



"W2170215"

13

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 2170215 PG 1 OF 13
DOUG CROFTS, WEBER COUNTY RECORDER
31-MAR-06 337 PM FEE \$34.00 DEP JPM
REC FOR: HOME ABSTRACT

(Tax Parcel No. 12-203-0003)

MAINTENANCE FEE PAYMENT AGREEMENT

THIS MAINTENANCE FEE PAYMENT AGREEMENT (this "Agreement") is executed to be effective 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") and **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, 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 (as amended, the "Lease").

B. 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").

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.12-203-0003/64

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 and the Master Development Agreement when Nutraceutical acquired it.

F. Although the 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 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.

NOW, THEREFORE, for 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 terms defined elsewhere in this Agreement, the following words, unless the context otherwise requires, shall have the following meanings:

“Adjustment Date” means each anniversary of the Initial Adjustment Date.

“Arbitration” means the dispute resolution procedure set forth in Section 9(c) of this Agreement to resolve all disputes and controversies 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 the Maintenance Payment and its Payment Due Date.

“Base Index” means the CP Index for April, 2006.

“BDO” means the Business Depot Ogden, which is all of the tracts covered by and described in the Lease.

“Common Areas” shall have the same meaning as set forth in the CC&Rs, as amended from time to time.

“CP Index” means the Revised Consumer Price Index For All Items Urban Wage Earners and Clerical Workers (1982-1984=100) published monthly in the “Monthly Labor Review” or other publication issued by the Bureau of Labor Statistics of the United States Department of Labor. If the CP Index is revised, the CP Index used in this Agreement shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CP Index is discontinued, “CP Index” shall refer to comparable statistics on the purchasing power of the consumer dollar published by the Labor Bureau or by another agency of the United States selected by Boyer BDO. If the Labor Bureau or another agency of the United States no

longer publishes comparable statistics on the purchasing power of the consumer dollar, "CP Index" shall refer to comparable statistics published by a reasonable financial periodical or recognized authority selected by Boyer BDO. If the base year "(1982-84=100)" used in computing the CP Index is changed, the figures used in making adjustments to the Maintenance Payment on each Adjustment Date shall be changed accordingly so that all increases in the CP Index are taken into account notwithstanding any such change in the base year. If the CP Index is discontinued, then such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CP Index had not been discontinued or revised.

"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, but does not include Ogden in its capacity as owner of the BDO after the termination of the Lease.

"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.

"Initial Adjustment Date" means April 1, 2007.

"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 Maintenance Payment which is not paid on or before the Payment Due Date.

"Maintenance Payment" means, in any specified calendar year, an amount determined as follows:

(a) During 2006, the Maintenance Payment shall equal \$6,722.00 per annum.

(b) Commencing as of the Initial Adjustment Date and as of each Adjustment Date thereafter, the Maintenance Payment provided for in subsection (a) shall be increased annually to an amount equal to the result obtained by multiplying \$6,722.00 per annum (i.e., the Maintenance Payment for 2006) by a fraction, the numerator of which is the CP Index as of the December immediately preceding the latest Adjustment Date and the denominator of which is the Base Index; provided, in no event will the Maintenance Payment be decreased.

"Mediation" means the dispute resolution procedure set forth in Section 9(b) to resolve all disputes and controversies under this Agreement.

"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.

"Owner" means the Person that, at a specified 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 **"Owner"** expressly does not include the owner of a leasehold interest in the Nutraceutical Parcel. In addition, notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term **"Owner"** does not include a Mortgagee with respect to the Nutraceutical Parcel 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 thereof, as evidenced by an instrument of conveyance Recorded in the Recording Office.

In the event that, at any time, there is more than one Owner of the Nutraceutical Parcel, the liability of each such Owner for performance or compliance with the applicable provisions of this Agreement shall be joint and several.

"Parties" means any one of the Parties.

"Party" means Boyer BDO (or, after termination of the Lease, Ogden) or any successor Owner of Boyer BDO, and Nutraceutical or a successor Owner of the Nutraceutical Parcel.

"Payment Due Date" means, with respect to a Quarterly Invoice, the last to occur of: (a) the last day of the calendar quarter to which the Quarterly Invoice relates; or (b) thirty (30) days after delivery of the Quarterly Invoice in accordance with the notice provisions of this Agreement.

"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.

"Quarterly Invoice" is defined in Section 2.

"Recorded" means filed for record in the Recording Office.

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

2. Obligation to Pay Maintenance Payment. As part of the consideration given by Nutraceutical to cause the Nutraceutical Parcel to be released from the CC&Rs and the Master Development Agreement, and to compensate Boyer BDO for services in maintaining Common Areas, which Boyer BDO will continue to render in connection with the Common Areas and related facilities of the BDO and which will benefit the Nutraceutical Parcel, the Nutraceutical Parcel Owner shall be obligated to pay the Maintenance Payment to Boyer BDO in quarterly installments on or before the Payment Due Date. Boyer BDO will invoice the Owner of the Nutraceutical Parcel for each such quarterly installment (a "Quarterly Invoice").

3. Amendment or Termination; Duration of Agreement.

(a) This Agreement may be amended or terminated by, but only by, Recorded in the Recording Office that is executed, acknowledged and delivered by the Owner of the Nutraceutical Parcel and Boyer BDO.

(b) The term of this Agreement is perpetual; provided, if any 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.

(c) Notwithstanding anything to the contrary, this Agreement shall terminate under the following circumstances:

(i) If Boyer BDO or a successor of either ceases collecting maintenance fees for the Common Areas (or any fees, rents or charges which replace such maintenance fees and are used for the same purpose) from substantially all of the tenants and/or owners of BDO, whether under the CC&Rs and the Master Development Agreement or otherwise; or

(ii) If any Governmental Authority assumes the obligations of Boyer BDO to maintain substantially all of the Common Areas; provided, that this subsection shall not include Ogden as fee owner of the BDO after the termination of the Lease.

4. Covenants to Run with 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 their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. By acquiring, in any way coming to have an interest in, Nutraceutical Parcel, the Person so acquiring, 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. This Agreement shall inure to the benefit of Boyer BDO and Ogden.

5. Late Payment. If the Owner of the Nutraceutical Parcel fails to pay the Quarterly Invoice on or before the Payment Due Date, then: (a) Late Payment Fee shall automatically be added to the Quarterly Invoice; and (b) the unpaid balance of the Quarterly Invoice shall thereafter accrue interest at the Interest Rate.

6. Assessment Lien. In the event the Owner of the Nutraceutical Parcel fails to pay the full amount of Quarterly Invoice on or before the Payment Due Date, then Boyer BDO, shall have the right to Record an Assessment Lien with respect to the Nutraceutical Parcel in the Recording Office.

a. Upon Recording the Assessment Lien, the delinquent Maintenance Payment as evidenced by the Quarterly Invoice, together with interest at the Interest Rate and the Late Payment 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 of the Nutraceutical Parcel by taking any or all of the following actions, concurrently or separately:

i. Bringing an action at law against the Owner of the Nutraceutical Parcel.

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.

b. 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.

c. Upon the curing of any default for which an Assessment Lien was Recorded, Boyer BDO shall record an appropriate release of such Assessment Lien.

7. Enforcement. In addition to the right of Boyer BDO to file an Assessment Lien set forth in Section 6, if any Party fails to perform its obligations under this Agreement, the other Party may provide written notice to such defaulting Party and the defaulting Party shall have thirty (30) days to rectify the default or, if the defaulting Party promptly commences and diligently pursues such cure, such longer period as may reasonably be required to effect a cure. If a dispute exists as to whether there is a default, other than the failure of the Owner of the Nutraceutical Parcel to pay the Maintenance Fee, or a Party fails to perform its obligations, the other Party may submit the matter to dispute resolution pursuant to Section 9.

8. Enforcement Costs. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Agreement) the prevailing Party in such action shall be entitled to recover from the unsuccessful Party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered.

9. 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 9(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 9(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 9(c) (an "Arbitration"); provided the arbitrator may not award exclusive parking rights to Nutraceutical 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.

(d) Maintenance Payment. The provisions of this Section and the dispute resolution mechanism set forth herein, Boyer BDO shall not be obligated to, and the Owner of the Nutraceuical Parcel shall not have the right to cause, dispute regarding the Maintenance Payment submitted to Mediation or Arbitration.

10. Effective Date. This Agreement, any amendment or termination hereof, and any supplement hereto shall take effect upon being Recorded in the Recording Office.

11. Notices. Any invoice, notice or communication under this Agreement required or permitted to be given under this Agreement, by any of the Parties to the others, shall be addressed to the Party at the address set forth in the introductory paragraph of this Agreement, and deemed delivered if hand delivered or on the date when deposited into the U.S. mail as certified mail, return receipt requested, postage prepaid. Any Party may change its address by written notice to the other Parties delivered in accordance with this Section.

12. Titles, Captions and References. All Section titles or captions in this Agreement are for convenience only, shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions of this Agreement. When this Agreement refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Agreement unless the context refers to another agreement, document or instrument.

13. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

14. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, 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 such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules that would apply the law of another jurisdiction.

16. Exhibits. All exhibits annexed to this Agreement are expressly made a part of and incorporated in this Agreement as fully as though completely set forth in this Agreement.

17. Time of Essence. Time is of the essence of this Agreement.

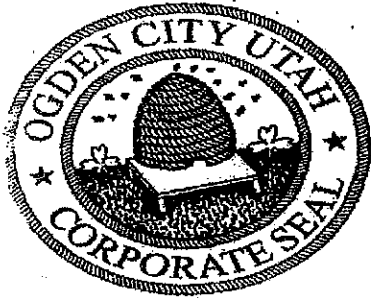
18. Estoppel Certificates. Boyer BDO and Nutraceutical shall both be obligated to provide written estoppel certificates to the other or to any lender within ten (10) business days after written request on commercially reasonable forms.

19. 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 successors 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 BDO from and after the date the Lease is terminated.

(Signatures begin on following page)

IN WITNESS WHEREOF, this Agreement 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:

Judi Mansell
City Recorder

Approved as to Form:

Assistant *C. Chafetz*
City Attorney

STATE OF UTAH)
) ss:
COUNTY OF WEBER)

The foregoing Agreement was acknowledged before me this 31st day of March, 2006, by Matthew R. Godfrey, in her/his capacity as the Mayor of Ogden City.

Lee Ann Peterson
Notary

My Commission Expires: July 5, 2009



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

My Commission Expires: July 5, 2009



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

My Commission Expires: July 5, 2009



NUTRACEUTICAL:

NUTRACEUTICAL CORPORATION, a Delaware corporation

By: [Signature]
Name: Bruce R. Hough
Title: President

STATE OF UTAH)
COUNTY OF Salt Lake) ss:

The foregoing Agreement was acknowledged before me this 31st day of March, 2006, by Bruce R. Hough, in her/his capacity as the President of Nutraceutical Corporation, a Delaware corporation.

[Signature]
Notary

My Commission Expires: 3/22/09

