

TERM CONSERVATION EASEMENT

This **TERM CONSERVATION EASEMENT** made this _____ day of _____, 2011,

WITNESSETH:

WHEREAS, **THE BETHLEHEM AUTHORITY**, a municipal authority, with primary offices at 10 East Church Street, Room 502, Bethlehem, Pennsylvania 18018-6052, hereinafter called the Grantor, is the owner in fee simple of certain real property, hereinafter called the "Protected Property", which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation but is currently utilized for the production of potable water, which property is located in Carbon and Monroe Counties, Pennsylvania, and is more particularly described in **Exhibit A** and shown in **Exhibit B** attached hereto and incorporated by this reference.

WHEREAS, **THE NATURE CONSERVANCY**, hereinafter called the Grantee, is a nonprofit corporation incorporated under the laws of the District of Columbia as a tax exempt public charity under Section 501(c)(3) and 509(a)(1) of the Internal Revenue Code qualified under section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, and having its headquarters at 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203 and a local address at 2101 North Front Street, Building #1, Suite 200, Harrisburg, Pennsylvania 17110, whose purpose is to preserve natural areas for scientific, charitable, educational and aesthetic purposes; and

WHEREAS, the Protected Property is comprised of primarily native forest types characteristic of the region that protect the headwaters of Tunkhannock Creek, Wild Creek, the Delaware River, and the Delaware Bay. Interspersed with the hardwood forests are significant stands of mixed conifers and special habitat types including mesic till barrens and wetlands that provide habitat for a multitude of rare species and natural communities; and

WHEREAS, preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, specifically the City of Bethlehem (the "City") and citizens of the City and surrounding municipalities support this

effort as it helps to ensure a high quality drinking water supply for all residents and users of City water; and

WHEREAS, the Grantor and Grantee are committed to protecting, conserving and maintaining the forests and the natural resources, including but not limited to high quality drinking water, on the Protected Property, to managing those forests and their associated forest products in an environmentally sensitive manner, to assuring the availability of the Protected Property for forestry and as open space, and to providing, either or both, the Grantor and Grantee with an economic return from forest products, including but not limited to solid wood, wood biomass and ecosystem services; and

WHEREAS the Grantor seeks to provide excellent quality water for its consumers and has interest and responsibility to optimize the financial performance of the City's water system; and

WHEREAS, the specific conservation values of the Protected Property are documented in an easement documentation report, prepared by the Grantee and to be signed, acknowledged and approved by the Grantor, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation (the "Easement Documentation Report"); and

WHEREAS, the Pennsylvania General Assembly, in enacting the Conservation and Preservation Easements Act, Act 29 of 2001, and as amended thereafter, has recognized the importance and significant public and economic benefit of conservation easements, "the purposes of which include, but are not limited to, retaining or protecting for the public and economic benefit the natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreation or open-space use;" and this Conservation Easement is drafted with the intention of conforming with the requirements for said act; and Grantor and Grantee wish to avail themselves of certain provisions of that law;

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained, does hereby give, grant, and convey unto the Grantee for a term of sixty (60) years, a Conservation Easement over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. Purpose and Term. It is the purpose of this Conservation Easement to ensure that the Protected Property will be retained predominantly in its natural, scenic, forested, and open space condition, free of additional forest fragmentation or additional development; to protect any rare plants, animals, or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. Specifically, this Conservation Easement will assure long-term, professional, independent third-party certified forest management on the Protected Property for the production, management and harvesting of economically valuable timber and related forest products while ensuring the conservation values as described above are protected or enhanced. This Conservation Easement will ensure the protection of forest and other natural resources on the Protected Property and allow for the potential of economic return from the protection, management, maintenance, and improvement of ecosystem services provided by the Protected Property. Ecosystem services include but are not limited to carbon sequestration, the protection of water quality and quantity, the protection of wetlands, rare species and natural communities. The Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Easement and shall specifically include Grantor's right and ability to manage and operate the Protected Property in order to produce potable drinking water for the customers of the City's water system. This Conservation Easement shall become effective upon execution by the Grantor (the "Effective Date") and shall terminate sixty (60) years thereafter.

2. Prohibited Uses. Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below:

2.1 There shall be no constructing or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign, asphalt or concrete pavement, billboard or other advertising display or any other temporary or permanent structure or facility on or above the premises except those required by the Grantor for appropriate management and allowed in Paragraph 3 "Grantor's Reserved

Rights” of this Agreement. Except as permitted in under paragraph 3, no new utility poles, towers or sodium vapor lights may be constructed or installed on the Protected Property unless necessary for the production of potable water. Replacement of existing utility poles, towers, or sodium vapor lights unrelated to potable water production will be permitted under this Agreement.

2.2 There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner except as required for maintaining or improving drinking water facilities or infrastructure as described in paragraph 3.1 of this Agreement or as required for forest management and specified in the Forest Management Plan as described in Paragraph 3.4 of this Agreement or as permitted under Paragraph 3.9 of this Agreement.

2.3 There shall be no removal, destruction or cutting of trees, shrubs or plants, planting of non-native trees, shrubs or plants, use of fertilizers, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner except as required for forest management and as allowed in Paragraphs 3.1, 3.4, 3.5, and 3.9 of this Agreement.

2.4 Except as required for forest management and approved in the Forest Management Plan, there shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as "bug-zappers".

2.5 There shall be no storage or dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; except as permitted under Paragraph 3.1 of this Agreement, there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property or on adjacent property if owned by the Grantor which could cause erosion or siltation on the Protected Property.

2.6 Other than required by the Grantor's obligation to supply drinking water to the City and its customers and in accordance with Paragraph 3.1 of this Agreement, there shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property or on adjacent property if owned by the Grantor, which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property.

2.7 There shall be no motorized recreation including the use of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, jet skis, motorized boats or any other types of motorized vehicles, nor shall the Protected Property be used for any commercial recreational activity, except as noted in Paragraph 3.8 of this Agreement.

2.8 There shall be no oil, natural gas, or other mineral resource extraction, development, or transmission ("OGM") except as permitted in Paragraph 3.5 of this Agreement. Both parties recognize that technological advances may allow for natural gas extraction in the future in such a way as to eliminate the threat to the natural resources on the surface of the land and to the water resources under the Protected Property. Should such technological advancements occur, the Grantor and Grantee agree to evaluate the potential for OGM development at that time.

2.9 The Protected Property may not be divided, partitioned, or subdivided, nor conveyed except in its current configuration as an entity with the following exception; (i) subdivisions and transfers of the Protected Property are permitted to qualified organizations or public agencies for purposes of land, forest, water, plant, and biodiversity conservation and (ii) to related entities under the control of the Grantor who will utilize the Protected Property for the production of potable water and (iii) to any third party who acknowledges, in writing, that it is acquiring the property subject to this Conservation Easement, such subdivisions and transfers must maintain equivalent or higher levels of natural resource protection as established in this Conservation Easement.

2.10 The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of

determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density.

3. Grantor's Reserved Rights. The Grantor hereby reserves the following rights:

3.1 The right, without limitation, to maintain replace and/or construct structures and facilities that are reasonable, customary, and necessary for the collection, production and distribution of drinking water.

3.2 The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Easement. Prior to making any change in use of the Protected Property, the Grantor shall notify the Grantee, in writing, of such use in accordance with Paragraph 17.5 of this Agreement.

3.3 The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice is provided to Grantee in accordance with paragraph 17.5 of this Agreement.

3.4 The right to conduct forest management activities on the Protected Property, including commercial activities related to the production of timber and other forest products, together with the right to construct, use and maintain logging roads, and to use motorized vehicles, only as necessary for such operations, provided that such forest management activities are conducted in accordance with the Forest Management Plan, as further described below and in accordance with the following terms;

3.4.a The Protected Property shall at all times be managed in accordance with a written Forest Management Plan to be developed, initially by Grantee, and approved by Grantor. The Grantee shall have the right to review and approve any Forest Management Plan developed after the initial Forest Management Plan prepared by Grantee.

3.4.b The Forest Management Plan shall, at all times during the term of this Conservation Easement, fully meet the Forest Stewardship Council - United States (FSC-US) forest management standard current at the time of the granting of this Conservation Easement and its successors or an alternative standard approved by Grantor and Grantee. The Forest Management Plan shall have the following minimum components during the

duration of this Conservation Easement regardless of the forest certification standard in place:

3.4.b (i) Defined forest management objectives in accordance with the Purposes of this Conservation Easement.

3.4.b (ii) Mechanisms to ensure compliance with the Pennsylvania Department of Environmental Protection's (DEP) silvicultural Best Management Practices as defined and described in DEP publication 3930-BK-DEP2322 (Rev. 4/2003) *Controlling Erosion and Sediment from Timber Harvesting Operations* and its successor publications and guidance.

3.4.b (iii) Descriptions based on statistically rigorous inventories of forest stands, species, stocking, age classes, and volumes.

3.4.b (iv) Descriptions based on professionally conducted inventories of non-forest habitats including barrens, waters, wetlands, and agricultural lands.

3.4.b (v) Descriptions of current and desired future forest conditions and the means by which forest stands will be managed for and maintained in naturally occurring species.

3.4.b (vi) Professionally prepared maps of forest stands, roads, and outstanding ecological features.

3.4.b (vii) Strategies to identify and protect and maintain threatened and endangered species, habitats, cultural sites, wetlands and riparian buffers and include location maps of these features.

3.4.b (viii) Method(s) to ensure adequate stocking of ecologically and economically desirable tree species following regenerative timber harvesting.

3.4.b (ix) Recommended actions to restore and maintain high quality barrens including, but not limited to mechanical and prescribed fire treatments, provided however, that any prescribed fire treatment shall only be done upon the written recommendation of Grantee and upon the execution of a hold harmless and indemnification agreement between Grantor and Grantee providing for the indemnification of the Grantor by Grantee. The recommended actions must, at a

minimum, comply with the Pennsylvania Prescribed Burning Practices Act (Act 17 of 2009) and the standards established by the Pennsylvania Bureau of Forestry and the Pennsylvania Prescribed Fire Council, Training and Standards Committee current at the time of the granting of this Conservation Easement and its successors or an alternative standard approved by Grantor and Grantee.

3.4.c Within twelve (12) months of the granting of this Conservation Easement, the Grantee will, at its sole cost and responsibility, conduct a forest and carbon inventory, prepare the initial ten (10) year Forest Management Plan for the Protected Property to the FSC-US Forest Management Standard, and enroll the Protected Property in the Grantee's FSC Certified Forest Manager Certificate. The Grantee will, at the Grantee's sole cost, provide the Grantor with FSC-US certification for the Protected Property for the initial ten (10) year period of this Conservation Easement except as described in 3.4.d of this Agreement.

3.4.d If, as determined by a third-party independent forest certification audit, the Grantor has deviated from the recommendations of the initial ten (10) year Forest Management Plan to the extent that the continued certification of the Protected Property under the FSC-US Forest Management Standard is jeopardized and/or precluded, then the Grantee may require the Grantor, at the Grantor's sole cost and responsibility and within six (6) months of the Grantee making such a determination and providing written notification to the Grantor, to conduct all actions that are necessary to certify the Protected Property under the FSC-US Forest Management Standard and that are necessary to monetize forest carbon benefits from the Protected Property and in default of such actions by Grantor, remove the Grantor from the Grantee's FSC Certified Resource Manager Certificate.

3.4.e Harvest Plans must be prepared prior to any substantial forest product harvesting operation. Harvest plans will be reviewed and approved by the Grantee to determine their consistency with the Forest Management Plan and will meet the forest certification standard. In addition, the Grantor and their assigned representatives including, but not limited to the Grantor's forester and harvesting contractor shall meet

with the Grantee on-site prior to any substantial harvesting operation to review proposed harvest operations, including but not limited to the placement, construction and decommission of log yards, skid trails, and haul roads. The Grantor will notify and provide the Grantee with a Harvest Plan at least 30 days prior to any substantial harvesting on the property.

3.4.f Notwithstanding anything contained herein to the contrary, the provisions of this Paragraph 3.4 shall in no way be interpreted to preclude the Grantor's right and ability to manage and operate the Protected Property in order to produce potable drinking water for the customers of the City's water system.

3.5 The right to mine sand, gravel and rock solely for infrastructure improvements on the Protected Property, in accordance with all applicable laws and Best Management Practices, provided that the disturbed area for mining does not exceed two (2) acre(s) in size alone or ten (10) acres in aggregate for the entire Protected Property. No other hard mineral mining is permitted except as may be permitted under Paragraph 2.8 of this Agreement.

3.6 The right to conduct agricultural activities on existing fields as documented in the Easement Documentation Report. Such activities must be done subject to all applicable Agricultural Best Management Practices and under a Nutrient Management Plan or similar document prepared by the appropriate county Soil and Water Conservation District or Natural Resource Conservation Service with highest priority placed on avoiding soil erosion and impacts to water quality. No cattle will be allowed in any wetland or watercourse. Forested areas may not be cleared for additional agricultural use but reforestation of fallow fields is permitted.

3.7 The right to retain and control public access to the Protected Property including the right to assign hunting and fishing rights either through lease, public access, or other mechanism consistent with the goals of the Forest Management Plan as described in Paragraph 3.4 of this Agreement. Recreational motorized vehicle use under a recreational lease scenario will be jointly determined and agreed upon by the Grantor and Grantee and shall only be granted on existing roads and trails, or new roads and trails

established for forest management activities and as specified in the Forest Management Plan.

3.8 The right to operate motorized vehicles as necessary and reasonable for forest management activities consistent with the goals of the Forest Management Plan in Paragraph 3.4 of this Agreement and as necessary and reasonable for water production and distribution activities and for the security of the Protected Property.

3.9 The right to enter into commercial wind development. Should the Grantor pursue commercial wind development, the Grantor shall:

3.9.a Comply with permitting/approval requirements established by the Pennsylvania Game Commission (PGC) and US Fish and Wildlife Service (USFWS) for natural resource protection as fully described in the *PGC Wind Energy Voluntary Cooperative Agreement*, *PGC Special Use Permits for Wind Energy Projects*, *PGC Pre and Post-Construction Monitoring of Bat Populations at Industrial Wind Turbines Sites* and the *USFWS Wind Turbine Guidelines Advisory Committee Recommended Guidelines* (March 4, 2010) ; and

3.9.b Comply with the Pennsylvania Game Commission permitting/approval requirements regarding the presence of Indiana bats, a federally listed species, all other federally listed species, and bird species of conservation concern identified in the Second Breeding Bird Atlas of Pennsylvania; and comply with permitting/approval requirements of- the Fish & Boat Commission regarding Pennsylvania state-listed species. Critical areas for these species should be avoided; and

3.9.c Make reasonable attempts to Access the Wild Creek Watershed property from the top of the Plateau rather than from below, to minimize erosion along the 1,100-foot vertical gradient; and shall

3.9.d Communicate with adjacent neighbors and stakeholders to minimize community concerns such as visual and sound impacts; and

3.9.e Use existing roads or cleared areas whenever reasonably possible as shown in **Exhibits C & D**; and

3.9.f Will make best efforts to avoid the development of wind generation in barrens, wetlands, steep slopes, and rocky outcrops as identified on **Exhibits C & D** and will manage the before mentioned areas to Forest Stewardship Council (FSC) standards described in section 3.4 designated as high conservation value forest or sensitive biodiversity areas in the Forest Management Plan or Easement Documentation Report.; and

3.9.g Minimize new disturbance to large contiguous forest patches as identified on **Exhibits C & D**. In cases where identified large contiguous forest patches conflict with wind development siting requirements, Grantor will consult with Grantee to offset, minimize and ensure siting has the minimum impact possible.

3.10 The right to enter into commercial solar energy projects or other types of related energy projects, provided that such solar energy projects or other types of related energy projects do not cause a Material Reduction (as that term is defined in the Carbon Agreement) otherwise obtainable on the Protected Property, and the associated infrastructure is located in the open and cleared areas identified on **Exhibits C & D**.

3.11 The Grantor and the Grantee acknowledge that the exercise of any reserved right enumerated herein by the Grantor shall not relieve the Grantor from complying with or obtaining any permit from any applicable governmental authority prior to the exercise thereof.

4. Grantee's Rights. To accomplish the purpose of this Conservation Easement, the following rights are granted to the Grantee by this Conservation Easement:

4.1 The right to preserve and protect the conservation values of the Protected Property as established in the Easement Documentation Report.

4.2 Right of Entry. The right of the Grantee and its agents to enter the Protected Property at all reasonable times and with prior notice and, if necessary, across other lands

retained by the Grantor, for the purposes of: (a) inspecting the Protected Property to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement; (b) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor; and (c) monitoring and management activities related to forest management and forest management certification as described in Paragraph 3.4 of this Agreement and as described below. Grantee's right of entry is, however, conditioned upon Grantee holding Grantor harmless and indemnifying Grantor for and against any suits, actions, damages, losses and judgments entered against or incurred by Grantor because of Grantee's entry onto the Protected Property

4.3 Forest Management Compliance. The right to review and approve Grantor's Forest Management Plan and Harvest Plans. These plans will be reviewed at a minimum annually at a meeting between the Grantor and Grantee and as needed to ensure compliance with the forest management standard in Paragraph 3.4 of this Agreement, and at the request of the Grantor or Grantee, with the Grantor's forester, logger and other service providers. Grantee will be notified in writing at least 30 days prior to any harvesting on the Protected Property.

4.4 Monitoring. The right, in accordance with Paragraph 4.2 of this Agreement, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on the Protected Property.

4.5 Enforcement. The right, in accordance with Paragraph 10 of this Agreement, to prevent any activity on or use of the Protected Property that is inconsistent with the provisions of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use that would cause a default by Grantor under the Carbon Agreement (as hereinafter defined).

4.6 Discretionary Consent. The Grantee's consent for activities otherwise prohibited under paragraph 2 of this Agreement, or for any activities requiring the Grantee's consent under paragraph 3 of this Agreement, may be given under the following conditions and

circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in paragraph 2 of this Agreement, are deemed desirable by the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the Grantee's consent under paragraph 3 of this Agreement, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the provisions of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Protected Property. Notwithstanding the foregoing, the Grantee and the Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any residential, commercial or industrial structures or any commercial or industrial activities not provided for above, or to prohibit such activities that are consistent with the Grantor's use of the Protected Property for the production of potable drinking water.

4.7 Carbon Sequestration and Ecosystem Services. The Protected Property may be used in connection with and in furtherance of programs related to carbon emissions and/or sequestration credits, nutrient and/or water quality credits, or habitat mitigation banks, or other similar offset, banking, mitigation, or compensation programs. This Conservation Easement does not preclude Grantor and Grantee from entering into separate agreements to inventory, have verified, market and share in the revenue generated by carbon sequestration or other ecosystem services described above provided by the Protected Property. The Parties acknowledge that the Grantor has entered into an Agreement for the Development, Verification, Registration, and Marketing of Greenhouse Gas Emission Reduction Benefits (the "Carbon Agreement") with Blue Source LLC for ten (10) years; the terms and provisions of the Carbon Agreement are incorporated herein by reference. The Grantee reserves Rights of First Negotiation and Refusal to benefit from and to provide services to monetize the programs described in

section 4.7 above on and from the Protected Property with respect to any greenhouse gas emission reduction benefits not covered by the Carbon Agreement with Blue Source LLC, including greenhouse gas emission reduction benefits after the Carbon Agreement expires and during the remainder of the Term of this Conservation Easement, and for any and all carbon emission credits or compensation arising from the protection and certified management of the Protected Property.

4.8 Management. Grantor and Grantee acknowledge the Grantee may request to manage barrens habitat, and rare plant and animal populations, if necessary to ensure their continued presence and viability on the Protected Property. The Grantor reserves the right to approve or deny such requests; such approval shall not be unreasonably withheld, provided that such approval does not further restrict Grantor's use of Protected Property. Such activities shall be in accordance with management practices of the Grantee, which may include but not be limited to mowing, fencing, trapping and prescribed burning in accordance with Paragraph 3.4b(ix) of this Agreement. Any such management activities shall be set forth in appendices to the Forest Management Plan.

5. Access. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.

6. Costs and Liabilities. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property and all improvements located on the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. The Grantor agrees to release, hold harmless, defend and indemnify the Grantee from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which the Grantee may suffer or incur as a result of or arising out of the activities of Grantor or its lessees on the Protected Property. The Grantee agrees to release, hold harmless, defend and indemnify the Grantor from any and all liabilities including, but not limited to, injury, losses,

damages, judgments, costs, expenses and fees which the Grantor may suffer or incur as a result of or arising out of the activities of the Grantee on the Protected Property.

7. Taxes. The Grantor is currently exempt from the payment of any real estate taxes or other assessments levied on the Protected Property. If the Grantor documents and provides reasonable proof the reversal of tax exempt status on all Protected Property is imminent due to the creation and sales of carbon benefits, Grantor recognizes it could terminate the “Carbon Agreement” between Blue Source, LLC and Grantor. Should the Blue Source, LLC and Grantor “Carbon Agreement” be terminated for the above cause, Grantee agrees to compensate Grantor at a rate of \$25,000 (twenty five thousand) dollars per year for the remainder for the Blue Source, LLC, Grantor “Carbon Agreement”.

8. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement subject to the approval of the City Council and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

9. Hazardous Waste. The Grantor covenants and represents that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that to the best of its knowledge and belief, but without investigation, there are not now any underground storage tanks located on the Protected Property.

10. Grantee's Remedies. In the event that the Grantee becomes aware of a default by Grantor of the terms of this Conservation Easement, the Grantee shall give notice to the Grantor in accordance with Paragraph 17.5 of this Agreement, and request corrective action sufficient to abate such default and if possible, restore the Protected Property to its previous condition at the time of this grant. Failure by the Grantor to cure the default within thirty (30) days after receipt of such notice shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement unless Grantor has commenced action to cure the default within the 30 days and continues to attempt to cure, in which case Grantor shall be given an additional 30 days in which to cure the default; to require the

restoration of the Protected Property to its previous condition; to enjoin such non-compliance by temporary or permanent injunction in a court of competent jurisdiction.

10.1 Emergency Enforcement. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, the Grantee may pursue its remedies under this paragraph without prior notice to the Grantor or without waiting for the period for cure to expire.

10.1 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and the Grantor hereby waives any defense of laches with respect to any delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

10.2 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by unauthorized wrongful acts of third persons, at Grantee's option, Grantor agrees to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

10.3 Standing. By virtue of the Grantee's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies for Grantor's default under this Agreement.

11. Parties Subject to Easement. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors to the Grantor in interest and shall continue as a servitude running for a period of sixty (60) years from the Effective Date with respect to the Protected Property.

12. Subsequent Transfers. The Grantor agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property; and the Grantor further agrees to notify the Grantee of any pending transfer at least thirty (30) days in advance.

13. Merger. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.

14. Assignment. The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be qualified as a "holder" under the Conservation and Preservation Easements Act. Grantee shall provide Grantor with notice in accordance with paragraph 18.5 of this Agreement, of any assignment of its interests under the Agreement.

15. Default or Termination of Carbon Agreement by Blue Source, LLC. The Grantor and Grantee acknowledge and agree that Grantor has or is about to enter into the Carbon Agreement, which Carbon Agreement shall be read in *pari materia* with this Agreement. In the event of a default by Blue Source, LLC under the Carbon Agreement, which is not cured under any cure period provided therein, or in the event Blue Source, LLC terminates the Carbon Agreement, as provided therein, Grantor and Grantee agree that the Grantee may assume the obligations of Blue Source, LLC under the Carbon Agreement or find a third party to assume such obligations within 120 days after such Default by Blue Source, LLC. Should Grantee be unable to assume the obligations of Blue Source, LLC under the Carbon Agreement, Grantee agrees to compensate Grantor at an annual rate equal to 50% of the average yearly carbon revenue received or to be received by the Grantor as of the date of such default or termination by Blue Source, LLC and thereafter annually for the remainder of the 10 year Carbon Agreement but in no event less than \$25,000.00 per year, such compensation to be paid annually by Grantee. Should the Carbon Agreement fail to generate revenue to Grantor as of the date of the default or termination by Blue Source, LLC, Grantee agrees to compensate grantor \$25,000.00 for the remainder of the 10 year Carbon Agreement, such compensation to be made annually.

16. Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests, if any

17. Miscellaneous Provisions.

17.1 Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

17.2 Successors and Assigns. The term "Grantor" shall include the Grantor and the Grantor's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term "Grantee" shall include The Nature Conservancy and its successors and assigns.

17.3 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

17.4 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

17.5 Notices. Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing: Grantor: Bethlehem Authority, 10 East Church Street, Room 307, Bethlehem, PA 18018, Attn: Stephen Repasch, Executive Director. Grantee:

The Nature Conservancy, 4245 N. Fairfax Drive, Suite 100, Arlington, Virginia 22203 and 2101 North Front Street, Building #1, Suite 200, Harrisburg, Pennsylvania 17110.

17.6 Jurisdiction; Venue. Any and all matters of dispute between the parties to this Agreement, whether arising from the Agreement itself or arising from alleged extra-contractual facts prior to, during, or subsequent to the Agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, regardless of the legal theory upon which such matter is asserted. All matters in dispute shall be heard before the Court of Common Pleas of Northampton County, Pennsylvania.

17.7 Coal Rights Notice. The following notice is given to the Grantor solely for compliance with the requirements of the Conservation and Preservation Easements Act, Act 29 of 2001, and as amended thereafter:

Notice: This Conservation Easement may impair the development of coal interests, including workable coal seams or coal interests which have been severed from the Protected Property.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee for the term described above.

IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

Witness:

Grantor:

BETHLEHEM AUTHORITY

By: _____

Print Name: _____

Title: _____

Witness:

Grantee:

THE NATURE CONSERVANCY

By: William W. Kunze

Its: State Director

STATE OF)
COUNTY OF) SS:

On this ____ day of _____, 20__, before me personally appeared _____, to me personally known, who, being by me duly sworn did say that ____ is the _____ of the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF } SS:

On this ____ day of _____, 20__, before me personally appeared William W. Kunze, to me personally known, who, being by me duly sworn did say that he is the State Director of The Nature Conservancy of Pennsylvania, the corporation named in the foregoing instrument; that the seal affixed to said instrument is the corporation seal of said corporation; and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires: