

**GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**

TO

EMPIRE STATE PIPELINE/EMPIRE PIPELINE, INC.

LEASEBACK AGREEMENT

Relating to:

Acquisition, Construction and Equipping of a Compressor Station and Related
Improvements in the Town of Oakfield, Genesee County, New York
for the Company's Natural Gas Pipeline Project

Dated as of July 1, 2007

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LEASEBACK AGREEMENT

THIS LEASEBACK AGREEMENT, dated as of the 1st day of July, 2007 (the "Leaseback Agreement"), is by and among the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at One Mill Street, Batavia, New York 14020 (the "Agency"), **EMPIRE STATE PIPELINE**, a joint venture formed and existing under the laws of the State of New York, with offices at 6363 Main Street, Williamsville, New York 14221 and **EMPIRE PIPELINE, INC.**, a corporation duly organized and validly existing under the laws of the State of New York, with offices at 6363 Main Street, Williamsville, New York 14221 (collectively, the "Company").

W I T N E S S E T H :

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 565 of the Laws of 1970 of the State (hereinafter collectively, the "Act") created the Agency which is empowered under the Act to undertake the leasing of the facility described below; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition by the Agency of fee title to or a leasehold or other interest in certain property located at 3261 Lockport Road, Oakfield, and certain other properties located throughout Genesee County, New York and the existing improvements located thereon (collectively the "Land"), (ii) the construction and equipping on the Land of (1) a 20,620 horsepower compressor station and (2) a portion of the Company's 78.3 mile 24-inch diameter natural gas pipeline beginning in Victor, New York and traversing the Finger Lakes region through the counties of Genesee, Ontario, Yates, Schuyler, Chemung and Steuben, and terminating in Coming, New York (the compressor station and the portion of such gas pipeline located in Genesee County, hereinafter referred to collectively as the "Improvements"), and (iii) the acquisition in and around the Improvements of certain items of equipment and other tangible

personal property including pipes, valves, meters, fittings, and compressors (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); all in furtherance of providing natural gas service to users located or locating at or in areas surrounding the Land in said Counties; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to take a leasehold interest in the Land, the Improvements and the Equipment and lease said Facility back to the Company pursuant to the terms and conditions contained herein; and

WHEREAS, the Agency has determined that providing the Facility will accomplish, in part, its public purposes; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the plans and specifications presented to the Agency in the Company's application; and

WHEREAS, the Agency proposes to lease its interest in the Facility back to the Company, and the Company desires to rent and assume such rights in the Facility from the Agency, upon the terms and conditions hereinafter set forth in this Leaseback Agreement.

NOW, THEREFORE, for and in consideration of the Facility and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows.

ARTICLE I

REPRESENTATIONS AND COVENANTS

Section 1.1. Representations and Covenants of the Agency.

The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

(b) The Agency has been duly authorized to execute and deliver this Leaseback Agreement.

(c) The Agency will take a leasehold interest in the Land, the Improvements and the Equipment, lease the Facility back to the Company pursuant to this Leaseback Agreement, and designate the Company as its agent for purposes of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and Genesee County, New York and improving their standard of living.

(d) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Leaseback Agreement by the undertaking of the Company to acquire, construct, equip, repair and maintain the Facility and related jobs in Genesee County, New York.

(f) Nothing in this Leaseback Agreement will allow the Agency to interfere with, interrupt, obstruct or modify in any way the Company's business operations, including its ability to provide transportation services under its then effective United States Federal Energy Regulatory Commission (the "FERC") Gas Tariff.

Section 1.2. Representations and Covenants of the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Empire State Pipeline (the "JV") is a joint venture between Empire State Pipeline Company, LLC ("Empire LLC") and St. Clair Pipeline Company, LLC ("St. Clair LLC"). Both Empire LLC and St. Clair LLC are limited liability companies duly formed, validly existing and in good standing under the laws of the State of New York; and Empire Pipeline, Inc. is a corporation duly formed, validly existing and in good standing under the laws of the State of New York (the "Corporation"). The JV and the Corporation (collectively, the "Company" and as defined above) have the authority to enter into this Leaseback Agreement and each has duly authorized the execution and delivery of this Leaseback Agreement.

(b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which either the JV or the Corporation is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of either the JV or the Corporation under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing

such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Facility and the operation thereof are governed by the FERC and will conform with all applicable laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d). The Company shall operate the Facility in accordance with this Leaseback Agreement and as a qualified "project" under the Act.

(e) The Company has caused to be transferred to the Agency a leasehold interest in the Facility.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would materially diminish or adversely impact on the Company's ability to fulfill its obligations under this Leaseback Agreement.

(g) The Company covenants that the Company's use of the Facility will comply in all material respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations and any other laws and regulations pertaining to the compression and transportation of natural gas, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is, to the best of the Company's knowledge, threatened, anticipated or in existence.

The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section.

(h) The Company has provided to the Agency a letter of self-insurance or certificates of insurance containing all of the insurance provision requirements included under Sections 3.4 and 3.5 hereof. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

(i) The Company represents, warrants and covenants that, unless otherwise approved by the Agency in compliance with the Act, facilities or properties that are primarily used for making retail sales to customers who personally visit such facilities constitute less than one-third (1/3) of the total Project costs. For purposes of this section, "retail sales" means: (a) sales by registered vendors under Article 28 of the Tax Law of the State of New York primarily engaged in the retail sale of tangible personal property, as defined in Section 1101(b)(4)(i) of the Tax Law of the State of New York; or (b) sales of a service to said customers.

(j) At the request of the Agency, the Company shall install up to three (3) "taps" into the gas line located in Genesee County connecting to the Facility, at the sole and exclusive cost of the Company. Such request shall be made by the Agency prior to the Projected Completion Date, as defined in Section 2.5(b) hereof. Such taps to be installed in a commercially reasonable timeframe following such request of the Agency and to be placed along the gas line located in Genesee County as are commercially reasonable.

(k) The Company covenants and represents that for the term hereof, it shall not grieve or otherwise challenge the assessed value at the Facility.

(l) The Company hereby agrees to defend and hold harmless the Agency, the Town of Oakfield, New York and Oakfield-Alabama Central School District, and their respective members, officers, agents, directors and employees, from prosecution or related disputes and costs arising therefrom (including legal costs) with respect to the PILOT Agreement litigation or other challenges.

Section 1.3. Public Authorities Law Representations.

The parties hereto hereby acknowledge that the Facility and the interests therein conveyed to the Agency under the Lease Agreement, dated as of the date hereof, by and between the Company and the Agency (the "Lease Agreement") and conveyed by the Agency back to the Company pursuant to the terms of this Leaseback Agreement are not "property" as defined in Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the Company's obligations to the Agency under the PILOT Agreement and this Leaseback Agreement, including (i) the Company's obligation to acquire, construct, equip and maintain the Facility on behalf of the Agency and (ii) the performance by the Company of the Unassigned Rights (as defined below).

ARTICLE II

FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

Section 2.1. Agreement to Convey to Agency.

The Company has leased or will lease to the Agency its rights to the real property, including any buildings, structures or improvements thereon, described in **Exhibit A** attached hereto and the Equipment described in **Exhibit B** attached hereto; *provided, however*, that the Agency's leasehold interest in the Facility shall be for the sole purpose of the Agency conferring certain financial assistance and such ownership or other interest undertaken by the Agency shall not include the right, authority or potential for the Agency to control operations on or at the

Facility, nor shall (or has) the Agency participate(d) in the management or participate(d) in the development of the Facility, except as otherwise provided herein. The Company agrees that the Agency's interest in the Facility resulting from said conveyances will be sufficient for the purposes intended by this Leaseback Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Facility.

Section 2.2. Construction and Equipping of the Facility.

(a) The Agency hereby confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to a resolution duly adopted by the Agency on March 14, 2007 (the "Authorizing Resolution").

(b) The Company, as agent for the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (a) the completion of the Project, or (b) November 30, 2008; *provided, however*, that the Company's appointment as agent of the Agency shall not extend to activities associated with the operation or maintenance of the Project upon completion thereof; and provided further that the Agency may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, such consent by the Agency to the extension of such appointment shall not be unreasonably withheld.

(c) The Company hereby agrees to pay the Agency administrative fee of \$291,000, the fees of counsel to Agency and/or the fees of transaction counsel, and any and all fees, costs and expenses incurred in the acquisition, construction and equipping of the Facility, including recording fees and taxes and any other fees or expenses due hereunder.

(d) The Company, as agent for the Agency, will undertake the Project. The Company hereby covenants and agrees to annually file with the State Department of Taxation and Finance the statement required by General Municipal Law Section 874(8) concerning the value of sales tax exemptions claimed.

Section 2.3. Demise of Facility.

(a) The Agency hereby demises and leases the Facility to the Company and the Company hereby rents and assumes such rights in the Facility from the Agency upon the terms and conditions of this Leaseback Agreement.

(b) Upon the execution by the Company and the Agency of the Lease Supplements, if any (as such term is defined in the Lease Agreement), the real property interests listed on Exhibit A, or the equipment and improvements on Exhibit B, attached hereto, shall be amended and shall become subject to the Lease Agreement and this Leaseback Agreement. No later than sixty (60) days following the date of the Company commencing commercial operation of the Facility, the Company and the Agency shall amend and restate this Leaseback Agreement or execute a lease

supplement to transfer leasehold interests in the Supplemental Property, if any (as such term is defined in the Lease Agreement) and make all necessary filings for the purpose of adding Supplemental Property to the Lease Agreement and this Leaseback Agreement. The Company agrees to pay all costs associated with any such amendment(s) or modification(s).

(c) The parties agree and understand that the Company intends to cause the JV to comply with its obligations hereunder and under all other documents to which it is a party (including the PILOT Agreement and the Lease Agreement) until commencement of commercial operation of the pipeline and thereafter to cause the JV to convey its interest therein to the Corporation which will thereafter comply with all of the Company's obligations hereunder. Thereafter, the JV may cease to exist.

Section 2.4. Remedies to be Pursued Against Contractors and Subcontractors and their Sureties.

In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Company deems reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including but not limited to reasonable attorney's fees) in any such action or proceeding.

Section 2.5. Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions of Sections 5.3 and 7.1 hereof) and the leasehold estate created hereby shall commence on the date hereof.

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on **December 31, 2019**, or on such earlier date as may be permitted by Section 8.1 hereof. The parties agree that the intent of this Leaseback Agreement is to facilitate construction of the Facility and to secure PILOT Payment revenues for the Affected Tax Jurisdictions for a period of ten (10) full years following the date of commencement by the Company of commercial operation of the Project (which is currently anticipated to be November 1, 2008 (the "Projected Completion Date")). In the event construction of the Project is delayed beyond the Projected Completion Date as a result of events reasonably unforeseeable by the Company (as of the date hereof), with the prior approval of the Agency, this Leaseback Agreement, the Lease Agreement and the PILOT Agreement shall be amended to provide for a delay in the commencement of the PILOT payments so as to provide for ten (10) full PILOT years following the actual date of Project completion.

(c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term.

(d) The Agency shall, subject to the provisions of Sections 5.3 and 7.1 hereof neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Leaseback Agreement, to prevent the Company during the term of this Leaseback Agreement from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

(e) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivering and recording any necessary terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Leaseback Agreement as shall be reasonably necessary to terminate the Agency's leasehold interest in the Project upon the expiration or termination hereof. Notwithstanding any such expiration or termination of this Leaseback Agreement, the Company's obligations under Sections 3.3 and 5.2 hereof shall continue notwithstanding any such termination or expiration.

Section 2.6. Rents and Other Consideration.

The rental obligations during the Lease Term are hereby reserved and the Company shall pay rent for the Facility as follows:

(a) Upon execution of this Leaseback Agreement, One Dollar (\$1.00) for the period commencing on the date hereof and ending on December 31, 2007, and on January 1 of each calendar year thereafter an amount equal to One Dollar (\$1.00) annually.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the term of this Leaseback Agreement, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the reasonable expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's leasing of the Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Leaseback Agreement.

(c) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts within thirty (30) days after demand. In the event the Company shall fail to timely make any undisputed payment required in this Section 2.6 the Company shall pay the same together with interest from the date said payment is due at the rate of twelve percent (12%) per annum.

Section 2.7. Obligations of Company Hereunder Unconditional.

The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional

irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Leaseback Agreement, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 5.2, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights of estates of the Company hereunder, except upon written consent of the Company. None of the foregoing shall relieve the Company of its obligations under Section 5.2 hereof.

ARTICLE III

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 3.1. Maintenance and Modifications of Facility By Company.

(a) The Company agrees that during the term of this Leaseback Agreement it or its operator will (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility only in a sound and prudent manner; (iv) operate the Facility only such that it continues to qualify as a "project" under the Act and pursuant to the terms contained herein; and (v) indemnify and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), (iii) or (iv) above.

(b) The Company, at its own expense from time to time may make any structural addition, modifications or improvements to the Facility or any addition, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility; provided, however, the Company shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) the Company is acting as agent for the Agency under an

agreement between the Agency and the Company which contemplates said additions, modifications or improvements or (ii) as otherwise provided by law.

Section 3.2. Installation of Additional Equipment.

The Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may remove or permit the removal of such machinery, equipment or other personal property.

Section 3.3. Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same respectively become due and to the extent applicable, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought by the Company therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the Agency from the Facility, if any, (ii) all payments under a certain payment-in-lieu-of-tax agreement, dated as of the date hereof, by and between the Agency and the Company (the "PILOT Agreement"); (iii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the term of this Leaseback Agreement.

(b) Except as otherwise provided herein, the Company, at its own expense and in its own name and on behalf or in the name and on behalf of the Agency but with notice to the Agency, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may, with prior written notice to the Agency, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Agency reasonably requests payment prior to settlement.

Section 3.4. Insurance Required.

At all times throughout the term of this Leaseback Agreement, including without limitation during any period of construction of the Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as

determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than **\$2,000,000** per accident or occurrence on account of personal injury, including death resulting therefrom, and **\$2,000,000** per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than **\$5,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

Section 3.5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4 hereof shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' written notice of the cancellation thereof to the Company and the Agency. The Company shall have the right to self-insure against any perils contemplated herein, to the extent permitted by applicable law.

(b) All letters of self-insurance or certificates of insurance shall be deposited with the Agency on or before the commencement of the term of this Leaseback Agreement. Prior to expiration or termination of such self-insurance or the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the self-insurance or policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

(c) Upon request by the Agency, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

Section 3.6. Application of Net Proceeds of Insurance.

The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

(i) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and

(ii) the net proceeds of the insurance required by Section 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 3.7. Right of Agency to Pay Taxes, Insurance Premiums and Other Charges.

If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the premium for such insurance. The Company shall reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 4.1. Damage or Destruction.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Leaseback Agreement:

(i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement; and

(iii) except as otherwise provided in subsection (b) of this Section 4.1, the Company shall, from the net proceeds of the insurance or otherwise, promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) The Company (i) shall not be obligated to replace, repair, rebuild or restore the Facility; (ii) shall be entitled to the net proceeds of the insurance less obligations required by and not yet paid under this Leaseback Agreement; and (iii) shall not apply said net proceeds of the insurance as provided in subsection (a) of this Section 4.1, if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

(d) The Agency shall cooperate fully with the Company in the handling and conduct of any claims resulting from the damage or destruction with respect to the Facility.

Section 4.2. Condemnation.

(a) If at any time during the term of this Leaseback Agreement the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement. The Agency shall not have any interest whatsoever in any condemnation award, and the Company shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company shall promptly:

(i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or

(ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility subject to Agency consent.

The Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to restore the Facility or acquire a substitute facility, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a), if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Agency shall cooperate fully with the Company in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the Agency voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of the Company.

Section 4.3. Condemnation of Company-Owned Property.

The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE V

SPECIAL COVENANTS

Section 5.1. No Warranty of Condition or Suitability by the Agency.

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 5.2. Hold Harmless Provisions.

The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members, directors and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or as a result of a breach by the Company of its representations or agreements contained herein or (ii) liability arising from or expense incurred by the Agency's financing, acquisition, construction, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (other than the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party.

Section 5.3. Right to Inspect the Facility.

The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to the Facility.

Section 5.4. Agreement to Provide Information.

The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without unreasonable delay, such information concerning the Company, the Company's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency. Information identified as "confidential" by the Company shall be kept confidential by the Agency, to the extent allowed by applicable law.

Section 5.5. Books of Record and Account; Financial Statements.

The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company relating to the Facility.

Section 5.6. Compliance With Orders, Ordinances, Etc.

(a) The Company agrees that it will, throughout the term of this Leaseback Agreement, promptly comply in all material respects with all lawful statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the Facility, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company will endeavor to give notice of the foregoing to the Agency but failure to do so shall not be a breach of this Leaseback Agreement.

Section 5.7. Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create, or suffer to be permitted or created, any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof except any liens existing on the date hereof. This provision shall not prohibit the Approved Liens as they are defined in Section 6.1(a) below.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with prior written notice to the Agency, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company to

promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing a lien to be removed.

Section 5.8. Depreciation Deductions and Investment Tax Credit.

The parties agree that the Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Facility which constitutes "Section 38 Property."

ARTICLE VI

RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING;
MORTGAGE AND PLEDGE OF INTERESTS

Section 6.1. Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company, if any (the "Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form reasonably acceptable to the Agency, the Lender and the Company, for purposes of financing the construction and improvement of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns (the "Approved Liens") the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement, without the prior written consent of the Company. Under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rentals described in Section 2.6 hereof or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 herein or (i) the right of the Agency on its own behalf to receive all opinions of counsel, reports, financial information, certificates, insurance policies or binders or certificates, or other notices or communications required to be delivered to the Agency hereunder or otherwise reasonably requested by the Agency; (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency hereunder; (iii) the right of the Agency in its own behalf to enforce the obligation of the Company to complete the Project and to confirm the qualification of the Project as a "project" under the Act; (iv) the right of the Agency to amend with the Company this Leaseback Agreement, and the right of the Agency to exercise its rights and remedies hereunder; (v) the right of the Agency in its own behalf to declare and Event of Default under Section 7.1 hereof and (vi) the right of the Agency as to any of the foregoing, exercisable with respect to any sublessees or subtenants (collectively, the "Unassigned Rights").

(b) With the exception of the Unassigned Rights, the Agency agrees that this Leaseback Agreement shall be subordinate to mortgage liens granted by the Company and the Agency in favor of any lender (the "Mortgagee") executed and delivered herewith and all further mortgages hereafter placed on the Facility with the consent of the Agency and the Mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 of this Leaseback

Agreement, or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 hereof.

Section 6.2. Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement of or diminution of the rents payable under Section 2.6 hereof.

Section 6.3. Assignment and Subleasing.

(a) This Leaseback Agreement may not be assigned in whole or in part except to a "Related Person" of the Company (as such term is defined in subparagraph (C) of paragraph three of subsection (b) of Section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), and the Facility may not be subleased, in whole or in part, by the Company except to a Related Person of the Company without the prior written consent of the Agency, not to be unreasonably withheld. A transfer in excess of 50% of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of each assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;

(ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act; and

(v) if the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, the Company, at its sole cost, shall furnish the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

(b) Any such assignment or sublease is subject to the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including attorneys fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel.

ARTICLE VII

DEFAULT

Section 7.1. Events of Default Defined.

(a) Each of the following shall be an "Event of Default" under this Leaseback Agreement:

(i) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 of this Leaseback Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company; or

(ii) If there is any purposeful, willful and knowing breach by the Company of any of its other agreements or covenants set forth in this Leaseback Agreement; or

(iii) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Leaseback Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or

(iv) If any representation or warranty of the Company contained in this Leaseback Agreement is incorrect in any material respect; or

(v) An Event of Default occurs under the PILOT Agreement.

(b) Notwithstanding the provisions of 7.1(a) above, if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Leaseback Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The

suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to or make the payments required by Sections 2.6 and 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.3, 5.6, 5.7, and 7.1(a)(1) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 7.2. Remedies on Default.

Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps;

(i) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6(a) hereof and (ii) all other payments due under this Leaseback Agreement.

(ii) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

(iii) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Leaseback Agreement.

(iv) Terminate this Leaseback Agreement and reconvey its interests in the Facility to the Company.

Section 7.3. Remedies Cumulative.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in

addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.

In the event the Company should default under any of the provisions of this Leaseback Agreement beyond applicable notice and grace periods and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.5. No Additional Waiver Implied by One Waiver.

In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII

EARLY TERMINATION OF LEASEBACK AGREEMENT; OBLIGATIONS OF COMPANY

Section 8.1. Early Termination of Leaseback Agreement.

(a) The Company shall have the option at any time to terminate this Leaseback Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.

(b) The Agency shall have the option at any time to terminate this Leaseback Agreement and to demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence of an Event of Default hereunder.

Section 8.2. Obligation to Purchase Facility.

Upon termination of the term of this Leaseback Agreement in accordance with Sections 2.5, 7.2 or 8.1 hereof, the Agency shall surrender its leasehold and easement interests in the Facility for One Dollar (\$1.00) plus all rental reserved and unpaid as described in Section 2.6 hereof (the "Purchase Payment"). The Company shall exercise its obligation to have the Agency's interests terminated by giving written notice to the Agency and paying said Purchase Payment to the Agency.

Section 8.3. Conveyance on Purchase.

At the termination of the Company's leasehold and other interests in the Facility pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the Purchase Payment, deliver to the Company all necessary documents to reflect termination of the Agency's interests in the Facility.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notices.

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
One Mill Street
Batavia, New York 14020
Attn: Steven G. Hyde, President & CEO

With Copy To: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company: Empire State Pipeline/Empire Pipeline, Inc.
6363 Main Street
Williamsville, New York 14221
Attn: Ronald C. Kraemer, Vice President

With Copy To: Keyser, Maloney & Winner LLP
HSBC Bank Building, 2nd Fl.
150 Lake Street
Elmira, New York 14901
Attn: George H. Winner, Jr., Esq.

Phillips Lytle, LLP
Milan K. Tyler, Esq.
437 Madison Avenue
New York, New York 10022

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 9.2. Binding Effect.

This Leaseback Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

Section 9.3. Severability.

In the event any provision of this Leaseback Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. Amendments, Changes and Modifications.

This Leaseback Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 9.5. Execution of Counterparts.

This Leaseback Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 9.6. Applicable Law.

This Leaseback Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

Section 9.7. Recording and Filing.

This Leaseback Agreement or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of Genesee County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 9.8. Survival of Obligations.

This Leaseback Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 hereof and all indemnities shall survive any termination or expiration of this Leaseback Agreement.

Section 9.9. Section Headings Not Controlling.

The headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.

Section 9.10. No Broker.

The Agency and the Company represent and warrant to the other that neither the Agency nor the Company has dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Leaseback Agreement, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

Section 9.11. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (except the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (except the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York or of Genesee County, New York, and neither the State of New York nor Genesee County, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency or the Company hereunder shall be sought or enforced against the Agency or the Company unless (i) the party seeking such order or decree shall first have requested the Agency or the Company in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency or the Company shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency or the Company refuses to comply with such request and the Agency's or the Company's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency or the Company, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency or the Company refuses to comply with such request and the Agency's or the Company's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (except the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency or the Company and its members, officers, agents (except the Company)

and employees against all liability expected to be incurred as a result of compliance with such request.

Section 9.12. Subordination of Leaseback Agreement to Mortgage(s).

The Agency agrees that this Leaseback Agreement shall be subordinate to the mortgage liens granted by the Company and the Agency in favor of any lender (the "Mortgagee") executed and delivered herewith and all further mortgage liens hereafter placed on the Facility with the consent of the Agency and the Mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 hereof, or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 hereof.

Section 9.13. No Joint Venture Created.

The Agency and the Company mutually agree that by entering into this Leaseback Agreement the parties hereto are not entering into a joint venture.

Section 9.14. FERC.

The Agency understands that the Company is an interstate natural gas pipeline company subject to the jurisdiction of the FERC and that the Company must comply with all valid and applicable rules, regulations and orders of the FERC. Accordingly, the Agency understands that the Company may be filing with the FERC executed copies of the lease and leaseback instruments in order to amend its certificate authorization to reflect such transactions. In the event the Company does not receive a FERC order amending its certificate upon terms satisfactory to the Company, the Company shall be entitled to terminate this Leaseback Agreement pursuant to Article VIII hereof.

[Remainder of Page Intentionally Left Blank]

[Signature Page to Leaseback Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Leaseback Agreement to be executed in their respective names, all as of the date first above written.

**GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY D/B/A
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

By: _____



Steven G. Hyde, President & CEO

**EMPIRE STATE PIPELINE, A JOINT VENTURE
By: EMPIRE STATE PIPELINE COMPANY, LLC**

By: _____

Ronald C. Kraemer, Vice President

EMPIRE PIPELINE, INC.

By: _____

Ronald C. Kraemer, Vice President

[Signature Page to Leaseback Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Leaseback Agreement to be executed in their respective names, all as of the date first above written.

**GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY D/B/A
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

By: _____
Steven G. Hyde, President & CEO

EMPIRE STATE PIPELINE, A JOINT VENTURE

By: _____
Ronald C. Kraemer, Vice President *ADN*

EMPIRE PIPELINE, INC.

By: _____
Ronald C. Kraemer, Vice President *ADN*

STATE OF NEW YORK)
) ss.:
COUNTY OF GENESEE)

On the ____ day of July, in the year 2007, before me, the undersigned, personally appeared **Steven G. Hyde**, 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.

SUZANNE M. COOK
Notary Public - State of New York
Qualified In Genesee County
My Commission Expires 2/28/10

Suzanne M. Cook
Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

On the ____ day of July, in the year 2007, before me, the undersigned, personally appeared **Ronald C. Kraemer**, 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.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

On the ____ day of July, in the year 2007, before me, the undersigned, personally appeared **Ronald C. Kraemer**, 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.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF GENESEE)

On the ____ day of July, in the year 2007, before me, the undersigned, personally appeared **Steven G. Hyde**, 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.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF *Erie*)

On the 24th day of July, in the year 2007, before me, the undersigned, personally appeared **Ronald C. Kraemer**, 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.

Antoinetta D. Mucilli
Notary Public

ANTOINETTA D. MUCILLI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires April 17, 20 13

STATE OF NEW YORK)
) ss.:
COUNTY OF *Erie*)

On the 24th day of July, in the year 2007, before me, the undersigned, personally appeared **Ronald C. Kraemer**, 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.

Antoinetta D. Mucilli
Notary Public

ANTOINETTA D. MUCILLI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires April 17, 20 13

EXHIBIT A

Legal Description of Premises

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Oakfield, County of Genesee and State of New York, being part of Lot 1, Section 9, Township 13, Range 2 of the Holland Land Company's Survey all as shown on a map entitled "Empire Connector Pipeline Project - Boundary Survey Map," prepared by Fisher Associates, Project No. 052028, drawing number FA-1, last revised January 12, 2007 and being more particularly bounded and described as follows:

BEGINNING at a point in the center line of Lockport Road (49.5 feet wide), said point being 25.01 feet westerly, measured along said center line, from its intersection with the division line between the lands now or formerly of Donald A. Falker and Mary L. Falker, (SBL No. 12-1-3.111) on the west and the lands now or formerly of William L. Shamp and Diane M. Shamp (SBL No. 12-1-3.211) on the east; thence South 89° 06' 28" West, along said center line of Lockport Road, a distance of 60.01 feet to a point; thence through the said lands of Falker the following 27 courses and distances: thence North 02° 02' 32" West, a distance of 168.98 feet to a point; thence North 21° 30' 46" East, a distance of 90.05 feet to a point; thence North 47° 11' 07" East, a distance of 255.42 feet to a point; thence North 36° 51' 02" East, a distance of 77.69 feet to a point; thence North 10° 47' 10" East, a distance of 71.20 feet to a point; thence North 01° 10' 43" East, a distance of 834.61 feet to a point; thence North 13° 35' 20" West, a distance of 48.96 feet to a point; thence North 28° 25' 10" West, a distance of 530.58 feet to a point; thence South 89° 06' 28" West, a distance of 167.31 feet to a point; thence North 06° 30' 28" East, a distance of 201.68 feet to a point; thence North 89° 06' 28" East, along a line 200 feet northerly and parallel with the 10th course herein, a distance of 144.35 feet to a point; thence North 08° 01' 36" East, a distance of 366.73 feet to a point; thence South 89° 06' 28" West, a distance of 722.23 feet to a point; thence North 02° 03' 10" West, along a line 92.00 feet easterly and parallel with the westerly property line of the said lands of Falker, a distance of 800.00 feet to a point; thence North 89° 06' 28" East, along a line approximately 800 feet northerly and parallel with the 14th course herein, a distance of 800.00 feet to a point; thence South 02° 03' 10" East, along a line approximately 800 feet easterly and parallel with the 15th course herein, a distance of 800.00 feet to a point; thence South 89° 06' 28" West, a distance of 17.04 feet to a point; thence South 08° 01' 36" West, along a line 60 feet southeasterly and parallel with the 13th course herein, a distance of 494.05 feet to a point; thence South 08° 30' 28" West, along a line 200 feet easterly and parallel with the 11th course herein, a distance of 23.27 feet to a point; thence South 28° 25' 10" East, along a line 60 feet northeasterly and parallel with the 9th course herein, a distance of 564.78 feet to a point; thence South 13° 35' 20" East, along a line 60 feet northeasterly and parallel with the 8th course herein, a distance of 64.54 feet to a point; thence South 01° 10' 43" West, along a line 60 feet easterly and parallel with the 7th course herein, a distance of 847.43 feet to a point; thence South 10° 47' 10" West, along a line 60 feet southeasterly and parallel with the 6th course herein, a distance of 90.13 feet to a point; thence South 36° 51' 02" West along a line 60 feet southeasterly and parallel with the 5th course herein, a distance of 97.01 feet to a point; thence South 47° 11' 07" West, along a line 60 feet southeasterly and parallel with the 4th course herein, a distance of 247.17 feet to a point; thence South 21° 30' 46" West, along a line 60 feet southeasterly and parallel with the 3rd course herein, a distance of 63.87 feet to a point; thence South 02° 02' 32" East, along a line 60 feet easterly and parallel with the 2nd course herein, a distance of 155.67 feet to the point of beginning.

SUBJECT to any easements, restrictions or rights- way of record, if any.

BEING and intended to be a portion of the same premises conveyed to Donald A. Falker and Mary L. Falker by deeds recorded in Liber 424 at Page 1061 and Liber 670 at Page 58 in the Genesee County Clerk's Office.

EXHIBIT B

Description of Improvements and Equipment

All machinery, apparatus, appliances, equipment, fittings, fixtures and furnishings and other property of every kind and nature whatsoever now or hereafter affixed to, located upon, appurtenant thereto or usable in connection with the present or future operation and occupancy of the Facility together with any replacements therefore to the extent acquired in the name of the Agency by the Company pursuant to the Agency appointment described in Section 2.2 of that certain Leaseback Agreement, dated as of July 1, 2007, by and between the Agency and the Company (the "Leaseback Agreement"), or to the extent the Company conveys title to the Agency.