

THIS AGREEMENT, dated as of June 1, 1965, by and between THE LONG ISLAND RAIL ROAD COMPANY, a railroad redevelopment corporation of the State of New York, having its principal office at Jamaica Station, Sutphin Boulevard and Archer Avenue, Jamaica, Borough and County of Queens, City and State of New York (hereinafter called the "Railroad"), and LONG ISLAND PIPE LINE CORPORATION, a corporation of the State of Delaware, having an office at 30 Rockefeller Plaza, in the County, City, and State of New York (hereinafter called "Pipe Line"),

WITNESSETH:

WHEREAS, the Railroad owns, operates, and maintains a railroad system extending from its western terminals at New York City, Long Island City, and Brooklyn eastward to the eastern ends of Long Island; and

WHEREAS, Pipe Line is engaged in the business of distributing petroleum, petroleum products, artificial gas, natural gas, and any and all substances or products capable of transmission by pipe line; and desires to construct, operate, and maintain a pipe line or lines and their appurtenances for such purposes along certain of the Railroad's rights of way and other lands throughout Long Island; and

WHEREAS, the parties hereto are desirous of entering into an agreement granting the right and privilege to Pipe Line to construct, operate, and maintain such a pipe line or lines and their appurtenances for such purposes above or below and along the Railroad's aforesaid rights of way;

NOW, THEREFORE, in consideration of the covenants and agree-

ments herein contained, and of the payments hereinafter agreed to be made, it is mutually agreed as follows:

1. Privilege Granted

Insofar as the Railroad has the right so to do under its property and franchise rights, it hereby grants to Pipe Line, subject to the conditions and liabilities hereinafter provided, the right and privilege to erect, construct, install, use, operate, maintain, repair, renew and remove a pipe line or lines, together with their appurtenances above or below and along and within the limits of the Railroad's normal rights of way, which vary in width to a maximum of sixty-six (66) feet, as follows:

- (a) Two 12-inch lines along the Bay Ridge Branch between Bay Ridge Yard and Fresh Pond Junction;
- (b) Two 12-inch lines along the Montauk Branch from Fresh Pond Junction to Glendale Junction;
- (c) Two 12-inch lines along the Montauk Branch between Fresh Pond Junction and Blissville Yard;
- (d) One 12-inch line along the Montauk Branch from Rosedale to Lynbrook; and
- (e) One 12-inch line along the Long Beach Branch from Lynbrook to Oceanside.

2. Purpose

The pipe-line system shall consist of a pipe line or lines and their appurtenances to convey petroleum and petroleum prod-

ucts, and Pipe Line may construct, operate, and maintain on the aforementioned rights of way at locations to be approved by the Railroad the necessary buildings to operate and maintain such pipe line or lines.

3. Future Modifications

Modifications that may hereafter be made in the right and privilege hereby granted entailing changes in the size or location of the pipe line or lines covered by this agreement, or the number of pipe lines involved, shall be effected by supplemental agreements between the parties.

4. Use and Protection of Electric Circuits

Pipe Line shall use the pipe line or lines and their appurtenances covered by this agreement solely for the purpose of transmitting petroleum, petroleum products, artificial gas, and natural gas. In using such pipe line or lines and their appurtenances, and in constructing, relocating, or making other changes therein and maintaining, repairing, renewing and removing the same as hereinafter set forth, Pipe Line shall protect and refrain from damaging the power, telegraph, telephone, signal, and other circuits of the Railroad, as well as those of any other company now or hereafter lawfully above or below the Railroad's rights of way; also, from injuriously affecting the use of such circuits of the Railroad, as well as those of any other company now lawfully above or below such rights of way.

5. Specifications

This agreement contemplates that on the rights of way of the Railroad, and within the aforementioned limits thereof, new structures may be erected and changes may be made in existing structures and other facilities of the Railroad in order to permit the installation of the pipe-line system described herein.

The type of structures, their location, strength, general design, and detailed plans shall be determined by the duly authorized representatives of the Railroad and Pipe Line, and the approval of these specifications and details by said representatives shall be binding on each of the parties. Such approval by the Railroad must be had from its Chief Engineer, in writing, prior to the beginning of construction.

6. Construction and Maintenance

The said pipe line or lines and their appurtenances covered by this agreement, including all new structures and necessary alterations to existing structures, shall be erected, constructed and installed, and the said pipe line or lines and their appurtenances shall be used, operated, maintained, repaired, renewed, and removed, all at the sole cost and expense of Pipe Line, in such suitable and safe manner and at such time or times and in all respects as shall be satisfactory to the Railroad, and as shall not jeopardize, impede, or interfere with the full, free, and safe use, operation, and enjoyment by the Railroad of its railroad

and property. Pipe Line shall at all times be obligated promptly to maintain, repair, and renew its pipe line or lines and their appurtenances covered by this agreement, and shall in any event upon due notice in writing from the Railroad requesting it so to do promptly effect such maintenance and make such repairs and renewals thereto as may be required by the Railroad. The Railroad, in the event of an emergency, for the purpose of protecting and safeguarding its property, traffic, patrons, or employees from damage or injury, may take such steps as it deems adequate and necessary to eliminate any hazardous conditions, all at the expense of Pipe Line, which agrees to reimburse the Railroad promptly upon demand therefor, Notice of such conditions shall be promptly given to Pipe Line.

7. Compliance with Laws, Ordinances, Rules and Regulations

Pipe Line shall comply with all laws, ordinances, rules, regulations, and orders of every kind and nature relating to the erection, construction, installation, use, operation, maintenance, repair, renewal, and removal by them of said pipe line or lines and their appurtenances above, below, and along the property of the Railroad, now or hereafter in effect, of federal, state, city, county, or other governmental or municipal authorities, and of the New York Board of Fire Underwriters and the New York Fire Insurance Exchange, and Pipe Line shall pay all costs and expenses incidental to such compliance and shall indemnify and save harmless

the Railroad from all expenses or damages or both by reason of any notices, orders, violations, or penalties filed against or imposed upon the pipe line or lines and their appurtenances of Pipe Line or the property of the Railroad, or upon either of the parties hereto; provided, however, that the Railroad will give its reasonable cooperation thereto and will execute and deliver at the expense of Pipe Line such reasonable consents or other instruments as may be necessary or desirable for compliance with the foregoing.

8. Changes Requested by Railroad or Otherwise Required

Pipe Line shall, upon request in writing of the Railroad, promptly and at its own expense relocate or make such other changes in the pipe line or lines and their appurtenances covered by this agreement as may be necessary in the judgment of the Railroad, taking into consideration of the rights and interests of Pipe Line, for the better development or use of its properties or as may be required directly or indirectly by any grade crossing elimination statute or other legislative enactment, by abandonment, or by order of any competent governmental authority having jurisdiction in the matter, and if Pipe Line does not comply with the Railroad's request within a reasonable time after receipt thereof, then the Railroad may, at the expense of Pipe Line, make such changes and provide the necessary material therefor; provided, that unless the relocation is required by reason of a

legislative enactment or order as aforesaid, then the Railroad will provide on its remaining lands, if practicable, a suitable site for the relocation of any such pipe line or lines and their appurtenances, but the Railroad is not obligated to procure other lands for Pipe Line by purchase or lease for such relocation.

9. Changes Desired by Pipe Line

Pipe Line may also from time to time relocate, make other changes in, or remove the pipe line or lines and their appurtenances covered by this agreement as it may desire, provided that such changes shall not in the judgment of the Railroad interfere with the use of its properties and shall not contravene the requirements of any legislative enactment or order of any competent governmental authority having jurisdiction in the matter, and shall be otherwise satisfactory to the Railroad.

10. Chief Engineer's Approval

Whenever Pipe Line desires, or is requested by the Railroad, or is otherwise required, as hereinbefore provided, to relocate or make other changes in the pipe line or lines and their appurtenances covered by this agreement, or to maintain, repair, renew, or remove such pipe line or lines and their appurtenances, it shall submit plans or adequate information pertaining to such aforementioned construction or maintenance work to the Railroad's Chief Engineer and procure his approval or that of any authorized persons under his supervision, in

writing, before any such aforementioned construction or maintenance work commences.

11. Avoidance of Interference

Pipe Line, in constructing, operating, maintaining, re-locating, repairing, renewing, removing, or making other changes in the pipe line or lines and their appurtenances covered by this agreement, shall exercise every reasonable precaution and use all diligence to avoid interference with the operation of trains and locomotives or with the use of the Railroad's property and property entrusted to it.

12. Notice to Railroad

Pipe Line shall, except in emergency, give not less than three (3) days' written notice to the Railroad's Superintendent of the day and hour it proposes to perform any such aforementioned construction or maintenance work. In the event the Railroad's Superintendent considers the time specified in such notice unsatisfactory or inconvenient, he shall, within three (3) days after receipt of such notice, notify Pipe Line in writing to that effect and shall specify a time for such work satisfactory or convenient to the Railroad. Whenever emergency work arises, Pipe Line shall make every effort immediately to notify the Railroad's Superintendent that such work is to be done, or is being done.

13. Inspection and Approval by Railroad

The Railroad shall have the right to inspect and approve

the work performed in constructing, maintaining, repairing, relocating, renewing, removing, or making other changes in the pipe line or lines and their appurtenances covered by this agreement. The right of approval of such aforementioned construction or maintenance work shall extend for such distance on each side of the Railroad's rights of way as the method of construction and materials used may have an important bearing upon the strength and stability of such pipe line or lines and their appurtenances above, below, and along such rights of way. The omission of the Railroad to exercise its right of inspection and approval of such aforementioned construction or maintenance work, or any failure or neglect in the exercise of such right, shall in no event be construed as in any manner or degree affecting any obligations of Pipe Line as provided for in this agreement.

14. Protection by Watchmen, Flagmen, or Trainmen

If the Railroad deems it advisable while the pipe line or lines and their appurtenances covered by this agreement are being constructed, maintained, repaired, relocated, renewed, removed, or other changes are being made therein, to place watchmen, flagmen, or trainmen for the protection of the property owned by, or in possession or control of, the Railroad, or its employees, patrons, or licensees, the Railroad shall have the right so to do at Pipe Line's cost and expense, as hereinafter provided in Section 19, but failure of the Railroad so to do shall in no event be construed as in any

manner or degree affecting any obligations of Pipe Line as provided for elsewhere herein. The providing of such personnel by the Railroad during such construction, maintenance, repair, relocation, renewal, removal, or other changes being made to the pipe line or lines and their appurtenances by Pipe Line shall not relieve Pipe Line or its contractors or subcontractors or its or their insurer from any liability arising directly or indirectly in connection with such work by Pipe Line, its contractors, his subcontractors, or its or their agents, servants, and employees; and any damages resulting from an act or omission of such personnel provided by the Railroad shall be deemed part of Pipe Line's work and shall be covered by the insurance to be furnished as hereinafter provided.

15. Indemnification of Railroad from Damages for Work Performed

In the event the Railroad shall do and perform any of the construction or maintenance work hereinbefore mentioned or contemplated, whether of relocation or making other changes in the pipe line or lines and their appurtenances covered by this agreement, or of maintaining, repairing, renewing, or removing the same, for and at the expense of Pipe Line, Pipe Line covenants and agrees to and shall indemnify, protect, and save harmless the Railroad from all loss or damage to property or injury to or death of persons growing out of or resulting from the performance of such aforementioned construction or maintenance work, whether due to the

negligence, fault, or default of the Railroad, its contractors, or his subcontractors.

16. Release and Waiver of Right to Damages from Railroad

It is understood between the parties hereto that the operations of the Railroad involve some risk, and Pipe Line as part of the consideration for the right and privilege given hereby releases and waives any right to ask for or demand damages for, or on account of, loss of, or injury to, the pipe line or lines and their appurtenances, including the contents thereof, of Pipe Line that are above or below and along the Railroad's rights of way, including the loss of, or interference with, service thereof, whether attributable to the fault, failure, or negligence of the Railroad or otherwise. It is the understanding and agreement between the parties hereto that the Railroad incurs no liability or obligation to Pipe Line other than to permit it the use of the rights of way in accordance with the terms of this agreement.

✓ 17. Indemnification of Railroad from Damages Generally

Pipe Line also covenants and agrees to and shall at all times indemnify, protect, and save harmless, the Railroad from or against all cost and expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs, and charges which the Railroad may directly or indirectly suffer, sustain, or be subjected to by reason of or occurring on account of the construction, installation, existence, operation,

or use of Pipe Line's pipe line or lines and their appurtenances, including the contents thereof, above or below and along the Railroad's rights of way, or by reason of or occurring on account of relocating or making other changes therein, or of maintaining, repairing, renewing or removing the same, whether such losses or damages be suffered or sustained by the Railroad directly or by its employees, patrons, or licensees, or be suffered or sustained by other persons or corporations including Pipe Line, its employees, and agents, who may seek to hold the Railroad liable therefor, whether or not occasioned by the fault, failure, or negligence of the Railroad, its agents, servants, or employees; and to indemnify and save harmless the Railroad from all costs and expenses in suits which may be brought against the Railroad on account of any such injuries to persons or damage to property, which suits Pipe Line agrees to defend.

18. Insurance

~~Pipe Line shall~~, beginning with the date upon which it shall commence actual construction of the pipe line or lines and their appurtenances, at all times during the continuance of this agreement, at Pipe Line's sole cost and expense, procure and maintain Excess Comprehensive General Liability Insurance in the name of Pipe Line, with contractual liability endorsement, quoting verbatim the liability assumed by Pipe Line under this agreement, for bodily injury and property damage insurance in the aggregate of

\$5,000,000 (with a self-insured retention of \$100,000); and Railroad Protective Liability Insurance (ASHO Form) naming the Railroad, with limits of \$250/\$500,000 for bodily injury and \$100,000 total or aggregate for property damage; and will furnish to the Railroad satisfactory evidence of such insurance.

19. Cost and Expense

All cost and expense in connection with the installation, existence, operation, or use of the pipe line or lines and their appurtenances above or below and along the Railroad's rights of way covered by this agreement, or relocating, removing or making other changes therein, or maintaining, repairing, or renewing the same, shall be borne by Pipe Line and in the event any construction or maintenance work is performed, or watchmen, flagmen, or trainmen are furnished by the Railroad during the course thereof, under stipulated rights to perform such construction or maintenance work or furnish such watchmen, flagmen, or trainmen under Sections 6, 8, and 14 of this agreement, the actual cost so incurred, together with fifteen percent (15%) for supervision and use of tools, shall be paid by Pipe Line on or before the 15th day of the month next succeeding that in which a bill therefor is rendered.

20. Taxes

Pipe Line shall pay all taxes imposed upon it or upon the Railroad by any governmental authority on account of the installation,

existence, operation, or use of the pipe line or lines and their appurtenances above or below and along the Railroad's rights of way covered by this agreement, and shall indemnify the Railroad from the payment of such taxes. In the event that any of Pipe Line's pipe line or lines and their appurtenances are assessed directly against Pipe Line, Pipe Line shall in such case pay all taxes levied upon such assessments directly to the governmental authorities involved. Where the taxes are imposed upon and paid in the first instance by the Railroad, however, Pipe Line shall reimburse the Railroad for the taxes so paid. It is understood, however, that Pipe Line and the Railroad shall have the right jointly and severally to contest in good faith and with due diligence by appropriate legal proceedings any assessment or tax asserted with regard to the same.

21. Compensation

As compensation for the right to erect and maintain the said pipe line or lines and their appurtenances on the rights of way of the Railroad, Pipe Line shall pay the Railroad as follows:

- (a) Commencing July 1, 1965, or on the first day of the month in which actual construction commences, whichever occurs first, Pipe Line shall pay to the Railroad an interim fee of \$2,500 per month. After construction of the pipe line system commences, the fee for each month will be computed on the

total footage of pipe installed on railroad rights of way at the end of the preceding month at one-twelfth of the annual rates specified in (b) and (c) of this Section but in no case shall the monthly fee be less than \$2,500. Upon the movement of the first petroleum products through any portion of the pipe line, this interim fee will cease and be replaced by the fees, on an annual basis, computed in accordance with sub-sections (b), (c), (d) and (e) of this Section 21.

(b) A fee at the rate of \$5.00 per inch of inside diameter per 100 feet of length for pipe lines installed on rights of way of the Railroad listed in Section 1(a), (b) and (c);

(c) A fee at the rate of \$3.00 per inch of inside diameter per 100 feet of length for pipe lines installed on rights of way of the Railroad listed in Section 1(d) and (e);

For the purposes of (b) and (c) above, "inch of inside diameter" shall mean the nominal inside pipe diameter in inches to the nearest hundredth.

(d) Provided Pipe Line installs a minimum of 25,000 lineal feet of pipe on the Railroad's rights of way, Pipe Line will pay to the Railroad a minimum annual fee of \$100,000; provided further, however, that if for any reason Pipe Line determines that it will install less than 25,000 lineal feet of pipe on Railroad's rights

of way, and so notifies Railroad in writing prior to July 1, 1965, this agreement shall become null and void and all rights and obligations of Railroad and Pipe Line under this agreement shall cease and Railroad and Pipe Line agree to negotiate an agreement for such occupancy.

(e) A further sum, when demanded, that shall be equal to all water and sewer rents on premises used by Pipe Line, and taxes, or increase in taxes, that may be assessed against the Railroad or become payable as a result of the improvements constructed for or by Pipe Line on property of the Railroad; provided, however, that Pipe Line and the Railroad shall have the right jointly and severally to contest in good faith and with due diligence by appropriate legal proceedings any assessment or tax asserted with regard to the same; and

(f) Upon demand, all additional costs to the Railroad on account of any tax, assessment, or other charge which shall during the continuance of this agreement be levied against the Railroad or be imposed, or become due and payable, or become a lien upon its premises by virtue of any present or future law, ordinance, or regulation of any federal, state, city, county, or other governmental or municipal authority, arising out of the occupancy or use by Pipe Line of the premises of the Railroad or

the construction and maintenance of the pipe line or lines and their appurtenances thereon; provided, however, that Pipe Line and the Railroad shall have the right jointly and severally to contest in good faith and with due diligence by appropriate legal proceedings any assessment, tax or other charge asserted with regard to the same.

All compensation, costs, and charges under this agreement shall be paid at the office of the Railroad's General Manager of Property and Purchases, Room 411, Jamaica Station, Jamaica, New York 11435, or at such other address as may have been furnished in writing to Pipe Line by the Railroad.

22. Term of Agreement

The term of this agreement shall be for a period of twenty-five (25) years from the date hereof, unless sooner terminated as in this agreement provided, by operation of law, or otherwise, except that the provisions with respect to the amount of compensation shall be subject to renegotiation at the request of either party at the end of fifteen (15) years from the date hereof, upon six (6) months' prior written notice.

23. Option to Renew

Provided and on condition that this agreement is not previously cancelled or terminated by either party, as in this agreement provided, by operation of law, or otherwise, and that Pipe Line has during the whole of the term herein provided, faithfully

complied with and performed all the covenants and conditions in this agreement on its part to be performed, then Pipe Line shall have the right at its option to extend such term for an additional period of twenty (20) years upon giving to the Railroad notice in writing of its desire to exercise such option at least twelve (12) months prior to the expiration of the original twenty-five (25) year period. In the event that Pipe Line exercises said option, this agreement shall be continued upon the same terms and conditions, except as to the amount of the compensation and except also that the latter shall be subject to renegotiation at the request of either party at the end of the first ten (10) years of the extended term, upon six (6) months' prior written notice.

24. Abandonment or Disposition of Portions of Railroad's Premises

In the event the Railroad is ordered to sell, abandon, or so dispose of any portions of its rights of way, upon which Pipe Line has already constructed, or has the right and privilege to construct, a pipe line or lines and their appurtenances, by a court or any competent governmental authority having jurisdiction in the matter, the right and privilege of Pipe Line shall cease and determine as to such portions of said rights of way; and if Pipe Line is required to relocate or remove any of its facilities by order of any competent governmental authority, as the result of a grade crossing elimination program, condemnation, abandonment, or other disposition of all or any portion of the rights of

way upon which Pipe Line's facilities are located, Pipe Line shall have the right to take such measures as in its sole discretion it may deem necessary to recover such compensation to which it may be entitled; provided, however, that the Railroad shall be indemnified and held harmless by Pipe Line against any expense of relocating and removing Pipe Line's facilities.

25. Changes in Line or Grade

Pipe Line shall make, at its own expense, such changes in its pipe line or lines and their appurtenances erected pursuant to this agreement as may be required from time to time to conform to changes in line or grade of the railroad or intersecting or adjacent streets or any other physical changes, including, but not by way of limitation, grade crossing eliminations or relocations or new street openings with which the then existing location of the pipe line or lines and their appurtenances may interfere.

26. Property of Others

Pipe Line covenants and agrees that it will, at its own cost and expense, arrange for the occupation of the property of others required to be used, in addition to the rights of way of the Railroad, including any encroachments thereon; and Pipe Line also agrees to defend, indemnify, protect, and save harmless the Railroad from and against any and all damages and compensation which it may be required to pay for trespass,

overhang, or any other damage growing out of the construction, installation, maintenance, and operation of the said pipe line or lines and their appurtenances.

27. Procurement of Franchises

Pipe Line shall procure, at its own cost and expense, all necessary franchises, consents, licenses, permits or other authority from governmental boards, agencies, public authorities, corporations, or individuals which may be required legally to permit the erection, construction, installation, use, operation, maintenance, repair, renewal and removal of the pipe line or lines and their appurtenances hereinbefore described; provided, however, that the Railroad shall give its reasonable cooperation thereto and shall execute and deliver such reasonable consents or other instruments as may be necessary or desirable for obtaining the foregoing. If Pipe Line, after exercising due diligence in the matter, is unable to obtain the necessary franchises, consents, licenses, permits, or other authority, it shall have the right thereupon to terminate this agreement.

28. Entrance Upon Railroad's Property

Pipe Line shall not, without the prior written consent of the Railroad, commence construction nor enter upon the property of the Railroad unless and until Pipe Line has obtained the necessary consents and approvals and insurance policies, all as herein provided, and submitted copies thereof to the Railroad.

29. Termination

Pipe Line shall have the right to terminate this agreement at any time during the first two (2) years only of the original term hereof upon giving the Railroad six (6) months' prior written notice of the intent to terminate the same, and at the expiration of said six (6) months' notice, this agreement and the term hereof shall cease and determine, and thereafter the Railroad shall have and enjoy its rights of way as of its former estate, free, clear, and discharged of this agreement, and of all of the rights of Pipe Line hereunder. Upon the expiration or other termination hereof, Pipe Line agrees peaceably to remove its pipe line or lines and their appurtenances, to quit the Railroad's rights of way and to restore them to their original condition. Pipe Line agrees for itself, its successors or assigns, that, if it terminates this agreement at any time during the first two (2) years of the original term hereof, it will, at its own cost and expense, from time to time do and perform any and all such acts and will execute, acknowledge, deliver, file, register, and record any and all further instruments required by law or reasonably requested by the Railroad for the purpose of proper protection, to the satisfaction of counsel for the Railroad, of its title to the rights of way and its rights under this Section or for the purpose of carrying out the intention of this Section.

30. Pipe Line Not to Abandon Pipe Line

Pipe Line covenants for itself, its successors and assigns, that it will pay the specified compensation at the times and in the manner hereinbefore provided, and all damages, costs and charges in this agreement provided for, and that it will not abandon any part or parts of the pipe line or lines and their appurtenances, and in case the pipe line or lines and their appurtenances shall be abandoned during the term hereof, the Railroad may take possession of same, either by force or otherwise, without being liable to any prosecution or action therefor, and may proceed according to law not only for the collection of the specified compensation, but also for all damages, costs, and charges in this agreement mentioned and provided for, with the same force and effect as if the same were a proceeding for rent in arrears, and also relicense the premises and receive and retain the compensation therefor. If Pipe Line, at any time after the first two (2) years of the original term of this agreement shall attempt to remove or manifest an intention to remove all the pipe line or lines and their appurtenances from the Railroad's property, or if Pipe Line becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or is sold out by any sale under process of law, then and in such cases the whole compensation for the remainder of the term of this agreement shall be taken to be due and payable forthwith, and

the Railroad shall be first paid out of the proceeds of such assignment or sale, or the Railroad may proceed according to law to collect the same in the same manner as if, by the conditions of this agreement, the compensation for the whole term were payable in advance, any law, usage or custom to the contrary notwithstanding.

31. Defaults

It is understood and agreed that if the said compensation, damages, costs, and charges payable by Pipe Line shall at any time be in arrears and unpaid, or if Pipe Line shall fail to comply with any other covenants, terms, and conditions of this agreement during the term hereof, or with any notice given under the terms hereof, and the same shall not be remedied within sixty (60) days after written notice thereof given by the Railroad to Pipe Line, then and in every such case this agreement may be terminated at the option of the Railroad by three (3) days' notice to that effect mailed to Pipe Line and become null and void upon the service of such notice; provided, however, that if the nature of the default is such that it cannot with due diligence be physically remedied within such period of sixty (60) days, the Railroad agrees to give Pipe Line a reasonable additional period of time within which to remedy the default. Upon such termination, all rights and interest of Pipe Line to and in this agreement and Railroad property shall cease, terminate, and end.

The Railroad may at its election waive any such default and its consequences and rescind and annul any such notice of termination by notice to Pipe Line in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such notice of termination had been given. Notwithstanding the provisions of this Section, it is expressly understood and agreed by Pipe Line that no such waiver, rescission, or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

32. Expiration of Term

Upon expiration of the term of this agreement as provided in Section 22 hereof, the right and privilege of Pipe Line to maintain its pipe line or lines and their appurtenances upon the Railroad's rights of way shall cease and determine, and Pipe Line shall thereupon, without charge to the Railroad, remove its pipe line or lines and their appurtenances from the Railroad's rights of way, and such rights of way shall be restored in good condition to the satisfaction of the Railroad.

33. Railroad's Right to Removal of Facilities

If upon sale, abandonment, or other disposition of portions of the Railroad's rights of way as in Section 24 provided, or upon expiration of the term, or other termination of this agreement, Pipe Line shall fail or refuse to remove its pipe

line or lines and their appurtenances within a reasonable time after such sale, abandonment, disposition, expiration, or other termination as herein provided, then the Railroad may effect such removal at the cost and expense of Pipe Line, and shall also have the right to sell the pipe line or lines and their appurtenances at a private sale without notice to Pipe Line. The Railroad shall turn over the proceeds of such sale to Pipe Line after first deducting therefrom, however, all costs and expenses incurred in removal, and any other amounts that may be then still due it from Pipe Line under the terms of this agreement. The provisions of Section 15 hereof, relating to indemnification of the Railroad for damages for work performed by it and the provisions of Section 19, relating to reimbursement to the Railroad of the cost incurred, shall be considered as fully applicable in respect to the removal by the Railroad of Pipe Line's facilities as if the work were of the type specifically described therein.

34. Provisions of Agreement Applicable to Removal Work

In effecting the removal of its pipe line or lines and their appurtenances under the provisions of Sections 24 and 32 of this agreement, Pipe Line shall comply with the provisions of Section 4 hereof with respect to protection of power, telegraph, telephone, signal, and other circuits of the Railroad and other companies, the provisions of Section 11 with respect to avoidance of interference with the operation of trains and locomotives

or with the use of the Railroad's property and property entrusted to it, and the provisions of Section 12 with respect to notice to the Railroad's Superintendent of Pipe Line's proposal to perform the work, these Sections to be considered as fully applicable in respect to such removal work as if the work were of the type specifically described therein. Also to be considered as fully applicable in respect to such removal work as if the work were of the type specifically described therein shall be the provisions of Section 13 relating to the supervision by the Railroad of the work performed, Section 14 relating to protection by watchmen, flagmen, or trainmen during the progress of the work, Section 17 relating to indemnification to the Railroad from damages, and Section 19 relating to cost and expense to be borne by Pipe Line.

35. Condemnation

If the whole of the rights of way occupied by the pipe-line system shall be condemned for public use, then and in that event, upon the taking of the same for such public use, this agreement shall become null and void; and the term hereunder shall cease and come to an end upon the date when the rights of way occupied by the pipe-line system shall be taken, and the consideration and other charges payable by Pipe Line shall be apportioned as of such date. No part of any award for the land shall belong to Pipe Line; the award for the pipe line or lines and their appurtenances on property of the Railroad shall, however, belong to

Pipe Line.

If a part of the rights of way occupied by the pipe-line system shall be condemned for public use, this agreement shall not terminate but shall remain in full force and effect, and Pipe Line covenants that any award attributable to the pipe line or lines and their appurtenances will be applied to reconstruction, with the same requirements as to the Railroad's approval of plans and specifications and protection against liens as in Sections 5, 10 and 37 provided, unless the parties agree that reconstruction is not practicable, in which case this agreement will continue but with a pro rata reduction in the minimum compensation payable by Pipe Line, with consideration being given to the respective value of the property taken and not taken, unless the part remaining is insufficient for the proper conduct of the business of Pipe Line, in which case Pipe Line shall have an option to cancel this agreement within sixty (60) days after the date of such taking by giving written notice to the Railroad that Pipe Line elects to terminate this agreement on a date thirty (30) days after the giving of such notice of termination.

In the event of any partial taking, if the Railroad and Pipe Line shall be unable to agree as to whether reconstruction is practicable, or whether the part not so taken shall be sufficient for the reasonable operation of Pipe Line's business, or if the condemnation court does not fix the portion of such award applicable

to improvements, and the Railroad and Pipe Line are unable to agree as to the proper apportionment of such award, such dispute or disputes shall be submitted to arbitration as hereinafter provided.

36. Arbitration

If any disputed question shall arise between the Railroad and Pipe Line concerning the construction and performance of this agreement, including the rate of compensation as provided herein, such question shall be submitted to the arbitrament of two persons to be chosen, one by the Railroad and one by Pipe Line, and if these arbitrators cannot agree, they shall select a third disinterested and competent person, and their decision, or that of a majority of them, shall be final and conclusive between the parties hereto. If either of the parties fails to name an arbitrator as aforesaid within fifteen (15) days after written notice to it from the other party setting forth the question or questions at issue, the arbitrator named by the party giving such notice shall name an arbitrator of like experience and skill in behalf of the party so in default, and the two arbitrators so appointed shall select a third arbitrator, and the three so chosen shall hear and decide such question or questions, and their decision, or that of a majority of them, shall be final and conclusive between the parties hereto. If the two arbitrators so chosen shall fail to select a third arbitrator within fifteen (15) days after the selection of the second arbitrator, as aforesaid, the

third arbitrator may be appointed, upon five (5) days' written notice by either of the parties hereto to the other of its intention to make application therefor, by the Chief Judge of the United States District Court for the Eastern District of New York, or by the Presiding Justice of the Appellate Division of the Supreme Court of the State of New York, Second Department. The arbitrators shall promptly hear and decide the question or questions submitted to them, as herein provided, giving each of the parties hereto reasonable notice of the time and place of the hearing, and an opportunity to be heard. The arbitrators shall make their award in writing, serving a copy upon each of the parties hereto. Except as it is otherwise expressly provided herein, the arbitration shall be conducted in accordance with the law of the State of New York, and the award of the majority of the arbitrators shall be final and binding upon the parties to this agreement. The arbitrators shall use every means expeditiously to present, consider, and decide any and all matters submitted, as herein provided, and the parties hereto agree to facilitate the deliberations of said arbitrators in every way practicable, and agree further that the arbitrators may consider any and all factors deemed pertinent and urged by either party in reaching their determination. The expense of such arbitration shall be divided equally between the parties hereto.

37. Surety Bond

Pipe Line agrees to furnish a surety bond conditioned on completion of the pipe line free of mechanics' liens in such form as the Railroad may prescribe and with such sureties as it may approve.

38. Title

Title to the pipe line or lines and their appurtenances shall at all times remain with and be vested in Pipe Line whether affixed permanently to the realty or not, and such pipe line or lines and their appurtenances shall at all times be and remain personalty. Such pipe line or lines and their appurtenances may not be secured by a claim upon the property of the Railroad.

39. Subordination

Pipe Line hereby agrees that its rights under this agreement are subordinate to any mortgage now on the Railroad property and also to any and all mortgages which may hereafter be placed on the Railroad's property, and if the Railroad or its mortgagee so desires, Pipe Line agrees to execute any instrument or instruments to evidence such subordination. The Railroad agrees that its rights hereunder shall be subordinate to any mortgage which may be placed at any time upon Pipe Line's pipe line or lines and their appurtenances on the Railroad's property, and if Pipe Line or its mortgagee so desires, the Railroad agrees to execute any instrument or instruments to evidence such subordination.

40. Agreement a License

It is understood and agreed by and between the parties hereto that this agreement is a license agreement, not a lease, and that there will be no reduction in compensation payable by Pipe Line by reason of inconvenience, annoyance, or loss of business arising from the Railroad's operations or repairs to and physical changes in its properties.

41. Failure to Exercise Rights Not to Constitute Waiver

Any waiver or any number of successive waivers of any of the rights that may accrue to either party hereto through the default of the other party in keeping and performing any of the terms or obligations of this agreement shall not estop the party so waiving the default from asserting and having the benefit of its rights in accordance with the terms of this agreement upon any other or subsequent default, but at any time during the life of this agreement either party shall have the rights and benefits herein provided in case of default by the other party, without regard to any prior waivers or the number or time of such prior waivers.

42. Encumbrances

No warranty of title to any property is given hereunder, and the right and privilege herein granted to Pipe Line are subject to all encumbrances, conditions, and reservations upon or under which the Railroad holds its properties, as well as to

existing agreements.

43. Air Rights

Nothing contained in this agreement shall be construed in any way to limit the right of the Railroad to sell, lease, license, or otherwise dispose of the air rights over and above its rights of way designated herein together with the surface and sub-surface areas of said rights of way needed in connection with such air rights.

44. Sale or Lease of Rights of Way by Railroad

During the original term of this agreement, the Railroad agrees that it will not impair, prejudice, or derogate from the rights granted herein, all and singular, by any sale, lease, surrender, or other disposal, except as otherwise provided herein, of such rights of way as are designated herein, and within the limits thereof, for pipe-line purposes, except with the written consent of Pipe Line prior obtained, which consent shall not be unreasonably withheld in view of the construction or extension, actual or reasonably foreseeable, of its pipe-line system.

45. Successors

This agreement shall inure to the benefit of and be binding upon the parties hereto and their successors or assigns; provided, however, that Pipe Line shall not transfer or assign to, or permit the use of the right or privilege hereby granted by, any person or corporation, other than a parent or wholly owned sub-

subsidiary of Pipe Line, without the consent and agreement in writing of the Railroad having been first obtained, which consent shall not be unreasonably withheld, and no such assignment shall release, relieve, or in any manner affect the liability of Pipe Line hereunder.

46. Notice

All notices which may or are required to be given by either party to the other shall be in writing and shall be deemed to have been properly given if served personally on an officer of the party for which such notice is intended or if sent by United States Registered Mail, postage prepaid, addressed to the party for which such notice is intended at the address of such party as hereinbefore set forth, or at such other address as such party may from time to time designate in a written notice to the other party.

47. Article Headings

All article headings are set forth for convenience only and shall not affect any construction or interpretation of this agreement.

48. Effect and Modification of Agreement

This agreement exclusively and completely states the rights of the parties hereto and supersedes any and all other agreements, oral or written, with respect to the pipe line or lines and their appurtenances. No variation or modification of

this agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Pipe Line and the Railroad.

49. Law Governing

This agreement shall be construed in accordance with the law of the State of New York.

50. Execution

The individuals executing this agreement do so only in their official capacities, and none of the covenants herein contained is to be held or construed as the acts of these individuals, or acts for which they may be individually liable in any way.

This agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this agreement is dated for convenience as of June 1, 1965, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed and their respective corporate seals to be affixed

by their respective duly authorized officers pursuant to lawful resolutions,
all as of the day, month, and year first above written.

THE LONG ISLAND RAIL ROAD COMPANY,

By Thomas M. Goodfellow
President and General Manager

ATTEST:

Sam A. Peterson
Secretary and Treasurer

LONG ISLAND PIPE LINE CORPORATION,

By [Signature]
President

ATTEST:

[Signature]
Asst. Secretary

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

On this 26th day of May 1965, before me personally appeared THOMAS M. GOODFELLOW, to me personally known, who, being by me duly sworn, says that he resides at 76 Fourth Street, Garden City, New York, that he is the President and General Manager of THE LONG ISLAND RAIL ROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

MARY K. BRUSH
NOTARY PUBLIC, State of New York
No. 52-0470825, Suffolk County
Commission Expires March 30, 1967

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

On this 26th day of May 1965, before me personally appeared D. R. MERRIMAN, to me personally known, who, being by me duly sworn, says that he resides at 9 Stafford Drive, Huntington Station, New York, that he is President of LONG ISLAND PIPE LINE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

MARY K. BRUSH
NOTARY PUBLIC, State of New York
No. 52-0470825, Suffolk County
Commission Expires March 30, 1967