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E# 2853872 PG 1 OF 8  
LEANN H KILTS, WEBER COUNTY RECORDER  
25-APR-17 2:06 PM FEE \$1.00 DEP TN  
REC FOR: OGDEN CITY

**PARKING EASEMENT AGREEMENT**

THIS PARKING EASEMENT AGREEMENT (the "*Agreement*") is made this 24<sup>th</sup> day of April, 2017, by and between Ogden City, a Utah municipal corporation ("*Ogden*"), Boyer BDO, L.C., a Utah limited liability company ("*Boyer*"), and NUTRACEUTICAL CORPORATION, a Delaware Corporation ("*Nutraceutical*").

**RECITALS:**

WHEREAS, Ogden is the owner of land in Business Depot Ogden that is more fully described in **Exhibit A**, attached hereto and incorporated herein by reference; and

WHEREAS, Ogden, by and through its tenant, Boyer, intends to construct a surface parking lot comprised of *uncovered asphalt surface parking and landscaping on the land described in Exhibit A (the "Parking Facility")*; and

WHEREAS, Nutraceutical, owns land in Business Depot Ogden that is more fully described in **Exhibit B**, attached hereto and incorporated herein by reference, on which it operates a manufacturing facility (the "*Nutraceutical Property*"), which is roughly adjacent to the Parking Facility; and

WHEREAS, Nutraceutical is providing financial assistance to Ogden and Boyer in making the improvements to the Parking Facility.

**AGREEMENT:**

NOW THEREFORE, for and in consideration of the foregoing premises, the covenants and obligations hereinafter set forth, and the mutual benefits to be derived hereunder, the parties agree as follows:

1. **Amendment to Easement Agreement.** Ogden hereby grants to Nutraceutical, a non-exclusive easement (the "*Easement*") to use the Parking Facility, as it is proposed to be constructed and as generally shown on **Exhibit C**, attached hereto and incorporated herein by reference. Nutraceutical shall have no right, license or permission, except as herein granted.

2. **Term.** The term of the Easement is for a period of twenty (20) years after the date on which improvements to the Parking Facility are completed and Nutraceutical is able to enjoy the rights granted hereunder. Such commencement date will be documented in the form of a letter from Ogden to Nutraceutical indicating the completion of improvements and the availability of use of the Parking Facility and in the absence of such a letter shall be deemed to

occur on the earlier to occur of: (a) December 31, 2017 or (b) Nutraceutical's commencement of actual use of the Parking Facility.

**3. Scope and Use.** The following terms and conditions shall apply to this Easement:

(a) The rights created in this Easement shall be for Nutraceutical and any tenant, guest, licensee and invitee of Nutraceutical to utilize parking spaces in the Parking Facility for the purpose of parking motor vehicles in the Parking Facility, subject to such reasonable rules and regulations as are applicable to all users of the Parking Facility; provided that in no event will parking regulations adopted by Ogden and Boyer result in Nutraceutical and its permitted users having access to less than fifty percent (50%) of the parking spaces in the Parking Facility.

(b) Neither Nutraceutical, nor anyone claiming by, through or under Nutraceutical, may install any improvements or make any changes to the Parking Facility without Ogden and Boyer's prior written authorization.

**4. Operation and Maintenance; Insurance.** Nutraceutical shall not be responsible for costs and expenses, including the cost of any utilities, associated with the operation, maintenance, repair, replacement and utilization of the Parking Facility except for the amounts owing under any separate written agreement of even date herewith between Ogden and Nutraceutical.

(a) Ogden and Boyer agree to operate and maintain the Parking Facility in a safe and clean manner in accordance with all applicable laws and commensurate with other similar parking facilities located in Business Depot Ogden.

(b) With respect to the Parking Facility, Ogden and Boyer shall either: (a) maintain hazard and liability insurance with respect to the Parking Facility in accordance with commercially prudent practices, at their cost and expense, or (b) maintain a commercially reasonable program of self-insurance. Upon request, Ogden shall deliver to Nutraceutical evidence of the foregoing.

(c) By agreeing to maintain insurance and maintain the Parking Facility as described in this paragraph 4, Ogden and Boyer do not: assume liability for the intentional, negligent, or accidental acts of others; guarantee that any vehicle occupying the Parking Facility, or the contents of any vehicle, will be free from damage or theft; or waive any rights that may apply based on governmental immunity as provided by Utah law.

**5. CAM Charges.** Nutraceutical shall not be required to pay any CAM charges, rental fee or any other amount for the use of the Parking Facility.

(a) Ogden and Boyer may relocate the Parking Facility to another location with similar functionality and size, subject to the following conditions:

(i) Ogden and Boyer will consult with Nutraceutical at least 6 months prior to relocating the Parking Facility;

(ii) The relocated Parking Facility is located either: (A) not further than 1,500 feet from the center of the intersection at 530 West and 2<sup>nd</sup> Street; or (B) at a location the parties mutually agree upon; and

(iii) Nutraceutical's rights under this Easement shall transfer to the relocated facility.

(b) This paragraph shall also apply in the event of any eminent domain that materially affects the Parking Facility.

(c) Ogden and Boyer may make substantial changes or improvements to the configuration of the Parking Facility; provided that the number, size and usefulness of parking spaces as well as the access thereto will not be reduced as a result of such changes or improvements, and Nutraceutical shall not be obligated to pay any portion of the cost of any improvements or changes to the Parking Facility.

(d) During any construction activities at the Parking Facility, Ogden and Boyer shall use commercially reasonable efforts to minimize the disruption of parking at the Parking Facility and in any case shall not materially alter or disrupt access to such parking unless it provides alternative parking during such period of disruption.

6. **Ingress and Egress.** The license granted herein includes the right of ingress and egress for vehicles and foot traffic in, from and to the Parking Facility and between the Parking Facility and Nutraceutical's Property.

7. **Assignability.** This Agreement is for the benefit of Ogden and Nutraceutical only, but shall include and be binding upon and benefit any successors in interest to the Nutraceutical Property.

8. **Entire Agreement.** The foregoing represents the complete and entire agreement of the Parties. All previous agreements, promises, covenants, related to the Parking Facility as outlined herein are merged into this Agreement and are not enforceable.

9. **Amendment.** Any amendment to the terms outlined herein must first be memorialized in writing and signed by all Parties. Additionally, this Agreement shall not be modified, amended, terminated or assigned without the prior written consent of the beneficiary of each deed of trust or mortgage encumbering the Parking Facility, and any such modification, amendment or termination made without such consent shall be void *ab initio*.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same agreement.

11. **Attorneys' Fees and Costs.** In the event of any action or proceeding to enforce or interpret the terms of this Agreement, each party shall pay its own attorneys' fees and costs.

12. **Recording.** Nutraceutical may record a copy of this Agreement with the Weber County Recorder's office.





EXHIBIT A

LOCATION OF PARKING FACILITY

ALL OF LOT 1, BUSINESS DEPOT OGDEN, PLAT 1 PARTIALLY VACATED, AMENDED  
AND EXTENDED, OGDEN CITY, WEBER COUNTY, UTAH.

Land Serial No. 12-199-0001

EXHIBIT B

NUTRACEUTICAL PROPERTY

ALL OF LOT 23, NUTRACEUTICAL / BUSINESS DEPOT OGDEN PLAT 10 2<sup>nd</sup>  
AMENDMENT, OGDEN CITY, WEBER COUNTY, UTAH.

Land Serial No. 12-243-0002

