

SITE ACCESS AGREEMENT

This Site Access Agreement (this “Agreement”) is made this ___ day of October, 2018 and effective this ___ day of October, 2018 by and between the CITY OF NIAGARA FALLS, a New York municipal corporation with offices at 745 Main Street, P.O. Box 69, Niagara Falls, New York 14302 (the “CITY”) and LIFEMAX NATURAL FOODS, a Canadian entity with offices at 1773 Bayly Street, Pickering, Ontario L1W2Y2 (“LIFEMAX”).

RECITALS

WHEREAS, the CITY is the owner of the Premises commonly known as 8450 Buffalo Avenue and 8411 Troy Avenue, Niagara Falls, NY (the “Premises”); and

WHEREAS, the CITY and LIFEMAX are currently in negotiations as concerns the possible development of the Premises by LIFEMAX, and

WHEREAS, as part of its due diligence, LIFEMAX must perform site analysis activities which may include certain environmental testing on the Premises in order to determine the suitability of the Premises for the project LIFEMAX wishes to undertake; and

WHEREAS, LIFEMAX contemplates certain environmental testing commonly referred to as Phase I Environmental Site Assessment (a “Phase I”) and Phase II Environmental Site Assessment (a “Phase II”) may take place; and

WHEREAS, the CITY is willing to permit LIFEMAX to undertake and complete the necessary site analysis activities including environmental testing upon the following terms and conditions:

1. **Recitals.**

The Recitals set forth above are incorporated in to and made a part of the Agreement.

2. **Access.**

The CITY hereby grants to LIFEMAX and its employees, agents, consultants and contractors (collectively, "LIFEMAX representatives") a license to enter upon the Premises in order to undertake site analysis activities which may include the Phase I and Phase II environmental testing activities on the Premises (the "Activities"). This Agreement represents a license that is limited in purpose and scope to the least amount of access which is reasonably required to undertake and complete the Activities and does not represent a lease to or create any interest in the Premises or any other property owned by the CITY or create a partnership, joint venture or any association or relationship between the CITY and LIFEMAX. LIFEMAX and LIFEMAX's representatives shall use commercially reasonable efforts to prevent damage to any aspect of the Premises. Any and all activities conducted by the CITY and/or LIFEMAX or its agents, shall not unreasonably interfere with or disrupt any commercial activities relating to the Premises.

3. **Laws; Permits.**

LIFEMAX shall comply with all applicable environmental laws and all lawful orders of any governmental authority or agency. LIFEMAX shall obtain all permits, consents, approvals and/or licenses (if any) required for the performance of the Activities undertaken pursuant to this Agreement.

4. **Indemnification.**

LIFEMAX hereby assumes any and all risks associated with Activities to be conducted by LIFEMAX or LIFEMAX's representatives on the Premises. LIFEMAX hereby agrees to indemnify, defend and hold harmless the CITY from and against any

and all claims, demands, judgments, expenses, losses, fees, liabilities and/or suits or other actions for any property damage and/or bodily injury as a direct result of the Activities.

5. **Restoration.**

Immediately after the Activities have been completed, LIFEMAX shall repair and restore those portions of the Premises which are in any way affected, damaged or disturbed due to the performance of the Activities to a condition which is, to the extent practical, identical to the condition that existed before the commencement of the Activities.

6. **Insurance.**

LIFEMAX shall be required to carry and/or require each contractor and subcontractor performing the Activities to carry insurance coverage naming the CITY as an additional insured, with respect to all Activities associated with the Activities. Such coverage shall be in at least the amount of One Million Dollars (\$1,000,000.00) combined single limit, bodily injury, death and property damage insurance per occurrence as per the attached insurance requirements.

7. **Pre-Existing Conditions.**

Notwithstanding anything to the contrary which may be contained in this Agreement, the parties agree that, prior to the commencement of the activities LIFEMAX and LIFEMAX's representatives have neither created nor contributed to the creation or existence of any environmental condition on the Premises and shall have no liability to the CITY for simply discovering and/or informing CITY of the discovery of such pre-existing environmental condition.

8. **Notice.**

LIFEMAX must provide the CITY with at least 48 hours notice of its intention to perform the Activities on the Premises and designate locations on the Premises where the Activities will be performed.

9. **Phase I and Phase II Reports.**

LIFEMAX agrees to provide the City with a full and complete copy of any Phase I and Phase II environmental reports as well as site analysis reports. Those reports will be provided to the City within five (5) days of LIFEMAX receiving them.

10. **Counterparts.**

The Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute a single, fully executed Agreement.

In Witness Whereof, LIFEMAX and the CITY have executed this Agreement on the day and year indicated.

Date: _____

CITY OF NIAGARA FALLS

By: _____
PAUL A. DYSTER, Mayor

Date: _____

LIFEMAX NATURAL FOODS

By: _____

STATE OF NEW YORK)
COUNTY OF NIAGARA : SS.
CITY OF NIAGARA FALLS)

On the _____ day of _____ in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared **PAUL A. DYSTER**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

STATE OF NEW YORK)
COUNTY OF : SS.
CITY OF)

On the _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known and known to me or proved on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.
