

AGREEMENT OF SALE  
 By and Between  
 PECO ENERGY COMPANY (SELLER)  
 And  
 CONCORD TOWNSHIP (BUYER)

Premises: 666 Concord Rd, Concord Township, Delaware County, Pennsylvania

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## AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement") made as of this <sup>9<sup>th</sup></sup> day of, *December* 2015, by and between PECO ENERGY COMPANY, a Pennsylvania corporation ("Seller") and CONCORD TOWNSHIP ("Buyer") (Buyer and Seller are collectively referred to as the "Parties").

### BACKGROUND

A. Seller is the owner of a certain parcel of ground situate in 666 Concord Rd., Lot 4, Concord Township, Delaware County, Pennsylvania, containing 1.4847 acres, more or less, as more particularly shown outlined in red on the plan attached hereto as Exhibit "A" (the "Premises").

B. Buyer desires to purchase, and Seller desires to sell, the Premises upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, agree as follows:

1. Purchase and Sale. For the purchase price and subject to the terms and conditions herein, Seller agrees to sell to Buyer, "As Is", and Buyer agrees to purchase, the Premises.

2. Purchase Price.

(a) The purchase price for the Premises is TWENTY-THREE THOUSAND DOLLARS (\$23,000.00) (the "Purchase Price") payable as follows:

(i) A deposit of TWO THOUSAND THREE HUNDRED DOLLARS (\$2,300.00) at the time of execution of this Agreement (collectively together with accrued interest, the "Deposit").

(ii) The balance of the Purchase Price shall be paid in cash, wiring of federal funds, certified check or title insurance company check at the time of Settlement, as described in Section 6.

(b) The Deposit shall be placed by Seller in an interest bearing escrow account in a federally insured bank or savings institution to be applied in accordance with Section 2(c).

(c) (i) If after payment of the Deposit, Buyer is in default in its obligations hereunder, Seller shall have the right to terminate this Agreement and retain

the Deposit as liquidated damages and not as a penalty (the parties agreeing that the Deposit represents their best estimate of the damages of Seller in such event, the actual amount of damages being impossible to ascertain) and as the sole and exclusive right and remedy of Seller, and thereafter this Agreement shall become null and void.

(ii) If Seller fails to perform its obligation to settle in accordance with this Agreement, Buyer may, as its sole and exclusive remedy, either (a) demand and receive a refund of the Deposit and thereafter this Agreement shall become null and void or (b) seek specific performance of this Agreement.

(iii) Except as provided in Section (c)(i) above, if this Agreement is rightfully terminated, by Seller, Buyer or both, then the Deposit shall be returned to Buyer and thereafter this Agreement shall become null and void.

(iv) If the transaction set forth herein closes, the Deposit shall be applied at Settlement for the benefit of Buyer towards the Purchase Price.

### 3. Title.

(a) Title to the Premises shall be good and marketable and such as will be insured by a reputable title insurance company ("Title Company") doing business in Pennsylvania at its regular rate, free and clear of all liens, encumbrances, restrictions and easements except as follows:

(i) To easements, rights, covenants, conditions and restrictions of record, if any, or otherwise visible (and as contained in this Agreement and which a survey or personal inspection might reveal).

(ii) To ordinances, rules and regulations of governmental or regulatory bodies.

(iii) The easements, reservations or restrictions benefiting Seller set forth on Exhibit "B" attached hereto.

(b) If Buyer purchases title insurance, Buyer shall provide Seller with a copy of a title insurance commitment for the Premises at least twenty (20) days prior to Settlement. In the event title is not as agreed, Buyer shall have the option of taking such title as Seller can deliver without abatement of Purchase Price, or of terminating or canceling this Agreement. In the latter event, this Agreement shall be null and void and the Deposit shall be returned to Buyer, provided Buyer has restored the Premises as provided in Section 11(e).

4. Premises Description. It is agreed that the Premises description contained herein is only for the purpose of identifying the Premises. The description in the deed delivered at Settlement shall be in accordance with the description disclosed by the portion of the survey plan attached hereto.

5. Apportionments.

(a) Real estate taxes, water and sewer rent and property rents, if any, for the Premises shall be apportioned, pro rata, as of the date of Settlement.

(b) Any real estate transfer taxes shall be divided equally between Seller and Buyer. Buyer shall be solely responsible for any real estate transfer tax due as a result of Buyer's assignment of its interest under this Agreement. This section shall survive Settlement.

6. Settlement.

(a) Settlement shall take place within Thirty (30) days after Pennsylvania Public Utility Commission approval as provided in Section 21 (b).

(b) Settlement shall take place at the office of the Title Company or at some other mutually agreeable location during normal business hours.

7. Events to Occur at Settlement. At Settlement, the following shall occur:

(a) Seller shall deliver to Buyer possession of the Premises, free and clear of all leases and occupancies, except as set forth in this Agreement, by Special Warranty Deed prepared by Seller.

(b) Buyer shall deliver to Seller evidence reasonably satisfactory to Seller and to the Title Company that Buyer has the authority to execute and deliver all documents to be executed and delivered by Buyer at Settlement and that the person executing such documents on behalf of Buyer will have the right, power and authority to do so.

(c) Buyer shall deliver or cause to be delivered to Seller an amount equal to the balance of the Purchase Price, adjusted for the apportionments referred to herein, and all other sums, if any, due from Buyer pursuant to this Agreement.

(d) Buyer shall execute and deliver to Seller, in recordable form a right-of-way grant for electric, gas and telecommunications facilities within and immediately outside the highway limits of the roads abutting the Premises, substantially in the form attached hereto and made a part hereof as Exhibit "C".

8. Seller's Management Approval.

(a) Seller's obligation to complete Settlement under this Agreement is contingent upon Seller receiving its management's approval of this Agreement within Ten (10) days after the date of Seller's execution of this Agreement. Seller's execution of this Agreement does not represent its management's approval as required by this Section. If Seller is unable to obtain its management's approval, Seller shall return the Deposit and thereupon shall be under no obligation nor liability to the Buyer, and this Agreement shall be null and void.

**(b) UNLESS SIGNED BY SELLER IN THE PLACE SET FORTH BELOW, THE DELIVERY OF THIS AGREEMENT DOES NOT CONSTITUTE A CONTRACTUAL OFFER; AND BINDING COMMITMENTS (OR OTHER OBLIGATIONS OF ANY KIND) WILL ARISE ONLY IF AND WHEN A MUTUALLY ACCEPTABLE AGREEMENT IS FINALLY SIGNED BY BOTH BUYER AND SELLER.**

9. Condemnation; Assessments; Zoning.

(a) Seller represents and warrants to Buyer that, to the best of its knowledge and belief, as of the date of this Agreement there is no taking or condemnation pending of any portion of the Premises by virtue of an exercise of the power of eminent domain. Seller agrees to immediately notify Buyer if notice of condemnation or other legal action is served upon Seller for the Premises or any portion thereof.

(b) Any work affecting the Premises or the abutting road(s) required by any constituted authority prior to the date of this Agreement shall be paid for by Seller and all such work required after the date of this Agreement shall be paid for by the Buyer provided Settlement is completed hereunder. Buyer agrees to reimburse Seller at Settlement for the cost of all such work paid for by Seller prior to Settlement, which is the obligation of Buyer pursuant to the foregoing sentence. Seller covenants and represents that to the best of its knowledge there are no notices outstanding requiring the doing or abatement of any act or work affecting the Premises or abutting road(s) which have not been fully complied with.

(c) To the best of Seller's knowledge the current zoning classification for the Premises is R2 and R3 Residential.

10. Casualty. No destruction, damage or casualty to the Premises or any part thereof shall affect the obligations of the parties. Buyer hereby assumes all risk of loss to the Premises **except as may be caused by Seller, its agents, contractors and employees during the term of the Agreement**

11. Environmental Matters.

a) (i) Buyer, at its sole cost and expense, shall conduct an independent Phase I environmental assessment of the Premises, which shall be completed within sixty (60) days after the date of this Agreement, to determine whether any Hazardous Substances are present on the Premises. As used in this Agreement, the term Hazardous Substances shall include petroleum and petroleum products and wastes, substances, chemicals or materials designated as toxic or hazardous under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Toxic Substances Control Act ("TSCA"), the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), or any other similar federal, state or local statute, rule or regulation pertaining to environmental regulation, contamination or clean-up. Buyer shall provide Seller with copies of all environmental assessment reports prepared by or for Buyer within ten (10) days after their receipt by Buyer. If either party is not reasonably satisfied with the contents of the environmental assessment report, either party shall be entitled to terminate this Agreement by giving written notice to the other party within fifteen (15) days after receipt of the environmental assessment report.

(ii) No right is granted hereunder for the Buyer or its contractor performing the Phase I environmental assessment to perform any testing, drilling, core borings or any other type of sampling (collectively "testing") of the Premises without the Seller's prior written approval. Buyer hereby agrees to indemnify Seller against any and all costs and expenses to Seller resulting from Buyer or his contractors performing such testing without Seller's prior written approval. This indemnification shall survive termination of this Agreement.

(b) In connection with the Buyer's Phase I environmental assessment or other work on the premises, "the Work", Buyer assumes all risk of loss or damage of any kind or nature to equipment used for the testing and all risk of injury or death to Buyer's employees, workmen or contractors from any causes whatever, including, without limitation, injuries to employees of Buyer's contractors or subcontractors. in performing the Work. Buyer shall at all times hereafter indemnify, protect and save harmless Seller (and its officers, agents and employees) from and against any and all claims, actions, demands, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) based on injury or damage to the person or property of any person, firm or corporation (including the parties hereto, their officers, agents and employees or the employees of their contractors or subcontractors.) and caused by or arising from the Work. This indemnification shall survive Settlement or termination of the Agreement. In addition to the above indemnification but not in limitation thereof, Buyer agrees to carry insurance with limits not less than indicated below, for the duration of the Work:

Commercial General Liability Insurance (with coverage consistent with ISO Form CG 0001 (12/04) covering liability for bodily injury and property damage arising from premises, operations, independent contractors,

personal/advertising injury, and blanket contractual liability for all of Buyers contractors, subcontractors and their subcontractors (including but not limited to coverage for claims against Seller for injuries to employees of Buyer or its contractors or subcontractor's with limits of not less than \$1,000,000 per occurrence and umbrella coverage of \$6,000,000. Such insurance shall name Seller, its officers, agents and employees, as additional insureds; be primary insurance for all purposes; and contain waiver of subrogation provisions.

Evidence of the above insurance shall be forwarded to Seller prior to entry onto the Premises and contain a provision that Seller be notified with at least ten (10) days prior notice, in the event of cancellation of the insurance.

(c) Buyer and its employees, workmen or contractors shall not commit any acts of waste to the Premises and shall restore the Premises to the condition as existed immediately prior to the environmental assessment upon completion of such assessment.

(d) Seller shall also have the right, but not the obligation, to perform an environmental assessment of the Premises and shall provide Buyer with a copy of the environmental assessment report within ten (10) days after Seller receives such environmental assessment report. Thereafter if either party is not reasonably satisfied with the results of Seller's environmental assessment report then either party shall be entitled to terminate this Agreement within fifteen (15) days following Buyer's receipt of such environmental assessment report by giving written notice thereof to the other party. If Buyer elects to rely upon Seller's environmental assessment report in lieu of obtaining its own environmental assessment report and purchases the Premises then in such event Buyer agrees to indemnify, protect and save harmless Seller (and its officers, agents and employees) from and against any and all claims, actions, demands, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) resulting from any Hazardous Substances found upon the Premises and not contained in Seller's environmental assessment report. This indemnification shall survive Settlement or termination of this Agreement.

(e) If this Agreement is terminated as provided in this Section 11, it shall become null and void and the Deposit shall be returned to Buyer (provided Buyer is not in default hereunder), neither party shall have any further duties or obligations hereunder (except that Buyer must restore the Premises as nearly as reasonably possible to its condition as existed prior to Buyer performing its environmental assessment) and Buyer and Seller shall execute such documentation as shall be necessary to release each party from all duties and obligations under this Agreement. If this Agreement is not so terminated, Buyer shall be deemed to have elected to purchase the Premises, subject to the conditions and contingencies set forth in this Agreement.

(f) If Hazardous Substances were found to be present on the Premises, and the parties have not terminated this Agreement, then a notice of such Hazardous Substances shall be included in the deed in accordance with all applicable environmental laws

g) Buyer acknowledges that a dwelling existed on the Premises which was serviced by an on site well, sewer system and underground oil tank. Buyer is purchasing the Premises "As Is" and agrees that Seller shall have no responsibility whatsoever for the removal or remediation that may be required due to the presence of such well, sewer system and oil tank, and following Settlement Buyer shall assume entirely Seller's responsibility, to the extent Seller has any responsibility, for compliance with any and all environmental laws, including any regulations, guidelines, standards or policies of any governmental authority regulating or imposing standards of liability or standards of conduct, if any, with regard to such well, sewer system, and oil tank on the Premises.

12. Notices. All notices required to be given under this Agreement shall be in writing and shall be deemed given when deposited in the United States Postal Service, Certified Mail return receipt requested or by recognized commercial courier service, return receipt requested.

Notices to Seller shall be addressed to:

PECO Energy Company  
2301 Market Street, N3-3  
P. O. Box 8699  
Philadelphia, Pennsylvania 19101 (Courier Service 19103)  
Attention: Manager, Real Estate

Notices to Buyer shall be addressed to:

Concord Township  
43 Thornton Road  
Glen Mills, PA 19342  
Attn: Township Manager

Carbon copies shall be provided to Solicitor:

Hugh A. Donaghue, Esquire  
300 West State Street, Suite 205  
Media, PA 19063

13. Broker's Commissions. Each party represents and warrants to the other that it has not consulted any real estate broker or agent with regard to the purchase of the Premises which could cause anyone to be liable for any real estate commissions or fees and each agrees to indemnify the other from and against any and all loss, costs, or

expense, including but not limited to reasonable attorney's fees, from claims for compensation asserted by any third party by reason of such party's breach of its representation or warranty contained in this Section. This Section shall survive Settlement.

14. No Recording. This Agreement shall not be recorded in any public office. Any attempt by Buyer to record this Agreement shall constitute a default by Buyer hereunder.

15. Inspections and Representations. Buyer has either inspected the Premises, or has waived the right to do so, and, except as otherwise expressly stated herein, is entering into this Agreement relying solely upon such inspection as to the condition and character of the Premises and the suitability thereof for its purposes. Except as expressly stated herein, Seller, its employees and/or agents, have made no representations or warranties with respect to the Premises, and Buyer waives and releases Seller from any claims, causes of action, obligations or liabilities relating to the compliance of the Premises with any and all federal, state, local, environmental or other laws and regulations.

16. Public Road Access. Buyer is aware that access to a public road may require issuance of a highway occupancy permit from the Pennsylvania Department of Transportation and/or the local municipality.

17. Assignment by Buyer. Buyer shall not assign its interest in this Agreement without first obtaining the prior written consent of Seller.

18. Time of the Essence. Time is of the essence in this Agreement.

19. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and, to the extent that assignment is permitted, their assigns.

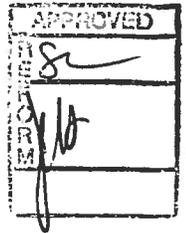
20. Entire Agreement. The entire agreement between the parties is herein written, and the parties shall not be bound by any agreements, understandings or conditions other than are expressly set forth and stipulated in this Agreement or in any subsequent written amendments to this Agreement signed by the parties hereto.

21. Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

(b) Seller shall file a copy of this Agreement with the Pennsylvania Public Utility Commission promptly upon the execution hereof and the 33rd day after such filing shall be the date of this Agreement, unless prior to such date proceedings are instituted as provide in Section 507 of the Pennsylvania Public Utility Law, Title 66,

and in the event of the institution of such proceedings, then this Agreement shall become effective as to Seller only after approval by the Pennsylvania Public Utility Commission.



EXECUTED the day and year first above written.

Seller: PECO ENERGY COMPANY

BY: \_\_\_\_\_

*Dennis E. Wilson*  
Dennis E. Wilson,  
Manager, Real Estate

Buyer: CONCORD TOWNSHIP

BY: \_\_\_\_\_

*Dominic Pileggi*  
Dominic Pileggi  
Chairman of Concord Township  
Board of Supervisors

PE 6365-3  
SML

**PREMISES DESCRIPTION**

**EXHIBIT "A"**



(i) The Seller, its successors and assigns, reserve the right as often as Seller, its successors and assigns, shall deem necessary to cut down, trim and remove from the Premises any trees which may endanger the safety of, interfere with the use of, or be a menace to any facilities or structures constructed or which may be constructed by Seller, its successors and assigns, upon ground adjoining the southerly side of the Premises. Together with the right of ingress and egress to, from and over the Premises for the purposes above reserved.

ii) Seller, its successors and assigns, reserve the full, free and uninterrupted right, liberty and privilege to lay, construct, install, use, operate, maintain, repair, renew, add to, relocate and replace facilities, including poles, towers, structures, wires, cables, fiber optics, cross-arms, anchors, anchor guys, guy wires, conduits, pipes, gas service pipes, gas mains, manholes, communications equipment including antennas, equipment cabinets, foundations and fences, and other equipment and appurtenances necessary for the transmission and distribution of electricity, gas and telecommunications in, on, over, under, across and along a 125 foot wide strip or parcel of ground more particularly shown cross-hatched in green on Exhibit "C". Together with the right, as often as Seller, its successors, and assigns, shall deem necessary, to cut down, trim and remove from the strip of ground any trees, roots of trees, brush, buildings, or other things. Also together with the right to cut down, trim and remove from the Premises adjoining the strip of ground any trees which may endanger the safety of, interfere with the use of, or be a menace to any facilities or structures constructed or which may be constructed by Seller, its successors and assigns, upon the strip of ground. Also together with the right of ingress and egress to, from and over the strip of ground as necessary for the exercise of the rights reserved hereunder. Under and subject to the express conditions and restrictions, that at no time shall any buildings or other structures of any kind whatsoever, or any part thereof, or house trailer nor any part thereof, ever be constructed, placed or used within the strip of ground. And the Buyer for itself, its heirs, successors and assigns, by acceptance of this deed, agrees with the Seller, its successors and assigns, that such conditions and restrictions shall be covenants running with the land and that in any deed of conveyance of the Premises or any part thereof, to any person or persons, such conditions and restrictions shall be incorporated by reference to this deed and the record hereof or as fully as the same are contained herein. Excepting and reserving thereout and therefrom unto Seller the ownership of any existing facilities located within the Premises and the strip of ground.

## EXHIBIT "B"

**RIGHT OF WAY GRANT**

**EXHIBIT "C"**

**RIGHT OF WAY GRANT**

**BE IT KNOWN** that CONCORD TOWNSHIP (the "Grantor"), for and in consideration of the payment of ONE DOLLAR (\$1.00) by **PECO ENERGY COMPANY** (the "Company"), the receipt whereof is hereby acknowledged, hereby grant(s) to Company, its successors and assigns, the full, free and uninterrupted right, liberty and privilege to erect, construct, install, use, operate, maintain, repair, renew, add to, relocate, replace and remove facilities, including poles, cross arms, wires, cables, fiber optics, guy wires, anchor guys, conduits, manholes, gas mains, gas service pipes, and appurtenances (the "Facilities"), as now existing and as shall be necessary for the transmission and distribution of electricity, gas and communications within the legal right of way limits of a public highway known as Concord Rd. on the westerly side thereof, (subject to such deviations as may be necessary due to construction conditions) as now existing or as may be hereafter established, abutting the entire length of the premises along Concord Rd. (300.31 feet) of the Grantor (part of the aforesaid Facilities such as wires, cross arms and appurtenances overhanging Grantor's premises adjacent thereto). Together with the right of ingress and egress across Grantor's premises to and from the Facilities and the right to cut down, remove, trim and keep trimmed, in a workmanlike manner, all trees, branches of trees, roots and brush, to the extent deemed necessary by the Company to provide sufficient clearance for the protection of the Facilities.

**AND** the Company is further granted the right to locate the Facilities outside the limits of said highway(s) but immediately adjacent thereto; **AND ALSO** the further right to install outside the limits of said highway(s) such guy wires and anchor guys as may be necessary to stabilize the poles. Also, Excepting & Reserving thereout and therefrom unto Seller the ownership of any Seller's facilities located within the Premises and the strip of ground.

The conditions herein contained shall enure to and bind the respective executors, administrators, heirs, successors and assigns of the Grantor and Company.

**EXECUTED THIS 18<sup>th</sup> DAY OF *November* 2015 .**

ATTEST:

  
Secretary

Supervisors

CONCORD TOWNSHIP

BY:   
\_\_\_\_\_  
Dominic Pileggi  
Chairman  
Concord Township Board of

WITNESS:

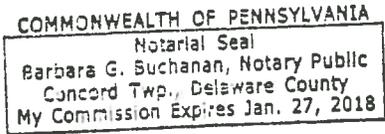
Terri L. Grant

Terri L. Grant (SEAL)  
(Name)

Deborah Kilburn

Deborah Kilburn (SEAL)  
(Name)

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



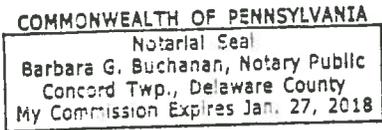
Barbara G. Buchanan  
Notary Public

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF Delaware : SS.

On this, the 18<sup>th</sup> day of November 2015, before me, Barbara G. Buchanan, the undersigned officer, personally appeared Dominic A. Pileggi, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Barbara G. Buchanan  
Notary Public

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SML