

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this "**Agreement**") is made this ___ day of _____, 2018 by **BUMPY ROAD LLC**, a Massachusetts limited liability company, having its principal office at 200 Bumpy Road, Burlington, Massachusetts 01803 ("**Borrower**"), Guarantor Corporation, a Delaware corporation, with an address of 200 Bumpy Road, Burlington, Massachusetts 01803 ("**Guarantor**"; together with Borrower, collectively, "**Obligors**"), in favor of **LIFE INSURANCE COMPANY**, an Indiana corporation, having its principal office at 1000 Corporate Largesse Drive, Indianapolis, Indiana 46206-0368 ("**Lender**").

RECITALS

A. Borrower is the owner of certain land (the "**Land**") located in Middlesex County, Massachusetts, and more particularly described on Exhibit A, attached hereto and incorporated herein by reference.

B. The Land and the improvements located thereon are hereinafter collectively called the "**Property**".

C. Lender is prepared to make and Borrower will accept a loan in the aggregate amount of TWENTY SIX MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$26,700,000.00) (the "**Loan**") secured by, *inter alia*, that certain Mortgage, Security Agreement, Financing Statement and Fixture Filing of even date herewith from Borrower in favor of Lender encumbering the Property (as may be, from time to time, amended, amended and restated, modified, extended, replaced, renewed or supplemented, the "**Mortgage**").

D. As a condition to and as consideration for making the Loan, Lender requires Obligors, their respective successors, personal representatives, heirs and assigns to jointly and severally provide for the benefit of Lender, its directors, officers, employees, agents, endorsees, successors, and assigns, certain representations, warranties and indemnities concerning existing and future underground storage tanks, underground pipelines, dry wells, or other underground structures, whether active or inactive, and Hazardous Materials (as hereinafter defined).

E. To induce Lender to make the Loan, Obligors have agreed to execute and deliver this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligors and their respective successors, personal representatives, heirs and assigns, hereby jointly and severally agree as follows:

1. Obligors unconditionally covenant and agree, at their sole cost and expense, to indemnify, protect, save and hold harmless Lender, its directors, officers, employees, agents, attorneys, endorsees, successors, and assigns against and from any and all actual out-of-pocket damages, losses, liabilities, and any and all obligations, penalties, claims, fines, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees, administrative expenses, prejudgment interest, court costs and disbursements) including, but not limited to, the cost and expense of any required or necessary investigation, testing, monitoring, repair, cleanup, removal, detoxification, decontamination, preparation of any closure or other required plans, or remedial action at or relating to the Property (collectively, "**Claims and Costs**"), with respect to, as a direct or indirect result of, or arising out of, but not limited to, any of the following:

- a. any requirement, lawsuit, notice of violation, notice letter, warning letter, administrative order, compliance order, enforcement action, lien imposed by Environmental Laws (as hereinafter defined), settlement, agreement, consent order, decree or judgment, injunction, restraining order or prohibition (collectively "**Action**") relating to the generation, presence, storage, management, disposal, release, discharge, escape, emission, spill, seepage, leakage, dumping, pumping, pouring, emptying or cleanup of Hazardous Materials at, on, in, beside, above, from, near or under all or a portion of the Property; or
- b. the migration of Hazardous Materials from the Property to any other property, or onto the Property from any property or area adjacent to the Property;

For purposes of this Agreement, the term "**Hazardous Materials**" shall include, but not be limited to any substance defined as "hazardous substances," "hazardous air pollutant," "pollutants," "contaminants," "hazardous materials," "hazardous wastes," "toxic chemicals," "petroleum or petroleum products," "pesticides" or related materials now or hereafter defined in any applicable federal, state, or local law, regulation, ordinance, policy, or directive, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001, et seq.; the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101, et seq.; the Federal Water Pollution Control Act ("**Clean Water Act**"), 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; any applicable state superfund law, storage tank law, hazardous waste management law, water pollution control law, air quality law, or the like and as any such acts or laws may be amended (collectively, "**Environmental Laws**").

Upon the initiation of any Action against Lender, Lender shall promptly notify Obligors in and Obligors shall assume the defense thereof, including the employment of counsel approved by Lender and the payment of all costs and expenses. Obligors in assuming the defense shall,

however, have no authority to represent to any claimant that it has the authority to enter into any settlement of any Action, consent judgment, confession of judgment or any other agreement purporting to bind Lender without Lender's advance written approval. Lender shall have the right, but not the obligation, to employ separate counsel in any such action and to participate in defense thereof. Obligors shall fully inform Lender of the status of any defense on a monthly basis or more often should events warrant. Obligors shall consult Lender at all critical stages of any defense of any Action. Obligors' obligations under this paragraph shall survive any termination of this Agreement or any other Loan Document (as hereinafter defined).

In the event that Lender shall suffer or incur any Claims or Costs as the result of an Action, Obligors shall pay to Lender the total of all such costs upon demand by Lender. Without limiting the foregoing, the indemnification provided herein shall specifically cover costs, including capital, operating, and maintenance costs, incurred in connection with (i) any investigation or monitoring of site conditions, (ii) any cleanup, containment, remediation, removal, or restoration work required or performed by any federal, state, or local governmental entity or performed by any other entity or person (including Lender) because of the presence, release, or threatened release of any Hazardous Materials on, near, above, or below the Property, and (iii) any claims of third parties for loss or damage due to such Hazardous Materials.

If any Hazardous Materials exist at any time at, on, in, beside, above, from, near or under all or a portion of the Property, or any Action, is initiated against any Obligor, Obligors shall promptly (but in no event later than the time periods prescribed by any law, ordinance or regulation) notify Lender in writing.

In the event that Lender must seek judicial redress to enforce any provision of this Agreement against any of the Obligors, Obligors shall reimburse Lender for all costs associated with such enforcement, including, but not limited to, all expenses and attorneys' fees.

The liability of Obligors under this Agreement shall in no way be limited or impaired by, and Obligors hereby consent to and agree to be bound by, any amendment to or modification of the provisions of the Loan Documents by Borrower. In addition, the liability of Obligors under this Agreement shall in no way be limited by (i) any extensions of time for performance required by way of the Loan Documents, (ii) any sales, assignments or foreclosures of the Note (as hereinafter defined) or Mortgage or any sale or transfer of all or part of the Property after the foreclosure of the Mortgage or Lender's, or its assignees, acquisition of the Property by a deed in lieu of foreclosure of the Mortgage, (iii) the accuracy or inaccuracy of the representations and warranties made by Obligors or any of the obligors under any of the Loan Documents, (iv) the release of any Obligor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Lender's voluntary act, or otherwise, (v) the release or substitution in whole or in part of any security for the Note, or (vi) Lender's failure to record the Mortgage or file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, secure or insure any security interest or lien given as security for the Note.

Lender's rights under this Agreement shall be in addition to all rights of Lender under the Mortgage, the Promissory Note dated of even date herewith secured by the Mortgage (as may be,

from time to time, amended, amended and restated, modified, extended, replaced, renewed or supplemented, the "*Note*"), the General Assignment of Rents and Leases dated of even date herewith executed in connection with the Mortgage (as may be, from time to time, amended, amended and restated, modified, extended, replaced, renewed or supplemented the "*Assignment*"), any guaranty or guaranties (whether of payment and/or performance) given to Lender in connection with the Loan, and under any other documents or instruments evidencing securing the Loan (the Mortgage, the Note, the Assignment, any such guaranty or guaranties and such other documents or instruments, as amended or modified from time to time, being herein collectively referred to as the "*Loan Documents*"), and payments by Obligor under this Agreement shall not reduce Borrower's obligations and liabilities under any of the Loan Documents, and shall not reduce Guarantor's obligations under any guaranty or guaranties executed in connection with the Loan.

2. For purposes of this Agreement, Obligor make the following representations and warranties:

- a. None of the Obligor is insolvent (as defined in §101(32) of the Federal Bankruptcy Code of 1978 as amended, 11 U.S.C. §101(32)) or will be rendered insolvent by execution of this Agreement;
- b. Except as disclosed in writing to Lender, there are no Actions pending or threatened against or affecting any of the Obligor or the Property; and
- c. Obligor shall take all appropriate precaution and/or action to ensure that Borrower and Borrower's tenants operate the Property in compliance with all Environmental Laws, and shall monitor the Property to insure continual compliance with the Environmental Laws.

3. The following shall constitute default under this Agreement:

- a. If any Obligor fails to perform any obligation under this Agreement;
- b. If any of the representations and warranties made by Obligor under this Agreement shall be untrue in any material respect; or
- c. If any Obligor becomes insolvent.

A default under this Agreement may, at the option of Lender, be treated as a default under any of the Loan Documents.

4. Obligor hereby waive any right or claim of right to cause a marshalling of their assets or to cause Lender to proceed against any of the security for the Loan before proceeding under this Agreement against Obligor; Obligor agree that any payments required to be made hereunder shall become due on demand.

5. No failure or delay on Lender's part to exercise any right, power or privilege under any of the Loan Documents shall operate as a waiver of any such right, power or privilege.

6. Obligors, or any other party liable upon or in respect of this Agreement or the Loan, may be released without affecting the liability of any party not so released.

7. No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

8. Lender and Obligors have jointly negotiated, drafted, and prepared this Agreement. Thus, this Agreement shall not be construed or interpreted in favor of or against any party by virtue of the identity of its preparer.

9. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Obligors and Lender and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Obligors may not, without the prior written consent of Lender in each instance, assign, transfer or set over to another, in whole or in part, all or any part of their benefits, rights, duties and obligations hereunder, including but not limited to, performance of and compliance with the conditions hereof. However, this shall not limit the right of Obligors to contract with others for any appropriate or necessary remediation.

10. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State in which the Property is located.

11. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and the remainder of this Agreement shall be construed as if such invalid part were omitted herefrom.

12. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

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[Remainder of page intentionally left blank; signature page(s) to follow.]

IN WITNESS WHEREOF, Obligors have executed this Agreement as of the day and year first above written.

BORROWER:

BUMPY ROAD LLC,
a Massachusetts limited liability company

By: Guarantor Corporation,
a Delaware corporation, Manager

By:

John B. Bumpy
President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GUARANTOR:

THE GUTIERREZ COMPANY,
a Delaware corporation

By: _____
Arthur J. Gutierrez, Jr.
President

EXHIBIT A

THE LAND