



W2449574

WHEN RECORDED, PLEASE RETURN TO:

Parr Brown Gee & Loveless
Attn: Robert A. McConnell
185 South State Street, Suite 800
Salt Lake City, Utah 84111

E# 2449574 PG 1 OF 7
ERNEST D ROWLEY, WEBER COUNTY RECORDER
14-DEC-09 4:50 PM FEE \$26.00 DEP SC
REC FOR: LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

**FIRST AMENDMENT TO
MAINTENANCE FEE PAYMENT AGREEMENT**

THIS FIRST AMENDMENT TO MAINTENANCE FEE PAYMENT AGREEMENT (this "Amendment") is executed to be effective as of the 11 day of December, 2009 (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"); and NUTRACEUTICAL CORPORATION, a Delaware corporation, with an address of 1400 Kearns Boulevard, 2nd Floor, Park City, Utah 84060 ("Nutraceutical").

RECITALS

A. Ogden and Boyer BDO entered into an agreement for the development of the BDO pursuant to that certain Master Development Agreement, dated as of December 29, 1999 (the "Master Development Agreement").

B. 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").

C. Ogden, Boyer BDO, and Nutraceutical executed that certain Maintenance Fee Payment Agreement, dated March 31, 2006, and recorded on March 31, 2006, as Entry No. 2170215 in the official records of Weber County, Utah, county recorder (the "Maintenance Fee Payment Agreement").

D. On the date upon which the Maintenance Fee Payment Agreement was executed, Nutraceutical owned the following described tract of land located in Weber County, State of Utah (the "Initial Nutraceutical Parcel"):

All of Lot 21 Business Depot Ogden Plat 10, in accordance with the plat thereof filed with the Official Records of the Recorder of Weber County, Utah

Tax Parcel No. ~~12-203-0003~~ 12-219-0003 ✓

E. As of the date hereof, and in addition to the Initial Nutraceutical Parcel, Nutraceutical owns the following described tracts of land located in Weber County, State of Utah (the "Additional Nutraceutical Parcel"):

All of Lot 19, BUSINESS DEPOT OGDEN PLAT 10 AMENDED, Ogden City, Weber County, Utah according to the official plat thereof on file and of record in the Weber County Recorder's Office, Ogden, Weber County, Utah.

Together with a non-exclusive perpetual 45 foot wide joint driveway easement for ingress and egress purposes appurtenant to the aforementioned Lot 19, on the north end of Lot 19, BUSINESS DEPOT OGDEN, PLAT 10 AMENDED, and the South end of Lot 22, BDO, Plat 10, as depicted on the recorded plat.

Weber County Parcel No. 12-219-0001. ✓

All of Lot 20, BUSINESS DEPOT OGDEN PLAT 10 AMENDED, Ogden City, Weber County, Utah according to the official plat thereof on file and of record in the Weber County Recorder's Office, Ogden, Weber County, Utah.

Weber County Parcel No. 12-219-0002. ✓ *DM*

The Additional Nutraceutical Parcel was released from the CC&Rs and the Master Development Agreement when Nutraceutical acquired it.

F. Although the Additional Nutraceutical Parcel is no longer subject to the CC&Rs or the Master Development Agreement, the Nutraceutical Parcel will benefit from work performed and services rendered by Boyer BDO pursuant to the CC&Rs.

G. Because of such benefit and as part of the consideration for the release of the Additional Nutraceutical Parcel from the CC&Rs, Nutraceutical has agreed to pay Boyer BDO certain amounts and to cause the obligation to pay such amounts to constitute an encumbrance against the Nutraceutical Parcel, in connection with which Ogden, Boyer BDO, and Nutraceutical desire to amend the Maintenance Fee Payment Agreement upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Additional Nutraceutical Parcel. Nutraceutical does hereby submit the Additional Nutraceutical Property to the terms, conditions, and provisions of the Maintenance Fee Payment Agreement, and the Maintenance Fee Payment Agreement is hereby amended so that any and all references therein to the "Nutraceutical Parcel" shall mean and refer to both the Initial Nutraceutical Parcel and the Additional Nutraceutical Parcel.

2. Maintenance Payment. The Term "Maintenance Payment", as defined in Section 1 of the Maintenance Fee Payment Agreement, is hereby modified by adding the following to the end of the definition thereof:

(c) As of January 1, 2010, the Maintenance Payment shall equal \$9,868.46 per annum, and shall thereafter increase as set forth in subparagraph (b) above.

3. Effect of Amendment. Except as modified by this Amendment, the Master Fee Payment Agreement is ratified and affirmed and shall remain in full force and effect. In the event of any inconsistency between this Amendment and the Master Fee Payment Agreement, the provisions of this Amendment shall control.

4. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

[signatures appear on the following pages]

IN WITNESS WHEREOF, this Amendment has been executed by the parties on the day and year first above written.

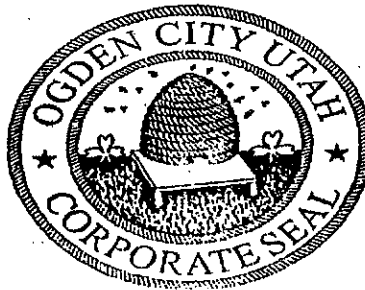
OGDEN:

OGDEN CITY, a Utah municipal corporation acting in its capacities as a local redevelopment authority

By: Matthew R. Godfrey
Name: MATTHEW R. GODFREY
Title: MAYOR

Attest:

Audi Mansell
City Recorder



Approved as to Form:

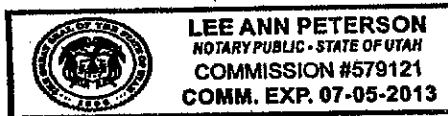
Buck Garner
City Attorney

STATE OF UTAH)
) ss:
COUNTY OF WEBER)

The foregoing Agreement was acknowledged before me this 11th day of December, 2009, by Matthew R. Godfrey, in her/his capacity as the Mayor of Ogden City.

Lee Ann Peterson
Notary

My Commission Expires: 7-5-2013



STATE OF UTAH)
) ss:
COUNTY OF WEBER)

The foregoing Agreement was acknowledged before me this 11th day of December, 2009, by Cindi Maxwell, in her/his capacity as the City Recorder of Ogden City.

Lee Ann Peterson

Notary

My Commission Expires: 7-5-2013



STATE OF UTAH)
) ss:
COUNTY OF WEBER)

The foregoing Agreement was acknowledged before me this 11th day of December, 2009, by Buck Ference, in her/his capacity as the Chief Deputy City Attorney of Ogden City.

Lee Ann Peterson

Notary

My Commission Expires: 7-5-2013



BOYER BDO:

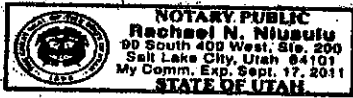
BOYER BDO, L.C., a Utah limited liability company, by its Manager

THE BOYER/GARDNER BDO COMPANY, L.C., a Utah limited liability company

By: [Signature]
Name: D. Glenn
Title: Manager

STATE OF UTAH)
COUNTY OF Salt Lake) ss:

The foregoing Agreement was acknowledged before me this 11th day of December, 2009, by Dennis N. Glenn, in his capacity as the Manager of THE BOYER/GARDNER BDO COMPANY, L.C., a Utah limited liability company, in its capacity as a Manager of BOYER BDO, L.C., a Utah limited liability company.



Rachael Nilsen
Notary

My Commission Expires: 9-17-11

NUTRACEUTICAL:

NUTRACEUTICAL CORPORATION, a Delaware corporation

By: Bruce R. Hough
Name: Bruce R. Hough
Title: President

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

The foregoing Agreement was acknowledged before me this 11th day of December, 2009, by Bruce R. Hough, in her/his capacity as the President of Nutraceutical Corporation, a Delaware corporation.

[Signature]
Notary

My Commission Expires: 4-2-13

