

**DRAFT OF July 20, 2017**

**THIRD SUPPLEMENTAL AGREEMENT OF LEASE**

Dated as of August \_\_, 2017

to

**AGREEMENT OF LEASE**

Dated as of December 23, 2009,  
as amended and/or supplemented by a  
First Supplemental Agreement of Lease,  
Dated as of February 15, 2012,  
and a

Second Supplemental Lease, dated as of February 26, 2013

**NORTHWESTERN LANCASTER COUNTY AUTHORITY,**

As Lessor,

To

**TOWNSHIP OF PENN**

Lancaster County , Pennsylvania,

As Lessee

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### THIRD SUPPLEMENTAL AGREEMENT OF LEASE

THIS THIRD SUPPLEMENTAL AGREEMENT OF LEASE, dated and effective as of August \_\_, 2017, between NORTHWESTERN LANCASTER COUNTY AUTHORITY, as lessor, and the TOWNSHIP OF PENN, Lancaster County, Pennsylvania, as lessee, to an Agreement of Lease, dated as of December 23, 2009, as amended and supplemented by a First Supplemental Agreement of Lease, dated as of February 15, 2012, and a Second Supplemental Lease, dated as of February 26, 2013, between the Authority, as lessor, and the Municipality, as lessee, relating to the Water and Sewer Systems (which capitalized phrases and other capitalized words and phrases referred to in these recitals are defined in Article I of the Original Lease, Section 1.02 of the First Supplemental Lease, Section 1.02 of the Second Supplemental Lease and Section 1.02 hereof).

WITNESSETH:

WHEREAS, The Authority is a municipality authority organized and existing under the Authorities Act of the Commonwealth; and

WHEREAS, The Authority presently owns the Water and Sewer Systems; and

WHEREAS, The Authority, as lessor, and the Municipality, as lessee, heretofore entered into the Existing Lease with respect to the Water and Sewer Systems; and

WHEREAS, The Municipality heretofore authorized and issued the 2012 General Obligation Bonds under the 2012 Bond Ordinance; and

WHEREAS, The proceeds of the 2012 General Obligation Bonds were expended for and toward the costs of capital improvements to the Water System; and

WHEREAS, The Authority and the Municipality have determined that the Municipality shall refund the 2012 General Obligation Bonds which remain outstanding, in order to realize debt service savings; and

WHEREAS, The Municipality, at the request and with the consent of the Authority, has determined to issue the 2017 General Obligation Notes, with a portion of the proceeds from sale thereof to be used, together with money otherwise available, for and toward, *inter alia*: (1) payment of all costs and expenses of retirement of the outstanding 2012 General Obligation Bonds upon stated maturities and by optional redemption prior to stated maturities, as applicable and appropriate, on and prior to August \_\_, 2017, and (2) payment of all related costs and expenses, including costs and expenses of issuance of the 2017 General Obligation Notes.

NOW, THEREFORE, The Authority, as lessor, and the Municipality, as lessee, in consideration of additional agreements, conditions and covenants herein contained, each intending to be legally bound, covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

**SECTION 1.01** *General Matters.* Terms and phrases which are defined in Section 1.01 of the Existing Lease, for all purposes of the Lease, including this Third Supplemental Lease, shall have the meanings therein specified, unless the context clearly otherwise requires.

**SECTION 1.02** *New and Amended Definitions.* Terms and phrases which are defined in this Section 1.02, for all purposes of the Lease, including this Third Supplemental Lease, shall have the following meanings, unless the context clearly otherwise requires:

**“Existing Lease”** shall mean the 2009 Lease as amended and supplemented by the First Supplemental Lease and the Second Supplemental Lease;

**“First Supplemental Lease”** shall mean the First Supplemental Agreement of Lease, dated as of February 15, 2012, between the Authority, as lessor, and the Municipality, as lessee, amending and supplementing the 2009 Lease;

**“Lease”** shall mean the Existing Lease, as amended or supplemented by this Third Supplemental Lease, and all additional modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions of the Existing Lease;

**“Second Supplemental Lease”** shall mean the Second Supplemental Agreement of Lease, dated as of February 26, 2013, between the Authority, as lessor, and the Municipality, as lessee, amending and supplementing the 2009 Lease;

**“Third Supplemental Lease”** shall mean this document, made and delivered in accordance with provisions of the Existing Lease, effective as of the date herein specified, and to constitute part of the Lease, which phrase sometimes is referred to in this document by use of such terms as “hereto,” “hereby,” “herein,” “hereof,” “hereunder” or other descriptive terms or phrases having similar import;

**“2009 Lease”** shall mean the Agreement of Lease, dated as of December 23, 2009, between the Authority, as lessor, and the Municipality, as lessee, with respect to the Water and Sewer Systems;

**“2017 General Obligation Notes”** shall mean the General Obligation Notes, Series of 2017, dated as of August \_\_, 2017, of the Municipality, initially authorized for issuance under the 2017 Notes Enabling Ordinance, in the maximum aggregate principal amount of \$4,795,000, as such more specifically shall be described in the 2017 Notes Enabling Ordinance and in the Proposal, as that term is defined in the 2017 Notes Enabling Ordinance; and

**“2017 Notes Enabling Ordinance”** shall mean an Ordinance of the Municipality, enacted July 24, 2017, authorizing issuance and delivery of the 2017 General Obligation Notes;

**“2017 Refunding Project”** shall mean the undertakings of the Municipality to provide all of the funds, by issuance of the 2017 General Obligation Notes, to refund all of the outstanding 2012 General Obligation Bonds and to pay the costs and expenses incidental to such refunding and financing.

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**ARTICLE II**  
**CONCERNING THE 2017 REFUNDING PROJECT**

**SECTION 2.01** *Covenant to Complete the 2017 Refunding Project.* The Municipality covenants to undertake and to complete the 2017 Refunding Project, applying for such purpose proceeds of the 2017 General Obligation Notes in the manner contemplated herein and in the 2017 Notes Enabling Ordinance

**SECTION 2.02** *Allocation of the 2017 General Obligation Notes.* The Authority and the Municipality acknowledge and agree that a portion of the 2012 General Obligation Bonds to be retired as part of the 2017 Refunding Project were allocated to the financing or refinancing of capital costs of the Water and Sewer Systems, and, therefore, a portion of the debt service on the 2017 General Obligation Notes is properly allocable to the Water and Sewer Systems, more specifically the debt service on the obligation designated as General Obligation Note, Series of 2017, Number 2017-1, in the stated principal amount of \$3,680,000 and having a term ending May 15, 2033.

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**ARTICLE III**  
**WATER AND SEWER REVENUE ACCOUNT**

**SECTION 3.01** *Amending Section 5.02 of the Existing Lease.* The first grammatical paragraph of Section 5.02 of the Existing Lease is hereby amended and restated in its entirety to read as follows:

**“SECTION 5.02. Application of Money in the Water and Sewer Revenue Account.** Money in the Water and Sewer Revenue Account, from time to time, exclusive of money in the Grant Account, shall be and is pledged by the Municipality for prompt and full satisfaction of all obligations of the Municipality under this Lease, which shall include obligations of the Municipality for payment of debt service or sinking fund payments due and payable on general obligation debt, including but not limited to the 2012 General Obligation Bonds and a portion of the 2017 General Obligation Notes, or other debt of the Municipality incurred in connection with the Water and Sewer Systems, and shall be withdrawn, from time to time, by the Municipality to satisfy such obligations.”

**SECTION 3.02** *Debt Service Payments on 2017 General Obligation Notes.* It is expressly agreed between the parties hereto that the debt service with respect to the portion of the 2017 General Obligation Notes specified on Appendix A to this Third Supplemental Lease is allocable to the Water and Sewer Systems and shall be paid from money available for such purpose in the Water and Sewer Revenue Account, and that such debt service shall be paid at the times and in the amounts specified in the 2017 General Obligation Notes Enabling Ordinance. The provisions of this Section shall be deemed to amend and supplement the provisions of Section 5.02 of the Existing Lease, which always shall be construed so as to give proper meaning and effect to the provisions of this Section 3.02

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**ARTICLE IV**  
**MISCELLANEOUS**

**SECTION 4.01** *Amending Section 11.02 of the Existing Lease.* Section 11.02 of the Existing Lease is hereby amended and restated in its entirety to read as follows:

“**SECTION 11.02. Obligations of Municipality Limited.** The Authority and the Municipality agree that all obligations of the Municipality to the Authority hereunder shall be paid from the Water and Sewer Revenues of the Municipality and, as appropriate, money in the Grant Account, and that neither the credit, nor taxing power, nor tax revenues, nor general revenues of the Municipality is pledged for such payments; Provided, however, the provisions of this Section shall not be construed to limit in any way or to amend or diminish the obligations and covenants of the Municipality under the 2013 General Obligation Bonds Enabling Ordinance with respect to the 2013 General Obligation Bonds, or under the 2017 General Obligation Notes Enabling Ordinance with respect to the 2017 General Obligation Notes, or under any other document to which the Municipality is a party.”

**SECTION 4.02** *Amending Section 11.05 of the Existing Lease Regarding Management Agreements.* The last proviso of the first paragraph of Section 11.05 of the Existing Lease is hereby amended to read as follows:

“Provided, further, however, that such employment and delegation shall not impair the exemption of interest on the 2013 General Obligation Bonds, the 2017 General Obligation Notes or any Bonds from Commonwealth or Federal income taxes to the extent of any such exemption applicable at the time of original issuance of such 2013 General Obligation Bonds, such 2017 General Obligation Notes or such Bonds, respectively, as the case may be.”

**SECTION 4.03** *Authority Covenant Not to Adversely Affect Tax-exempt Status of 2017 General Obligation Notes.* The Authority covenants that it shall not take any action or suffer or permit any action to be taken or any condition to exist (inclusive of the application, use or investment of the “proceeds” of the 2017 General Obligation Notes) that causes or may cause the interest payable on the 2017 General Obligation Notes to be subject to Federal income taxes, or that will cause the Municipality to be in violation of the Municipality’s covenants under the 2017 General Obligation Notes Enabling Ordinance, or which, if the Municipality were taking such action, would cause the Municipality to be in violation of the Municipality’s covenants under the 2017 General Obligation Notes Enabling Ordinance; and the Authority covenants to take all action, to do all things and to cause all things to be done that may be necessary on the part of the Authority so that the interest payable on the 2017 General Obligation Notes shall be and shall continue to be exempt from Federal income taxes.

*Use of the Term “Lease” and the Phrase “Water and Sewer Systems.* The Municipality and the Authority covenant and agree that hereafter the term “Lease” and the phrase “Water and Sewer Systems,” when and as used in the Existing Lease, unless the context clearly otherwise

requires, shall be and is amended or modified to mean the Lease and the Water and Sewer Systems, as herein defined.

**SECTION 4.06** *This Supplemental Lease to be Construed as Integral Part of the Existing Lease.* This Third Supplemental Lease, being a supplement to the Existing Lease, shall be construed as an integral part thereof.

All terms, conditions, covenants and agreements of the Existing Lease, unless the context clearly otherwise requires, and except and to the extent that the same are amended or supplemented hereby, are ratified and confirmed and are declared to be and shall be and remain in full force and effect and shall apply in all respects to this Third Supplemental Lease, all as shall be applicable and appropriate, as if the same were repeated in full herein; Provided, however, that provisions of the Existing Lease always shall be construed so as to give proper effect and meaning to provisions of this Third Supplemental Lease.

**SECTION 4.07** *Execution in Multiple Counterparts.* This Third Supplemental Lease may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

**SECTION 4.08** *Severability of Provisions.* If any provision hereof shall be determined to be invalid, such invalidity shall not affect any other provision hereof, and this Third Supplemental Lease thereafter shall be construed and enforced as if such invalid provision had not been contained herein.

**SECTION 4.09** *Governing Law.* Laws of the Commonwealth shall govern construction hereof.

**SECTION 4.10** *Article and Section Numbers.* The use of numbered Articles and Sections herein is for convenience only and such numbered Articles and Sections herein bear no direct relationship to numbered Articles and Sections in the Existing Lease which bear identical numbers.

**SECTION 4.11** *Table of Contents; Heading of Articles and Sections.* The Table of Contents and the descriptive heading of the several Articles and Sections of this Third Supplemental Lease are inserted for convenience only and shall not control, limit or affect the meaning of any provisions hereof.

**IN WITNESS WHEREOF**, the **NORTHWESTERN LANCASTER COUNTY AUTHORITY** has caused this Third Supplemental Lease to be executed in its name and in its behalf by its Chairman or Vice Chairman and its official seal to be affixed hereto and attested by its Secretary or Assistant Secretary, and the **TOWNSHIP OF PENN**, Lancaster County, Pennsylvania, has caused this Third Supplemental Lease to be executed in its name and in its behalf by the Chairman or Vice Chairman of its Board of Supervisors and its official seal to be affixed hereto and attested by its Secretary or Assistant Secretary, all as of the day and year first above written.

**NORTHWESTERN LANCASTER COUNTY  
AUTHORITY**

By: \_\_\_\_\_  
(Vice) Chairman

**ATTEST:**

\_\_\_\_\_  
(Assistant) Secretary

(SEAL)

**TOWNSHIP OF PENN**, Lancaster County,  
Pennsylvania

By: \_\_\_\_\_  
(Vice) Chairman of the Board of Supervisors

**ATTEST:**

\_\_\_\_\_  
Secretary of the Township

(SEAL)

**APPENDIX A**

(Debt Service on the 2017 General Obligation Notes to be paid  
from Money in the Water and Sewer Revenue Account)

SEE ATTACHED SCHEDULE

(Debt service on General Obligation Note, Series of 2017, No.  
2017-1, in the original principal amount of \$3,680,000)





