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DOUG CROFTS, WEBER COUNTY RECORDER  
31-MAR-06 333 PM FEE \$38.00 DEP JPH  
REC FOR: HOME ABSTRACT

Special Warranty Deed

Defense Distribution Depot Ogden, Utah

WHEN RECORDED RETURN TO:

Carl W. Barton  
Holland & Hart  
60 East South Temple #2000  
Salt Lake City, Utah 84111

**SPECIAL WARRANTY DEED**

**THIS DEED** is made and entered into between **OGDEN CITY CORPORATION**, a Utah Municipal Corporation, acting as the Ogden Local Redevelopment Authority (the "Grantor"), and **Nutraceutical Corporation**, a Delaware corporation (the "Grantee").

**WITNESSETH THAT:**

**WHEREAS**, the 1995 Defense Base Closure and Realignment Commission, pursuant to Public Law 101-510, as amended, required the United States Department of Defense to close the military installation formerly known as the Defense Distribution Depot Ogden, Utah (the Former DDOU), and in connection therewith to dispose of certain surplus real and personal property; and

**WHEREAS**, the United States conveyed to **Grantor**, as the local redevelopment authority with regard to the Former DDOU pursuant to Public Law 101-510, Section 2905(b)(4)(A) as amended (Public Law 101-510 Section 2905 as amended by Public Law 103-160 Section 2903), a portion of the Former DDOU property by way of a Quitclaim Deed dated December 21, 2001, recorded on January 18, 2002 in Book No. 2203 at Page 183 as Entry No. 1821840 (the "Government Deed") in order to redevelop the property; and

**WHEREAS**, the **Grantor** is now the record owner of certain real property located within the Former DDOU, a portion of which is to be herein conveyed, which portion is hereinafter referred to as the **Property** as more fully described at **Exhibit A** attached hereto and made a part hereof; and

**WHEREAS**, the **Property** is part of the Former DDOU, which the U.S. Environmental Protection Agency (EPA), pursuant to Section 105 of the CERCLA, 42 U.S.C. 9605, placed on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987; and

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**WHEREAS**, the Grantor has made available to the Grantee a copy of the DDOU Federal Facility Agreement (FFA), entered into by EPA Region VIII, the Utah Department of Health (predecessor to the Utah Department of Environmental Quality (UDEQ)), and the Defense Logistics Agency, that became effective on November 30, 1989; and

**WHEREAS**, the Grantor assumed, and Grantee hereby assumes, certain obligations and liabilities with respect to the Property as set forth in the Government Deed; and

**WHEREAS**, the Grantee desires to acquire the Property and the Grantor desires to convey the Property to Grantee, subject to the same reservations, restrictions, obligations, and liabilities of Grantor as set forth in the Government Deed; and

**WHEREAS**, the United States encumbered the Property with respect to certain environmental and access matters as set forth more fully in the Government Deed, which encumbrances are assumed by Grantee and are binding on Grantee and its successors and assigns.

**A. NOW, THEREFORE**, the Grantor, for and in consideration of the monetary sum of ten dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby conveys and warrants against all claiming by, through or under it to the Grantee the Property, including all land and buildings, facilities, fixtures located therein, except as hereinafter otherwise expressly provided, but subject to certain exclusions, reservations, covenants conditions, and restrictions set forth in this Deed or in the Government Deed.

**B. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS**

1. Grantee is hereby placed on notice that in the Government Deed, the United States reserved an irrevocable and permanent easement, which runs with the land and is binding on Grantee, its successors and assigns, providing access on and over the Property as more fully set forth in paragraph B.4. of the Government Deed, which is incorporated herein by this reference (Environmental Protection Easement).

2. Grantor further reserves unto itself the Environmental Protection Easement to the same extent, subject to the same conditions and with the same rights as reserved by the United States under paragraphs B.4.a.-f. of the Government Deed.

3. Grantor hereby reserves:

- a. Temporary appurtenant easements granted to Grantor under the Government Deed;
- b. Utility lines, pipes, facilities, and associated infrastructure located therein comprising part of the utility distribution or collection systems for water,

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- sanitary sewer, storm sewer, electric, gas, or telecommunications situated within public utility easements reserved herein or otherwise established and depicted on Business Depot Ogden - Plat 10;
- c. The railroad transportation systems and facilities situated in the Common Railroad Easement depicted and designated on Business Depot Ogden - Plat 10, together with such Common Railroad Easement; and
  - d. A temporary storm drainage easement for the operation, repair, maintenance and replacement of the existing storm water lines and facilities located on the Property, which easement is more particularly described in Exhibit B attached hereto and incorporated herein by reference. Such temporary storm drainage easement shall terminate upon Grantee's installation, and the City's acceptance, of storm drainage facilities replacing the need for the existing storm water lines and facilities.
4. The **Property** is conveyed subject to:
- a. Easements established on, over, under, or across the **Property** as described on Business Depot Ogden - Plat 10;
  - b. The provisions of that certain Development Agreement between the Grantor and Grantee, of even date herewith, and recorded in the records of Weber County, State of Utah, concurrently with the recording of this Deed.

**C. TO HAVE AND TO HOLD** the **Property** unto the **Grantee** and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following covenants and conditions, as applicable, which conditions shall be binding upon and enforceable against the **Grantee**, its successors and assigns, in perpetuity, as follows:

1. "AS IS"

- a. Paragraph C.1. "AS IS" of the Government Deed is incorporated herein by this reference.
- b. The **Property** is conveyed "As Is," "Where Is" without any representation, warranty or guarantee, by the **Grantor** pursuant to applicable law, as to Environmental Condition (as defined in paragraph C.3. below), quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the **Grantor** to make any alterations, repairs or additions, and the **Grantor** shall not be liable for any latent or patent defects in the **Property**. The **Grantee** acknowledges that the **Grantor** has made no representation or warranty concerning the condition

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and state of repair of the buildings and appurtenances on the **Property** nor any agreement or promise to alter, improve, adapt, or repair any portion of the **Property**, except as otherwise agreed upon by the **Grantor** in writing herein.

**2. FEDERAL FACILITIES AGREEMENT**

a. Paragraph C.2. FEDERAL FACILITIES AGREEMENT of the Government Deed is incorporated herein by this reference.

b. By accepting this Deed, the **Grantee** acknowledges that the **Grantee** has access to a copy of the FFA.

c. The provisions of this Paragraph C.2 FEDERAL FACILITIES AGREEMENT shall run with the land, shall be binding on **Grantee** and its successors and assigns, and shall be enforceable by the United States, **Grantor**, EPA and UDEQ.

**3. ENVIRONMENTAL CONDITION**

a. Paragraph C.3. ENVIRONMENTAL CONDITION of the Government Deed is incorporated herein by this reference.

b. As used in this Deed, "Environmental Condition" means any condition with respect to the environment (including soil, surface waters, ground waters, stream sediments, and the surface or subsurface strata on, at, in or relating to the **Property**, whether or not the condition is known or unknown, which could or does result in any liability, claim, cost, or order to or against **Grantor** or **Grantee**, their successors or assigns.

c. The **Grantee** acknowledges that it has been given full access to technical environmental reports, investigations, and studies relating to the **Property**, including the final EBS, the FFA and the Finding of Suitability of Transfer, dated January 20, 1999, (FOST) (collectively the Environmental Documents) and that it has reviewed the Environmental Documents and has had an opportunity to independently investigate the **Property** and to observe, investigate, test, and study its physical characteristics and existing conditions.

d. Subject to the conditions disclosed in the Environmental Documents, the Response Actions required in the Environmental Documents, the covenants and warranties of the United States under Section 120(h)(3) of CERCLA and as set forth in Paragraph C.4 CERCLA NOTICE AND COVENANTS of the Government Deed, **Grantee** hereby accepts the Environmental Condition of the **Property** and deems the **Property** to be safe for the **Grantee's** intended use. If, after conveyance of the **Property** to the **Grantee**, **Grantee** discovers an actual or threatened release of a CERCLA hazardous substance on the **Property** (other than asbestos or

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lead-based paint), or in the event that a hazardous substance is discovered or a pre-existing underground storage tank is found on the **Property** after the date of the conveyance, **Grantee** or its successor or assigns shall be responsible for such release, newly discovered substance, or underground storage tank unless **Grantee** is able to demonstrate that such release, such newly discovered substance, or such underground storage tank was due to **Grantor's** activities, ownership, use or occupation of the **Property**, or the activities of **Grantor's** contractors and/or agents. Nothing in this provision shall be construed to create an additional burden of proof applicable to any administrative or judicial proceedings.

e. **Grantee** understands that **Grantor** makes no representations or warranties regarding the Environmental Condition of the **Property**, including but not limited to items described or referred to in Paragraphs C.1. "AS IS;" C.3. ENVIRONMENTAL CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.6. NOTICE OF THE PRESENCE OF ASBESTOS; C.7. NOTICE OF THE PRESENCE OF LEAD BASED PAINT; C.8. NOTICE OF POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; AND C.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT.

f. **Grantee**, on behalf of itself, its successors and assigns, hereby releases **Grantor**, its successors and assigns, from any and all liabilities, claims, or demands related to the condition, including the Environmental Condition, of the **Property**. Neither **Grantee** nor its successors or assigns shall assert or bring any claim against **Grantor**, its successors or assigns, for any representation, warranty, covenant, or obligation of the United States, the State of Utah, or any of their respective departments, agencies, or political subdivisions. Without limiting the foregoing, **Grantee's** sole and exclusive remedy for claims arising from or related to the Environmental Condition of the **Property** shall be against the United States as provided in the Government Deed or against other parties (other than **Grantor**, its successors and assigns) as allowed by law. **Grantor** makes no representation or warranty regarding the binding nature or enforceability by the **Grantee** of any representation, warranty, covenant, or obligation of the United States set forth in the Government Deed.

**4. CERCLA NOTICE AND COVENANTS**

a. Paragraph C.4. CERCLA NOTICE AND COVENANTS as set forth in the Government Deed is incorporated herein by this reference.

b. **Grantee** is hereby notified, based solely on representations made to the **Grantor** by the United States, of the storage, release, and disposal of hazardous substances on and around the **Property**, as set forth more fully in Paragraph C.4. CERCLA NOTICE AND COVENANTS of the Government Deed and references and citations made therein.

**5. INDEMNIFICATION**

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a. Paragraph C.5, INDEMNIFICATION of the Government Deed is incorporated herein by this reference.

b. As consideration for this conveyance, the Grantee, its successors and assigns, shall release, indemnify and hold the Grantor harmless from any and all claims, liability, loss, cost, environmental contamination, or damage relating to the Property and arising out of or resulting from any actions or omissions of the Grantee, its successors and assigns, and their respective agents, employees, invitees, contractors, on the Property prior to or after the date of this Deed.

**6. NOTICE OF THE PRESENCE OF ASBESTOS**

a. The Grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (ACM) have been found on the following general areas of the Property, as described more fully in the Final EBS: Buildings 203, 216 (2A), 217 (2B), and 218 (2C).

b. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary on the Property.

c. Grantee, its successors and assigns are hereby informed that unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

d. The Grantee acknowledges that it has had an opportunity to inspect the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto.

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e. The Grantee further agrees to release, indemnify and hold harmless the Grantor, its officers, agents and employees, from and against and to assume liability for all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees (1) arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the Grantee or (2) arising out of, or in any manner predicated upon any future remediation or abatement of asbestos or the need therefor.

f. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the Grantee, its successors and assigns, and shall be deemed to run with the land.

**7. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT**

a. The Grantee, and its successors and assigns, are hereby informed and acknowledge that the following buildings on the Property, constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint based solely upon representations made by the United States: Buildings 203, 216 (2A), 217 (2B), and 218 (2C). Grantee, its successors and assigns are hereby informed that lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, as indicated by the United States, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS and (for residential properties) the lead-based paint risk assessment, which have been provided to the Grantee. Additionally, the federally-approved pamphlet on lead poisoning prevention and the *Finding of Suitability to Transfer (FOST)* have been provided to the Grantee. The Grantee hereby acknowledges receipt of all of the information described in this Paragraph.

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c. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this document.

d. The Grantee, its successors and assigns, covenants and agrees that they shall not permit the occupancy or use of any buildings or structures located on the Property, which were constructed or rehabilitated prior to 1978, as residential real property without complying with this Paragraph C.7. NOTICE OF THE PRESENCE OF LEAD BASED PAINT and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards.

e. Prior to permitting the occupancy of any buildings or structures located on the Property, which were constructed or rehabilitated prior to 1978, where its use subsequent to sale is intended for residential habitation, Grantee, its successors and assigns, agree to perform, at its sole expense, the abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X). The Grantee, its successors and assigns shall, after consideration of the guidelines and regulations established pursuant to Title X:

(1) Comply with the joint HUD and EPA Disclosures Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments;

(2) Abate lead-based paint hazards in pre-1978 buildings and structures in paint, dust and bare soil in accordance with the HUD Guidelines; and

(3) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L).

In complying with these requirements, the Grantee, its successors and assigns, covenant and agree to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the Property for residential purposes. The Grantee its successors and assigns, covenant and agree to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

f. The Grantor assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Grantee, its successors and assigns, sublessees or to any other person, including members of the general public, arising out of exposure to lead-based paint in connection with the Grantee's possession and/or use of any portion of the



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**Property containing lead-based paint.** The **Grantee**, its successors and assigns, further agree to release, indemnify and hold harmless the **Grantor**, its officers, agents and employees, from and against, and to assume liability for, all suits, claims, demands or actions liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of exposure to, after the date of this Deed, lead-based paint or lead-based paint hazards on the **Property**, if any portion of the **Property** is used for residential purposes.

g. The **Grantee's** obligation hereunder shall apply whenever the United States of America or **Grantor** incurs costs or liabilities for actions giving rise to liability under this paragraph.

h. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the **Grantee**, its successors and assigns, and shall be deemed to run with the land.

**8. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES**

a. The United States has represented to the **Grantor** that no evidence exists that would indicate the **Property** is or has been contaminated with chemical weapons/substances (chemical test kits). However the **Grantee** is hereby informed and does acknowledge that chemical test kits have been removed from the Former DDOU in the area described in the Final EBS as Operable Unit 3. The location of Operable Unit 3 is depicted on Figure 5 of the Final EBS. For prudent safety precautions the **Grantee**, its successors and assigns, and any contractors performing ground intrusive work on the **Property** are notified that the Former DDOU had a Chemical Ordnance Supply Corps active from 1941 to 1947 which might have resulted in unexploded ordnance contamination. If any item is encountered that appears to be of an ordnance or explosive nature, stop-work procedures should be invoked and the Army notified immediately at U.S. Army Technical Escort Unit, Aberdeen Proving Ground, Maryland, telephone (410) 436-4259.

b. The provisions and requirements of this Paragraph shall be binding upon the **Grantee**, its successors and assigns, and shall be deemed to run with the land.

**9. NOTICE OF THE PRESENCE OF POLYCHLORINATED BIPHENYL (PCB) CONTAINING EQUIPMENT**

a. The United States has represented to the **Grantor**, and the **Grantee** is hereby informed, that certain equipment containing PCBs including pole and concrete mounted transformers, and fluorescent light ballasts and fixtures may have been, or may be stored and/or operated on the **Property**, as described more fully in Paragraph C.9.a of the

Government Deed which is incorporated herein by this reference. **Grantee** acknowledges that it has been given full access to the reports regarding pole and concrete mounted transformers provided to the **Grantor** under Paragraph C.9.a.2 of the Government Deed. The United States has represented to the **Grantor** that (i) all PCB-containing equipment existing on the **Property** as of the date of this Deed has been properly labeled in accordance with applicable law and regulation to provide notification to future users; (ii) any PCB contamination or spills related to such equipment has been properly remediated prior to conveyance; (iii) the PCB equipment does not currently pose a threat to human health or the environment; and (iv) all PCB equipment is in good repair and is presently in full compliance with all applicable laws and regulations.

b. Upon request, the **Grantor** agrees to furnish to the **Grantee**, its successors and assigns, any and all records in its possession related to such PCB equipment necessary for the continued compliance by the **Grantee**, its successors and assigns, with applicable laws and regulations related to the use and storage of PCBs or PCB-containing equipment.

c. The **Grantee**, its successors and assigns, covenant and agree that its continued possession, use and management of any PCB-containing equipment will be in compliance with all applicable laws relating to PCBs and PCB-containing equipment, and that the **Grantor** assumes no, and is hereby released from, any and all liability for the future remediation of PCB contamination or damages for personal injury, illness, disability, or death to the **Grantee**, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB-containing equipment, after the date of this Deed, whether or not the **Grantee**, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The **Grantee**, its successors and assigns, agree to be responsible for any future remediation of PCBs or PCB-containing equipment found to be necessary on the **Property** resulting from its use or possession thereof.

d. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the **Grantee**, its successors and assigns, and shall be deemed to run with the land.

## 11. IMMUNITIES

The **Grantee** is not entitled to any of the immunities which the United States may have had in using the **Property** while it was a part of the Former DDOU. The **Grantee** is not exempt from acquiring the necessary permits and authorizations from, or from meeting the requirements of the local, county, and state jurisdictions before using the **Property** for any purpose. The **Property**, immediately after conveyance to the **Grantee**, will be subject to all local, county, and state laws, regulations, and ordinances. The **Grantee** shall comply with the applicable environmental laws and regulations and all other Federal, state, and local laws,

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regulations, and standards that are or may become applicable to the **Grantee's** proposed use of the **Property**. The **Grantee** shall be solely responsible for fulfilling, at its own cost and expense, the requirements of the new governing authorities, independent of any existing permits or usages by the **Grantor**.

**12. ENFORCEMENT AND NOTICE REQUIREMENT**

a. The provisions of this Deed benefit the governments of the United States, the State of Utah, acting on behalf of the public in general, and the local governments of Weber County and Ogden City, and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of Utah, Weber County, **Grantor**, and by the **Grantee**, and their respective successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA.

b. The **Grantee**, its successors or assigns, shall neither transfer the **Property**, or any portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the **Property** without the inclusion, to the extent applicable to the **Property** or any portion thereof, of the environmental protection provisions contained in Paragraphs B.4. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS (B.1 and 2 of this Deed), C.2. FEDERAL FACILITIES AGREEMENT; C.3. ENVIRONMENTAL CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.5. INDEMNIFICATION; C.6. NOTICE OF THE PRESENCE OF ASBESTOS; C.7. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT; C.8. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; and C.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT as set forth in the Government Deed and this Deed; and shall require the inclusion, to the extent applicable, of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

c. The **COVENANTS, CONDITIONS, and RESTRICTIONS** set forth in this Deed are a binding servitude on the **Property** and the burdens and benefits thereof will be deemed to run with the **Property** in perpetuity. Restrictions, stipulations and covenants contained in Paragraphs B.4. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS (B.1 and 2 of this Deed); C.2. FEDERAL FACILITIES AGREEMENT; C.3. ENVIRONMENTAL CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.5. INDEMNIFICATION; C.6. NOTICE OF THE PRESENCE OF ASBESTOS; C.7. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT; C.8. NOTICE OF THE POTENTIAL

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PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; and C.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT of the Government Deed and/or this Deed will be inserted by the Grantee, its successors and assigns, to the extent applicable to the Property or any portion thereof, either verbatim, or by express reference in any deed or other legal instrument by which they divest themselves of either the fee simple title or any other lesser estate in the Property as provided in subparagraph b. above. The Grantee, its successors and assigns, shall neither transfer nor lease the Property, or any portion thereof, nor grant any interest, privilege, or license whatsoever in the Property without providing notice of the environmental protection provisions identified above, which apply to the property conveyed, and shall require notice of such environmental protection provisions in all further deeds, transfers, leases, or grants of any interest, privilege, or license, as provided in subparagraph b. above.

d. The obligations imposed in this Paragraph upon the successors or assigns of Grantee shall only extend to the property conveyed to any such successor or assign.

**13. GENERAL PROVISIONS**

a. **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

b. **SEVERABILITY.** If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

c. **NO FORFEITURE.** Nothing contained herein will result in a forfeiture or reversion of title in any respect.

d. **CAPTIONS.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

e. **RIGHT TO PERFORM.** Any right which is exercisable by the Grantee, and its successors and assigns, to perform under this Deed may also be performed, in the event of default by the Grantee, or its successors and assigns, by a lender of the Grantee and its successors and assigns.

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D. All rights and powers reserved to the Grantor, and all references in this Deed to Grantor, shall include its successor in function. The Grantor may agree to waive, eliminate, or reduce the obligations of the Grantee, or any subsequent transferee, successor, assignee, licensee, or lessee, that are contained in this Deed.

E. PROVIDED, HOWEVER, that the failure of the Grantor to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee, its successors and assigns, as applicable, with respect to such future performance pertaining to the Property shall continue in full force and effect.

THIS SPECIAL WARRANTY DEED is executed by the Grantor this 31<sup>st</sup> day of March, 2006.

OGDEN CITY, a Utah municipal corporation

By: Matthew R. Godfrey  
MATTHEW R. GODFREY, Mayor

ATTEST:  
Cindi Mansell  
CITY RECORDER

APPROVED AS TO FORM:  
Carla Johnson  
CITY ATTORNEY



ACKNOWLEDGMENT

STATE OF UTAH     )  
                              : ss  
COUNTY OF WEBER )

On this 31<sup>st</sup> day of March, 2006, personally appeared before me, Matthew R. Godfrey and Cindi Mansell, respectively the Mayor and City Recorder of Ogden City, the signers of the foregoing instrument who duly acknowledged to me that they executed the same in behalf of Ogden City.

Lee Ann Peterson  
NOTARY PUBLIC



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ACCEPTANCE

Grantee accepts this special warranty deed for itself, its successors and assigns, subject to all of the conditions, reservations, restrictions, and terms contained herein.

GRANTEE:

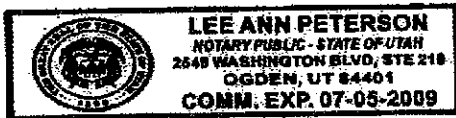
NUTRACEUTICAL CORPORATION, a Delaware corporation

By: *Bruce R. Hough*  
Name/Title: Bruce R. Hough, President

ACKNOWLEDGMENT

STATE OF UTAH )  
Weber COUNTY ) : ss

On the 26<sup>th</sup> day of March, 2006, personally appeared before me Bruce R. Hough who being by me duly sworn did say that he/she is the President of Nutraceutical Corporation and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.



*Lee Ann Peterson*  
NOTARY PUBLIC

Special Warranty Deed  
Defense Distribution Depot Ogden, Utah

**EXHIBIT A**  
**Special Warranty Deed**  
**Grantor: Ogden City – Grantee: Nutraceutical Corporation**  
**Dated March 31, 2006**

All of Lot 21, Business Depot Ogden Plat 10, Ogden City, Weber County, Utah, according to the official plat thereof.

Tax Id. 12-203-0003

*X.T. / d.s.*

**EXHIBIT B**  
**Storm Drainage Easement Description**

**10 FOOT STORM DRAIN EASEMENT**

A 10.00 foot wide storm drain easement the centerline of which is located in the Southeast Quarter of Section 7 all in Township 6 North, Range 1 West, Salt Lake Base and Meridian, Weber County, Utah and more fully described as follows:

Beginning at a Point on the west line of Lot 19 of Business Depot Ogden Plat 10 said point being North 12°14'17" East 5,526.95 feet from the South Quarter Corner of Section 18, Township 6 North, Range 1 West, Salt Lake Base and Meridian, Weber County, Utah, and thence South 85°15'27" West 274.06 feet to the east right-of-way line of 600 West Street and the POINT OF TERMINUS, said easement being 5.00 feet perpendicularly distant either side of the described centerline. The Basis of Bearing for the described centerline is S 00°10'47" E 1608.33' between the monument at 12<sup>th</sup> Street and said South Quarter Corner of Section 18 as referenced on said Plat 10.



WHEN RECORDED RETURN TO:  
 Carl W. Barton  
 Holland & Hart  
 60 East South Temple #2000  
 Salt Lake City, Utah 84111

E# 2449570 PG 1 OF 13  
 ERNEST D ROWLEY, WEBER COUNTY RECORDER  
 14-DEC-09 450 PM FEE \$34.00 DEP SC  
 REC FOR: LANDMARK TITLE COMPANY  
 ELECTRONICALLY RECORDED

**SPECIAL WARRANTY DEED**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, OGDEN CITY, a Utah municipal corporation] ("Grantor"), hereby conveys and warrants against all claiming by, through or under it to the NUTRACEUTICAL CORPORATION, a Delaware corporation ("Grantee"), the following real property, including all land and buildings, facilities, fixtures located thereon, and all appurtenances thereto, which real property is located within the City of Ogden, Weber County, Utah, more particularly described as (the "Property"):

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, together with all rights appurtenant thereto.

Weber County Parcel No. 12-219-0002. *[Signature]*

**WITNESSETH THAT:**

**WHEREAS**, the 1995 Defense Base Closure and Realignment Commission, pursuant to Public Law 101-510, as amended, required the United States Department of Defense to close the military installation formerly known as the Defense Distribution Depot Ogden, Utah (the Former DDOU), and in connection therewith to dispose of certain surplus real and personal property; and

**WHEREAS**, the United States conveyed to **Grantor**, as the local redevelopment authority with regard to the Former DDOU pursuant to Public Law 101-510, Section 2905(b)(4)(A) as amended (Public Law 101-510 Section 2905 as amended by Public Law 103-160 Section 2903), a portion of the Former DDOU property by way of a Quitclaim Deed dated December 21, 2001, recorded on January 18, 2002 in Book No. 2203 at Page 183 as Entry No. 1821840 (the "Government Deed") in order to redevelop the property; and

**WHEREAS**, the **Grantor** is now the record owner of certain real property located within the Former DDOU, a portion of which is to be herein conveyed, which portion is hereinafter referred to as the **Property** as more fully described above attached hereto and made a part hereof; and



**WHEREAS**, the **Property** is part of the Former DDOU, which the U.S. Environmental Protection Agency (EPA), pursuant to Section 105 of the CERCLA, 42 U.S.C. 9605, placed on the National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987; and

**WHEREAS**, the **Grantor** has made available to the **Grantee** a copy of the DDOU Federal Facility Agreement (FFA), entered into by EPA Region VIII, the Utah Department of Health (predecessor to the Utah Department of Environmental Quality (UDEQ)), and the Defense Logistics Agency, that became effective on November 30, 1989; and

**WHEREAS**, the **Grantor** assumed, and **Grantee** hereby assumes, certain obligations and liabilities with respect to the **Property** as set forth in the Government Deed; and

**WHEREAS**, the **Grantee** desires to acquire the **Property** and the **Grantor** desires to convey the **Property** to **Grantee**, subject to the same reservations, restrictions, obligations, and liabilities of **Grantor** as set forth in the Government Deed; and

**WHEREAS**, the United States encumbered the **Property** with respect to certain environmental and access matters as set forth more fully in the Government Deed, which encumbrances are assumed by **Grantee** and are binding on **Grantee** and its successors and assigns.

The conveyance of the **Property** hereby shall be subject to the following reservations, restrictions, easements, and encumbrances:

#### **A. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS**

1. **Grantee** is hereby placed on notice that in the Government Deed, the United States reserved an irrevocable and permanent easement, which runs with the land and is binding on **Grantee**, its successors and assigns, providing access on and over the **Property** as more fully set forth in paragraph B.4. of the Government Deed, which is incorporated herein by this reference (Environmental Protection Easement).

2. **Grantor** further reserves unto itself the Environmental Protection Easement to the same extent, subject to the same conditions and with the same rights as reserved by the United States under paragraphs B.4.a.-f. of the Government Deed.

3. **Grantor** hereby reserves:

- a. Temporary appurtenant easements granted to **Grantor** under the Government Deed;
- b. Utility lines, pipes, facilities, and associated infrastructure located therein comprising part of the utility distribution or collection systems for water, sanitary sewer, storm sewer, electric, gas, or telecommunications;
- c. The railroad transportation systems and facilities situated in the Common Railroad Easement depicted and designated on Business Depot Ogden - Plat 10, together with such Common Railroad Easement; and

- d. A temporary storm drainage easement for the operation, repair, maintenance and replacement of the existing storm water lines and facilities located on the Property, which easement is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Such temporary storm drainage easement shall terminate upon Grantee's installation, and the City's acceptance, of storm drainage facilities replacing the need for the existing storm water lines and facilities.
4. The Property is conveyed subject to:
    - a. Easements established on, over, under, or across the Property as described on Business Depot Ogden - Plat 10;
    - b. The provisions of that certain Development Agreement between the Grantor and Grantee, of even date herewith, and recorded in the records of Weber County, State of Utah, concurrently with the recording of this Deed.

**B. TO HAVE AND TO HOLD** the Property unto the Grantee and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following covenants and conditions, as applicable, which conditions shall be binding upon and enforceable against the Grantee, its successors and assigns, in perpetuity, as follows:

**1. "AS IS"**

a. Paragraph C.1. "AS IS" of the Government Deed is incorporated herein by this reference.

b. The Property is conveyed "As Is," "Where Is" without any representation, warranty or guarantee, by the Grantor pursuant to applicable law, as to Environmental Condition (as defined in paragraph B.3. below), quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the Grantor to make any alterations, repairs or additions, and the Grantor shall not be liable for any latent or patent defects in the Property. The Grantee acknowledges that the Grantor has made no representation or warranty concerning the condition and state of repair of the buildings and appurtenances on the Property nor any agreement or promise to alter, improve, adapt, or repair any portion of the Property, except as otherwise agreed upon by the Grantor in writing herein.

**2. FEDERAL FACILITIES AGREEMENT**

a. Paragraph C.2. FEDERAL FACILITIES AGREEMENT of the Government Deed is incorporated herein by this reference.

b. By accepting this Deed, the Grantee acknowledges that the Grantee has access to a copy of the FFA.

c. The provisions of this Paragraph B.2 FEDERAL FACILITIES AGREEMENT shall run with the land, shall be binding on Grantee and its successors and assigns, and shall be enforceable by the United States, Grantor, EPA and UDEQ.

### 3. ENVIRONMENTAL CONDITION

a. Paragraph C.3. ENVIRONMENTAL CONDITION of the Government Deed is incorporated herein by this reference.

b. As used in this Deed, "Environmental Condition" means any condition with respect to the environment (including soil, surface waters, ground waters, stream sediments, and the surface or subsurface strata on, at, in or relating to the Property, whether or not the condition is known or unknown, which could or does result in any liability, claim, cost, or order to or against Grantor or Grantee, their successors or assigns.

c. The Grantee acknowledges that it has been given full access to technical environmental reports, investigations, and studies relating to the Property, including the final EBS, the FFA and the Finding of Suitability of Transfer, dated January 20, 1999, (FOST) (collectively the Environmental Documents) and that it has reviewed the Environmental Documents and has had an opportunity to independently investigate the Property and to observe, investigate, test, and study its physical characteristics and existing conditions.

d. Subject to the conditions disclosed in the Environmental Documents, the Response Actions required in the Environmental Documents, the covenants and warranties of the United States under Section 120(h)(3) of CERCLA and as set forth in Paragraph C.4 CERCLA NOTICE AND COVENANTS of the Government Deed, Grantee hereby accepts the Environmental Condition of the Property and deems the Property to be safe for the Grantee's intended use. If, after conveyance of the Property to the Grantee, Grantee discovers an actual or threatened release of a CERCLA hazardous substance on the Property (other than asbestos or lead-based paint), or in the event that a hazardous substance is discovered or a pre-existing underground storage tank is found on the Property after the date of the conveyance, Grantee or its successor or assigns shall be responsible for such release, newly discovered substance, or underground storage tank unless Grantee is able to demonstrate that such release, such newly discovered substance, or such underground storage tank was due to Grantor's activities, ownership, use or occupation of the Property, or the activities of Grantor's contractors and/or agents. Nothing in this provision shall be construed to create an additional burden of proof applicable to any administrative or judicial proceedings.

e. Grantee understands that Grantor makes no representations or warranties regarding the Environmental Condition of the Property, including but not limited to items described or referred to in Paragraphs B.1. "AS IS;" B.3. ENVIRONMENTAL CONDITION; B.4. CERCLA NOTICE AND COVENANTS; B.6. NOTICE OF THE

**PRESENCE OF ASBESTOS; B.7. NOTICE OF THE PRESENCE OF LEAD BASED PAINT; B.8. NOTICE OF POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; AND B.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT.**

f. **Grantee**, on behalf of itself, its successors and assigns, hereby releases **Grantor**, its successors and assigns, from any and all liabilities, claims, or demands related to the condition, including the Environmental Condition, of the **Property**. Neither **Grantee** nor its successors or assigns shall assert or bring any claim against **Grantor**, its successors or assigns, for any representation, warranty, covenant, or obligation of the United States, the State of Utah, or any of their respective departments, agencies, or political subdivisions. Without limiting the foregoing, **Grantee's** sole and exclusive remedy for claims arising from or related to the Environmental Condition of the **Property** shall be against the United States as provided in the Government Deed or against other parties (other than **Grantor**, its successors and assigns) as allowed by law. **Grantor** makes no representation or warranty regarding the binding nature or enforceability by the **Grantee** of any representation, warranty, covenant, or obligation of the United States set forth in the Government Deed.

#### **4. CERCLA NOTICE AND COVENANTS**

a. Paragraph C.4. CERCLA NOTICE AND COVENANTS as set forth in the Government Deed is incorporated herein by this reference.

b. **Grantee** is hereby notified, based solely on representations made to the **Grantor** by the United States, of the storage, release, and disposal of hazardous substances on and around the **Property**, as set forth more fully in Paragraph C.4. CERCLA NOTICE AND COVENANTS of the Government Deed and references and citations made therein.

#### **5. INDEMNIFICATION**

a. Paragraph C.5. INDEMNIFICATION of the Government Deed is incorporated herein by this reference.

b. As consideration for this conveyance, the **Grantee**, its successors and assigns, shall release, indemnify and hold the **Grantor** harmless from any and all claims, liability, loss, cost, environmental contamination, or damage relating to the **Property** and arising out of or resulting from any actions or omissions of the **Grantee**, its successors and assigns, and their respective agents, employees, invitees, contractors, on the **Property** prior to or after the date of this Deed.

#### **6. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES**

a. The United States has represented to the Grantor that no evidence exists that would indicate the Property is or has been contaminated with chemical weapons/substances (chemical test kits). However the Grantee is hereby informed and does acknowledge that chemical test kits have been removed from the Former DDOU in the area described in the Final EBS as Operable Unit 3. The location of Operable Unit 3 is depicted on Figure 5 of the Final EBS. For prudent safety precautions the Grantee, its successors and assigns, and any contractors performing ground intrusive work on the Property are notified that the Former DDOU had a Chemical Ordnance Supply Corps active from 1941 to 1947 which might have resulted in unexploded ordnance contamination. If any item is encountered that appears to be of an ordnance or explosive nature, stop-work procedures should be invoked and the Army notified immediately at U.S. Army Technical Escort Unit, Aberdeen Proving Ground, Maryland, telephone (410) 436-4259.

b. The provisions and requirements of this Paragraph shall be binding upon the Grantee, its successors and assigns, and shall be deemed to run with the land.

#### **7. NOTICE OF THE PRESENCE OF POLYCHLORINATED BIPHENYL (PCB) CONTAINING EQUIPMENT**

a. The United States has represented to the Grantor, and the Grantee is hereby informed, that certain equipment containing PCBs including pole and concrete mounted transformers, and fluorescent light ballasts and fixtures may have been, or may be stored and/or operated on the Property, as described more fully in Paragraph C.9.a of the Government Deed which is incorporated herein by this reference. Grantee acknowledges that it has been given full access to the reports regarding pole and concrete mounted transformers provided to the Grantor under Paragraph C.9.a.2 of the Government Deed. The United States has represented to the Grantor that (i) all PCB-containing equipment existing on the Property as of the date of this Deed has been properly labeled in accordance with applicable law and regulation to provide notification to future users; (ii) any PCB contamination or spills related to such equipment has been properly remediated prior to conveyance; (iii) the PCB equipment does not currently pose a threat to human health or the environment; and (iv) all PCB equipment is in good repair and is presently in full compliance with all applicable laws and regulations.

b. Upon request, the Grantor agrees to furnish to the Grantee, its successors and assigns, any and all records in its possession related to such PCB equipment necessary for the continued compliance by the Grantee, its successors and assigns, with applicable laws and regulations related to the use and storage of PCBs or PCB-containing equipment.

c. The Grantee, its successors and assigns, covenant and agree that its continued possession, use and management of any PCB-containing equipment will be in compliance with all applicable laws relating to PCBs and PCB-containing equipment, and that the Grantor assumes no, and is hereby released from, any and all liability for the future remediation of PCB contamination or damages for personal injury, illness, disability, or death to the Grantee, its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity

causing or leading to contact of any kind whatsoever with PCBs or PCB-containing equipment, after the date of this Deed, whether or not the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee, its successors and assigns, agree to be responsible for any future remediation of PCBs or PCB-containing equipment found to be necessary on the Property resulting from its use or possession thereof.

d. The covenants, restrictions, and requirements of this Paragraph shall be binding upon the Grantee, its successors and assigns, and shall be deemed to run with the land.

#### 8. IMMUNITIES

The Grantee is not entitled to any of the immunities which the United States may have had in using the Property while it was a part of the Former DDOU. The Grantee is not exempt from acquiring the necessary permits and authorizations from, or from meeting the requirements of the local, county, and state jurisdictions before using the Property for any purpose. The Property, immediately after conveyance to the Grantee, will be subject to all local, county, and state laws, regulations, and ordinances. The Grantee shall comply with the applicable environmental laws and regulations and all other Federal, state, and local laws, regulations, and standards that are or may become applicable to the Grantee's proposed use of the Property. The Grantee shall be solely responsible for fulfilling, at its own cost and expense, the requirements of the new governing authorities, independent of any existing permits or usages by the Grantor.

#### 9. ENFORCEMENT AND NOTICE REQUIREMENT

a. The provisions of this Deed benefit the governments of the United States, the State of Utah, acting on behalf of the public in general, and the local governments of Weber County and Ogden City, and, therefore, are enforceable, by resort to specific performance or legal process by the United States, the State of Utah, Weber County, Grantor, and by the Grantee, and their respective successors and assigns. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA.

b. The Grantee, its successors or assigns, shall neither transfer the Property, or any portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion, to the extent applicable to the Property or any portion thereof, of the environmental protection provisions contained in Paragraphs B.4. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS (A.1 and 2 of this Deed), C.2. FEDERAL FACILITIES AGREEMENT; C.3. ENVIRONMENTAL CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.5. INDEMNIFICATION; C.6. NOTICE OF THE PRESENCE OF ASBESTOS; C.7. NOTICE OF THE PRESENCE OF LEAD-BASED

PAINT; C.8. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; and C.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT as set forth in the Government Deed and this Deed; and shall require the inclusion, to the extent applicable, of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

c. The COVENANTS, CONDITIONS, and RESTRICTIONS set forth in this Deed are a binding servitude on the Property and the burdens and benefits thereof will be deemed to run with the Property in perpetuity. Restrictions, stipulations and covenants contained in Paragraphs B.4. EXCLUSIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS (A.1 and 2 of this Deed); C.2. FEDERAL FACILITIES AGREEMENT; C.3. ENVIRONMENTAL CONDITION; C.4. CERCLA NOTICE AND COVENANTS; C.5. INDEMNIFICATION; C.8. NOTICE OF THE POTENTIAL PRESENCE OF CHEMICAL WEAPONS/SUBSTANCES; and C.9. NOTICE OF THE PRESENCE OF PCB CONTAINING EQUIPMENT of the Government Deed and/or this Deed will be inserted by the Grantee, its successors and assigns, to the extent applicable to the Property or any portion thereof, either verbatim, or by express reference in any deed or other legal instrument by which they divest themselves of either the fee simple title or any other lesser estate in the Property as provided in subparagraph b. above. The Grantee, its successors and assigns, shall neither transfer nor lease the Property, or any portion thereof, nor grant any interest, privilege, or license whatsoever in the Property without providing notice of the environmental protection provisions identified above, which apply to the property conveyed, and shall require notice of such environmental protection provisions in all further deeds, transfers, leases, or grants of any interest, privilege, or license, as provided in subparagraph b. above.

d. The obligations imposed in this Paragraph upon the successors or assigns of Grantee shall only extend to the property conveyed to any such successor or assign.

#### C. PERMITTED ENCUMBRANCES

This conveyance is further subject to the liens and encumbrances listed on Exhibit "B" hereto (the "Permitted Encumbrances"). Except for the Permitted Encumbrances and the other exclusions, reservations, covenants, and restrictions expressly set forth herein, Grantor is conveying the Property to Grantee free and clear of liens, claims, and encumbrances.

#### D. USE OF THE PROPERTY

The Property is currently made available by Grantor for the public's use for parking and access purposes. Upon Grantor's execution hereof, Grantor hereby represents, warrants, covenants, and agrees to and with Grantee that such uses shall automatically and immediately cease and that Grantee shall be permitted to use the Property for private parking for Grantee's permittees, licensees, invitees and such other persons as Grantee may determine and for any other uses or purposes permitted under zoning laws affecting the Property from time to time.

Dated the 11<sup>th</sup> day of December, 2009.



OGDEN CITY,  
a Utah municipal corporation

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

Attest:

Carl Maxwell  
City Recorder

Approved as to form:

Buck Groves  
City Attorney



STATE OF UTAH )  
COUNTY OF Weber ) :ss

On this 11<sup>th</sup> day of December, 2009, personally appeared before me Matthew R. Coffrey  
the MAYOR of OGDEN CITY, a Utah municipal corporation.

Lee Ann Peterson  
Notary Public  
Residing at: Ogden, Utah

My commission expires:  
7-5-2013

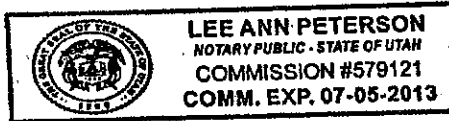


STATE OF UTAH )  
COUNTY OF Weber ) :ss

On this 11<sup>th</sup> day of December, 2009, personally appeared before me Cindi Massell  
the City Recorder of OGDEN CITY, a Utah municipal corporation.

Lee Ann Peterson  
Notary Public  
Residing at: Ogden, Utah

My commission expires:  
7-5-2013

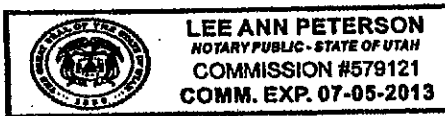


STATE OF UTAH )  
COUNTY OF Weber ) :ss

On this 11<sup>th</sup> day of December, 2009, personally appeared before me Buck Frazier  
the Chief Deputy City Attorney of OGDEN CITY, a Utah municipal corporation.

Lee Ann Peterson  
Notary Public  
Residing at: Ogden, Utah

My commission expires:  
7-5-2013



**EXHIBIT "A"**  
**Storm Drainage Easement Description**

**10 FOOT STORM DRAIN EASEMENT**

*PT 12-219-0003 A*

A 10.00 foot wide storm drain easement the centerline of which is located in the Southeast Quarter of Section 7 all in Township 6 North, Range 1 West, Salt Lake Base and Meridian, Weber County, Utah and more fully described as follows:

Beginning at a Point on the west line of Lot 19 of Business Depot Ogden Plat 10 said point being North  $12^{\circ}14'17''$  East 5,526.95 feet from the South Quarter Corner of Section 18, Township 6 North, Range 1 West, Salt Lake Base and Meridian, Weber County, Utah, and thence South  $85^{\circ}15'27''$  West 274.06 feet to the east right-of-way line of 600 West Street and the POINT OF TERMINUS, said easement being 5.00 feet perpendicularly distant either side of the described centerline. The Basis of Bearing for the described centerline is  $S 00^{\circ}10'47'' E 1608.33'$  between the monument at 12<sup>th</sup> Street and said South Quarter Corner of Section 18 as referenced on said Plat 10.

**EXHIBIT "B"**  
**Permitted Encumbrances**

1. The lien of all non-delinquent general real and personal property taxes, not yet due or payable.
2. Said property lies within the boundaries of Weber County, Weber Basin Water-Ogden, Central Weber Sewer, Ogden City and Defense Depot Ogden Eco. Dev. Proj. Area, and is subject to any and all charges and assessments thereof.
3. Resolution No. 23-2005, a resolution of the Board of County Commissioners of Weber County creating and establishing a special service district throughout all of Weber County, to be known as the "Weber Area Dispatch 911 and Emergency Services District", recorded January 24, 2006 as Entry No. 2156401 of Official Records.
4. Easements for public utilities, easements, building setback lines, restrictions, dedications, offer for dedications if any, conditions of approval and notes and incidental purposes over, along and across said property as shown on the recorded plat of said subdivision.
5. A 45 foot joint driveway easement as shown on the recorded plat of said subdivision.
6. Easement for 30 foot access easement as shown on the recorded plat of said subdivision.
7. Interim Easement and Access Agreement, according to the terms, conditions and restrictions contained therein, recorded July 14, 1999, as Entry No. 1649464 in Book 2023 at Page 664 of Official Records. Amendment of Interim Easement and Access Agreement, according to the terms, conditions and restrictions contained therein, recorded December 30, 1999 as Entry No. 1682126 in Book 2051 at Page 1359 of Official Records.
8. The terms of that certain instrument entitled Amendment to Master Declaration of Covenants, Conditions and Restrictions, dated December \_\_\_\_, 2009, and recorded December \_\_\_\_, 2009, as Entry No. \_\_\_\_, in Book \_\_\_\_, at Page \_\_\_\_ of the Official Records, including all provisions, covenants, conditions, restrictions, easements, charges, assessments, liens or rights, if any, created therein, but deleting those matters based upon race, color, creed, religion, sex, handicap, familial status or national origin unless and only to the extent that said matters, or any portion thereof, are exempt under relevant provisions of the United States Code or relate to handicap, but do not discriminate against handicapped persons.
9. The terms of that certain Maintenance Fee Payment Agreement, by and among Ogden City, Boyer BDO, L.C., and Nutraceutical Corporation, dated March 31, 2006, and recorded March 31, 2006, as Entry No. 2170215 of the Official Records, as amended and modified by that certain First Amendment to Maintenance Fee Payment Agreement, dated December \_\_\_\_, 2009, and recorded December \_\_\_\_, 2009, as Entry No. \_\_\_\_, in Book \_\_\_\_, at Page \_\_\_\_ of the Official Records.
10. The terms of that certain Development Agreement, by and between Ogden City Corporation and Nutraceutical Corporation, dated March 31, 2006, and recorded March 31, 2006, as Entry No. 2170213 of the Official Records, as amended and modified by that certain Amendment to Development Agreement Between Ogden City Corporation and Nutraceutical Corporation, dated December \_\_\_\_, 2009, and recorded December \_\_\_\_, 2009, as Entry No. \_\_\_\_, in Book \_\_\_\_, at Page \_\_\_\_ of the Official Records

11. Any and all outstanding oil and gas, mining and mineral rights, etc., together with the right of the proprietor of a vein or lode to extract his ore therefrom should the same be found to penetrate or intersect the premises, and the right of ingress and egress for the use of said rights.

12. Exclusions, Reservations, Easements and other appurtenant details disclosed in Quit Claim Deed by and between United States of America acting by and through the Secretary of the Army, acting by and through the Deputy Assistant Secretary of the Army, under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (Public law 101-510, Title XXIX; 10 U.S.C.S 2687 note), and Ogden City, a Municipal Corporation, acting as the Ogden Local Redevelopment Authority, recorded July 28, 2000 as Entry No. 1821840 in Book 2203 at Page 183 of Official Records.

13. Provisions, covenants, conditions, restrictions, easements, charges, assessments, liens or rights, if any, created therein, but deleting those matters based upon race, color, creed, religion, sex, handicap, familial status or national origin unless and only to the extent that said matters, or any portion thereof, are exempt under relevant provisions of the United States Code or relate to handicap, but do not discriminate against handicapped persons, contained in that certain Special Warranty Deed, recorded August 13, 2004 as Entry No. 2050343 of the Official Records.

14. Any matters disclosed by a current and accurate survey of the Swanson Property, prepared in accordance with the 2005 Minimum Standard Details Requirements for ALTA/ACSM Land Title Survey, effective January 1, 2006.

4679884\_1.DOC



\*W2449571\*

**WHEN RECORDED RETURN TO:**

Carl W. Barton  
Holland & Hart  
60 East South Temple #2000  
Salt Lake City, Utah 84111

E# 2449571 PG 1 OF 4  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
14-DEC-09 4:50 PM FEE \$16.00 DEP SC  
REC FOR: LANDMARK TITLE COMPANY  
ELECTRONICALLY RECORDED

**SPECIAL WARRANTY DEED**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DR. W.C. SWANSON FAMILY FOUNDATION, INC., a Utah corporation ("Grantor"), hereby conveys and warrants against all claiming by, through or under it to the NUTRACEUTICAL CORPORATION, a Delaware corporation, the following real property, including all land and buildings, facilities, fixtures located thereon, and all appurtenances thereto, which real property is located within the City of Ogden, Weber County, Utah, more particularly described as (the "Property"):

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

Conveyance of the Property shall be subject only to the following reservations, restrictions, easements, and encumbrances:

1. Non-delinquent property taxes and assessments;
2. The lien of all non-delinquent general real and personal property taxes and assessments, not yet due or payable.
3. Said property lies within the boundaries of Weber County, Weber Basin Water-Ogden, Central Weber Sewer, Ogden City and Defense Depot Ogden Eco. Dev. Proj. Area, and is subject to any and all charges and assessments thereof.
4. Resolution No. 23-2005, a resolution of the Board of County Commissioners of Weber County creating and establishing a special service district throughout all of Weber County, to be known as the "Weber Area Dispatch 911 and Emergency Services District", recorded January 24, 2006 as Entry No. 2156401 of Official Records.
5. Easements for public utilities, easements, building setback lines, restrictions, dedications, offer for dedications if any, conditions of approval and notes and incidental purposes over, along and across said property as shown on the recorded plat of said subdivision.

6. A 45 foot joint driveway easement as shown on the recorded plat of said subdivision.
7. Easement for a 20 foot common railroad easement as shown on the recorded plat of said subdivision.
8. Easement for a 20 foot common fire lane as shown on the recorded plat of said subdivision.
9. Easement for 30 foot access easement as shown on the recorded plat of said subdivision.
10. Interim Easement and Access Agreement, according to the terms, conditions and restrictions contained therein, recorded July 14, 1999, as Entry No. 1649464 in Book 2023 at Page 664 of Official Records. Amendment of Interim Easement and Access Agreement, according to the terms, conditions and restrictions contained therein, recorded December 30, 1999 as Entry No. 1682126 in Book 2051 at Page 1359 of Official Records.
11. Terms and conditions of that certain Easement Agreement recorded March 27, 2006 as Entry No. 2168725 of the Official Records.
12. The terms of that certain instrument entitled Master Declaration Of Covenants, Conditions And Restrictions, recorded December 30, 1999 as Entry No. 1682125, in Book 2051, at Page 1301 of the Official Records, as amended (the "Master CC&Rs").
13. Any and all outstanding oil and gas, mining and mineral rights, etc., together with the right of the proprietor of a vein or lode to extract his ore therefrom should the same be found to penetrate or intersect the premises, and the right of ingress and egress for the use of said rights.
14. Exclusions, Reservations, Easements and other appurtenant details disclosed in Quit Claim Deed by and between United States of America acting by and through the Secretary of the Army, acting by and through the Deputy Assistant Secretary of the Army, under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (Public law 101-510, Title XXIX; 10 U.S.C.S 2687 note), and Ogden City, a Municipal Corporation, acting as the Ogden Local Redevelopment Authority, recorded July 28, 2000 as Entry No. 1821840 in Book 2203 at Page 183 of Official Records.
15. Exclusions, reservations, restrictions, easements and other appurtenant details as disclosed in that certain Special Warranty Deed recorded August 13, 2004 as Entry No. 2050343 of Official Records.
16. Provisions, covenants, conditions, restrictions, easements, charges, assessments, liens or rights, if any, created therein, but deleting those matters based upon race, color, creed, religion, sex, handicap, familial status or national origin unless and only to the extent that said matters, or any portion thereof, are exempt under relevant provisions of the United States Code

or relate to handicap, but do not discriminate against handicapped persons, contained in that certain Special Warranty Deed, recorded August 13, 2004 as Entry No. 2050343 of the Official Records.

17. Any matters that would be disclosed by a current and accurate survey of the Swanson Property, prepared in accordance with the 2005 Minimum Standard Details Requirements for ALTA/ACSM Land Title Survey, effective January 1, 2006.

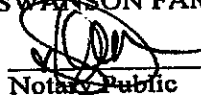
Dated the 11 day of December, 2009.

DR. W.C. SWANSON FAMILY FOUNDATION,  
INC., a Utah corporation

By: Cindy R. Wood  
Name: Cindy R. Wood  
Title: President / CEO

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

On this 11<sup>th</sup> day of December, 2009, personally appeared before me Cindy R. Forcell  
the President of DR. W.C. SWANSON FAMILY FOUNDATION,  
INC., a Utah corporation.



Notary Public  
Residing at: SLO, UT

My commission expires:  
4-12-13

