of parking stalls of similar size, and Boyer BDO shall use its commercially reasonable best efforts to locate such replacement parking stalls in as close proximity to the Nutraceutical Parcel as possible. If or to the extent Boyer BDO fails to so provide such replacement parking stalls, notwithstanding Boyer BDO's commercially reasonable best efforts to do so, Owner's right to such parking stalls shall cease, and Owner shall be entitled to receive that portion of any award or compensation with respect to such taking or conveyance equal to the amount of the value of the perpetual right to use the lost parking stalls. In the event that the court orders or the applicable settlement documents provide that Owner is entitled to any award or compensation pursuant to the foregoing sentence, and such award or compensation is paid to Boyer BDO, then Boyer BDO shall pay such award or compensation to Owner with five (5) days after Boyer BDO's receipt of the same. Except as set forth herein, Owner shall not be entitled to any portion of the award or other compensation payable with respect to any such taking or conveyance; provided, however, that Owner may file collateral claims with the condemning authority, over and above the value of the land within the Parking Area so taken, to the extent of any damage suffered by the Nutraceutical Parcel resulting from the severance of the Parking Area so condemned or taken.

(e) Boyer BDO shall promptly repair and restore the remaining portion of the Specified Parking Area designated for use by Owner to as near as practicable to the condition of same immediately prior to such condemnation or taking and without contribution from Owner.

(f) Owner shall be entitled, at such Owner's sole cost and expense and with legal counsel of its choosing, to join as a party in any condemnation proceeding involving a taking or the Specified Parking Area or any portion thereof affecting Owner's rights hereunder.

12. Default/Remedies.

(a) In the event that Owner is in breach of its obligations under this Agreement, Grantor shall provide written notice of such breach to Owner. If Owner fails to cure such breach within thirty (30) days following the receipt of such notice, or in the case of a breach other than the payment of money which by its nature cannot be completely cured within such thirty (30) day period, if Owner does not within such period commence to cure the breach and diligently pursue and complete the cure in a reasonable period of time, then in either such event, Grantor may, at its election, do any or all of the following:

- (i) Terminate this Agreement;
- (ii) Do all things necessary or desirable to remedy such breach and perform the obligations of Owner that have not been fully or promptly performed; or
- (iii) Exercise any other remedy available at law or equity.

(b) This Agreement shall not be terminated on account of a non-monetary default by Owner except upon final adjudication or Arbitration awarding a termination and subsequent opportunity to cure in accordance with Section 12(a) and, in the event of a dispute, subject to the resolution of any disputes hereunder in accordance with Section 14 hereof.

(c) Owner shall immediately on demand reimburse Grantor for all costs and expenses incurred by Grantor in connection with the cure of any breach by Owner of its obligations under this Agreement, plus interest at the Interest Rate, or if less, the highest rate permitted under applicable law.

13. No Public Dedication. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever.

14. Dispute Resolution.

(a) Good Faith Attempt to Resolve Disputes. In the event of a dispute arising under this Agreement, the parties to the dispute shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation between designated representatives with authority to resolve the dispute.

(b) Mediation. Prior to exercising any other remedies available or required under this Agreement or otherwise available at law or equity, including, without limitation, Arbitration of a dispute pursuant to Section 14(c), the parties to the dispute shall first attempt in good faith to settle any dispute arising out of or relating to this Agreement or its breach by mediation pursuant to this Section ("Mediation"). Any party to the dispute may demand Mediation by written notice to the other parties to the dispute. The Mediation is to be administered by a mediator mutually agreed upon by the parties to the dispute, in the absence of an agreement upon a mediator, any party to the dispute may petition the Chief Judge of The Second Judicial District

Court in and for Weber County, Utah to appoint a mediator. If the Mediation does not resolve the dispute, any party to the dispute may then resort to Arbitration.

(c) Arbitration. In the event of a dispute and after the parties to the dispute have satisfied the requirements of Section 14(a) and (b), then any party to the dispute by delivering written notice delivered to the other parties to the dispute may elect to subject the dispute to binding arbitration by a single arbitrator in an expedited proceeding pursuant to this Section 14(c) (an "Arbitration"); provided the arbitrator may not award exclusive parking rights to Owner and its Licensed Users and may not award monetary damages. The Arbitration shall be governed by and subject to the terms of this Section and to the Utah Arbitration Act, Utah Code Annotated 78-31a-1. The parties to the dispute shall promptly designate a single arbitrator. If the parties to the dispute cannot agree upon an arbitrator within thirty (30) days after the initial written notice demanding Arbitration, any party to the dispute may, by motion made to a Utah State Court having jurisdiction pursuant to Utah Code Annotated, Section 78-31a-5, request that the court appoint an arbitrator. If and to the extent that the issue giving rise to the dispute involves a specialized expertise, such as, but not limited to, resolution of an issue in connection with accounting for expenses, the parties to the dispute or the Court shall attempt to appoint a Person having at least five (5) years of experience in that area of expertise. The arbitrator shall have the discretion to define the issues involved in the dispute. To the extent possible, all discovery shall be informal in accordance with a procedure and timetable prescribed by the arbitrator. The arbitrator shall employ all reasonable efforts to expedite the resolution of the dispute. The arbitrator shall determine how the cost of the Arbitration shall be allocated between and paid by the parties to the dispute.

15. Fees and Expenses. In the event Owner or Grantor fails to perform any of its respective obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision herein, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

16. Runs With the Land. This Agreement and the covenants and obligations created by this Agreement are intended by to be and shall constitute covenants running with the land as to the Nutraceutical Parcel, and shall be binding upon and shall inure to the benefit of Boyer BDO and each Owner who acquires or comes to have any interest in the Nutraceutical Parcel, and upon and to their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. By acquiring or in any way coming to have an interest in the Nutraceutical Parcel, the Person so acquiring or coming to have such interest in the Nutraceutical Parcel shall be deemed to have consented to, and shall be bound by, each and every provision of this Agreement.

17. General Provisions.

(a) Amendment. This Agreement or any provisions hereof, or any covenants and conditions contained herein, may be terminated, extended, modified or amended, but only by a written instrument duly executed by Boyer BDO, Ogden and Owner. No such termination,

extension, modification or amendment shall be effective until an appropriate instrument has been properly executed by Boyer BDO, Ogden and Owner.

(b) Severability. If any term or provision of this Agreement, or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) No Further Rights. Owner is entitled to only those rights set forth explicitly herein. The willingness of Grantor to enter into this Agreement will not obligate Grantor to enter into any further agreement with Owner in the future.

(d) Governing Law; Legal Requirements. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Utah. If any covenant, condition, restriction, option, right of first refusal or other provision of this Agreement shall be unlawful, void or voidable for the violation of any rule of law including, but not limited to, the rule against perpetuities, any law regarding unreasonable restraints on alienation or any similar rule of law, then such provision shall continue only until the date 999 years after the date of this Agreement.

(e) Exhibits. All exhibits referred to herein are attached hereto and made a part hereof.

(f) Limited Recourse. The recourse of Owner shall be limited to specific performance for delivery of the Number of Non-Exclusive Parking Spaces Allocated to Owner in accordance with the terms of this Agreement. Owner shall not seek or seek to enforce or collect a monetary judgment for any amount against Boyer BDO, its members or the members or partners of its members at any level removed, or against their employees, agents, officers, directors or shareholders.

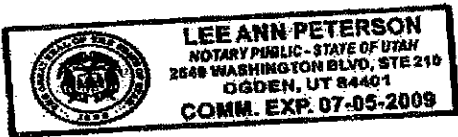
(g) Ogden. Ogden is joining in this Agreement solely to bind its fee interest in the Property and to bind its residual interest after termination of the Lease. Any terms, conditions, provisions applicable to or obligations of Boyer BDO set forth in this Agreement shall be applicable to and performed by Boyer BDO or its successor prior to the termination of the Lease. Any terms, conditions, provisions applicable to or obligations of Boyer BDO set forth in this Agreement shall be applicable to and performed by Ogden or its successors as to the fee interest in the Parking Area from and after the date the Lease is terminated.

(h) Estoppel Certificates. Boyer BDO and Owner shall both be obligated to provide written estoppel certificates to the other or to any lender within ten (10) business days after written request on commercially reasonable forms.

(Signatures begin on following page)

STATE OF UTAH)
) ss:
COUNTY OF WEBER)

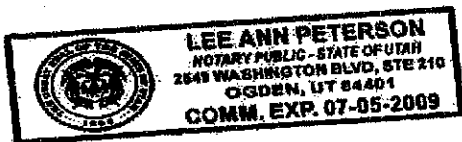
The foregoing Agreement was acknowledged before me this 31st day of March, 2006, by Andrea Lockwood, in her/his capacity as the Asst. City Attorney of Ogden City.



Lee Ann Peterson
Notary

STATE OF UTAH)
) ss:
COUNTY OF WEBER)

The foregoing Agreement was acknowledged before me this 31st day of March, 2006, by Cindi Mansell, in her/his capacity as the City Recorder of Ogden City.



Lee Ann Peterson
Notary

