

STATE OF ALABAMA)

SHELBY COUNTY)

DECLARATION OF CONSERVATION EASEMENT

THIS DECLARATION OF CONSERVATION EASEMENT (this "Easement") is entered this the 17th day of September, 2002, by Barbara M. Tickle, a married woman, joined by her husband, T. Charles Tickle (the "Grantor"), in favor of The Water Works and Sewer Board of the City of Birmingham, an Alabama public corporation (the "Grantee").

RECITALS

WHEREAS, the Grantor is the owner of certain real property located in Shelby County, Alabama, as more particularly described in Exhibit "A" attached hereto (hereinafter called the "Property").

WHEREAS, the Property is a part of the watershed of the Cahaba River system, a source of water supply for the Grantee; and

WHEREAS, the Grantee is a governmental unit within the meaning of Section 170(b)(1)(A)(v) of the Internal Revenue Code of 1986, as amended (the "Code") as required by Treas. Reg. § 1.170A-14(c)(1)(i), and a governmental body empowered to hold an interest in real estate under the laws of the state of Alabama as required by § 35-18-1, *et seq.*, Code of Alabama (1975) as amended (the "State Act").

WHEREAS, the Grantor and the Grantee desire to place this Easement on the Property described herein for the purpose of preserving the Property in its natural condition so as to protect the watershed as a source of water supply and to create a conservation easement pursuant to the State Act; and

WHEREAS, the Grantor and the Grantee desire to maintain the Property so that it may continue to enhance, protect and preserve the natural, scenic, forested and wildlife habitats of the Property in order to maintain and enhance the water quality of the Cahaba River as a source of water supply;

NOW, THEREFORE, in consideration of the exchange of real property between Grantor and Grantee, and the mutual promises and conditions set forth herein, the receipt and sufficiency Grantor hereby acknowledges, Grantor hereby grants to the Grantee a conservation easement, as currently defined in the State Act, over the Property described hereinabove for the purposes and uses described below and subject to the terms, conditions, covenants and reservations set forth below:

1. **Intent of Grantor.** Grantor hereby acknowledges and agrees that the sole purpose of the Easement hereby created is to retain, enhance, manage, protect, and preserve the natural, scenic, forested and open-space conditions and wildlife habitats of the Property and any existing improvements thereto, to maintain and enhance the water quality of the Cahaba River watershed as a source of water supply, it being the specific intent of the Grantor to permanently protect in perpetuity the Property as described herein and to create a conservation easement under Chapter 18 of Title 35 of the Code of Alabama (1975), as amended. It is also the intent of the Grantor to comply with the provisions of Treas. Reg. § 1.170A-14, the terms of which are incorporated herein by reference and the Conservation Easement shall be interrupted in accordance with such regulations.

2. **Restricted Uses.** The Grantor hereby acknowledges and agrees that the Property shall not be used for any use which is inconsistent with the intent of this Easement as set out in paragraph 1 above; provided, however, that notwithstanding anything provided in this Easement to the contrary, (i) Grantor shall have the right at all times to operate, maintain, use, repair and replace from time to time the existing drives and any paths and walkways which are currently situated on any portion of the Property and (ii) none of the terms and provisions of this Easement shall be effective as to or otherwise apply to the exercise of any rights in and to the Property by the holders of any current interest therein (*e.g.*, utility companies and holders of the mining and mineral rights in and to the Property), which interests were created at any time prior to the date of this Easement. Without limiting the foregoing, the following uses of the Property shall be prohibited:

- 2.1 future residential, commercial or industrial development;
- 2.2 the construction or improvement of any buildings, structures, or facilities used for human lodging, feeding or entertainment, including, without limitation thereto, hotels or other lodging facilities;
- 2.3 restaurants, convention centers and meeting halls; golf courses;
- 2.4 dancing or meeting pavilions;
- 2.5 exhibition halls; car wash facilities; service or gasoline stations, car repair garages and any other activities which involve the commercial servicing of internal combustion engines or provide gasoline and other petroleum products for internal combustion engines;
- 2.6 laundry and dry cleaning activities;
- 2.7 all types of landfills, including but not limited to solid waste, rubble, and environmental, regardless of whether a permit is required for the landfill;
- 2.8 slaughter houses for animals;

- 2.9 clear cutting of timber except as necessary to restrict pine beetle damages or other timber management needs in accordance with best timber management practices;
- 2.10 mining of any type of gas or minerals;
- 2.11 any activities which involve the use and/or disposal of pesticides or herbicides, except as necessary to restrict pine beetle damage or other timber management needs in accordance with best timber management practices;
- 2.12 any release of liquid discharges which would require a National Pollutant Discharge Elimination System permit (other than those already permitted);
- 2.13 activities which result in the release of air contaminants;
- 2.14 placement of fill materials; and
- 2.15 any activities which use or store products that constitute hazardous or toxic materials, hazardous or toxic substances, and /or hazardous wastes, as such terms are defined by any rule, regulation, statute, or law of any state, federal or local governmental agency, as the same may be amended from time to time, specifically including, but not limited to, regulations promulgated by the United States Environmental Protection Agency; and similar activities or facilities that have a principal purpose not related to the purpose of this Easement.

3. **Reserved Rights.** Grantor reserves to herself and to her personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of Section 2, the following rights are expressly reserved:

- 3.1 To harvest timber in accordance with good forest management procedures.
- 3.2 To engage and permit others to engage in recreational uses of the Property, that require no surface alteration or other development of the land.
- 3.3 To operate, maintain, use, repair and replace from time to time the existing drives and any paths and walkways currently situated on the Property.
- 3.4 To undertake any other actions not specifically prohibited under the terms of Section 2 above.

4. **Rights of Grantee.** To accomplish the purpose of this Easement, the following rights are conveyed to the Grantee by this Easement:

- 4.1 To preserve and protect the conservation values of the Property.
- 4.2 To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 2; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- 4.3 To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 8.
- 4.4 To enter the Easement area for the purpose of study and to make scientific observations.

Any entry by Grantee onto the Property shall be at the sole risk and expense of Grantee and shall be limited to the purposes set forth in this Section 4. Grantee does hereby indemnify, agree to defend and hold Grantor, her heirs, executors, successors and assigns, harmless, from and against any and all claims, demands, actions, losses, liabilities, damages and expenses, including reasonable attorneys' fees, suffered, paid or incurred by Grantor arising out of or by virtue of any entry onto the Property by Grantee or any of its agents, employees, contractors or invitees and any damages to the Property arising out of the exercise of the easement rights granted herein to Grantee.

5. **Running with the Land.** It is the specific intent of the parties hereto, that this Easement shall constitute an easement and servitude in and upon the Property, and shall run with the Property and shall inure to the benefit of, and shall be enforceable by the Grantee, its successors or assigns, and against present or subsequent holders and subsequent owners of the Property.

6. **Instruments Subject to Easement.** Any deed, lease, conveyance, contract or other instrument involving the Property shall be subject to this Easement, and any deed, lease, conveyance, contract or other instrument involving the Property shall be entered into and granted as if this Easement were contained therein, and this document shall be properly recorded in the office of the Judge of Probate, Shelby County, Alabama so as to be in the chain of title for the Property.

7. **Notice and Approval.**

7.1 **Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Section 3, is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than ten (10) days prior to the date Grantors intend to undertake the activity in question; provided, however, that no such notice and no approval by Grantee shall be required for Grantor to undertake any action authorized in Section 3 which are necessary due to any emergency situation. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistence with the purpose of this Easement.

7.2 **Grantee's Approval.** Where Grantee's approval is required, as set forth in Section 7.1, Grantee shall grant or withhold its approval in writing within ten (10) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

8. **Grantee's Remedies.**

8.1 **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

8.2 **Injunctive Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

8.3 **Enforcement.** The terms and provisions of this Easement may only be enforced by Grantee or any permitted assignee of Grantee, as provided in Section 14

below. No third party rights of enforcement of this Easement are created hereunder or shall be allowed.

- 8.4 **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this Section 8 without prior notice to Grantor or without waiting for the period provided for cure to expire.
- 8.5 **Scope of Relief.** Grantee's rights under this Section 8 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 8.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 8 shall be cumulative and shall be in addition to all remedies now or thereafter existing at law or in equity.
- 8.6 **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action, then Grantee shall bear all costs and expenses incurred by Grantor in connection therewith, including, without limitation, attorneys' fees and expenses and court costs.
- 8.7 **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 8.8 **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
- 8.9 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from acts of third parties not under the control of Grantors, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such clauses.

9. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

10. **Term.** The terms, covenants, conditions and restrictions set forth in this Easement shall run with and bind all of the Property in perpetuity.

11. **Governing Law.** The validity of this Agreement and any of its items, or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Alabama.

12. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provisions of this Easement and this Easement shall be construed as if the invalid, illegal or unenforceable provision had never been contained in it.

13. **Entire Agreement.** This Easement constitutes the entire agreement between the parties hereto relating to the granting of an easement in the Property, and any oral representations or other writings concerning said Easement shall have no effect.

14. **Assignment.** This Easement is transferable by the Grantee, but the Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Treas. Reg. § 1.170A –14(c)(1) (or any successor provision then applicable), and the applicable regulations promulgated thereunder; and (b) authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable); and (c) approved as a transferee by the Grantor, which approval may be withheld in the sole and absolute discretion of Grantor. To the extent Grantor approves the transferee of Grantee as provided herein, then as an additional condition of such transfer, the Grantee shall require the transferee to expressly agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise assume all of the obligations and liabilities of the Grantee set forth herein or created hereby. After such transfer, the Grantee shall have no further obligation or liability under this Easement. Nothing contained in this Easement shall be deemed to restrict or prohibit the transfer, conveyance, pledge, encumbrance, hypothecation or other alienation of the Property by Grantor.

15. **Interpretation.** If any reserved right of the Grantor under this Easement is found to be not in compliance with Section 170(h) of the Code, or any regulations promulgated thereunder, then such provision shall be interpreted and applied in such a manner as to be in compliance with Section 170(h) of the Code, or any regulations promulgated thereunder.

16. **Acceptance.** Grantee herein accepts this Easement. In accepting this Easement, Grantee represents, warrants and confirms that this Easement is in accordance with the policy of the Grantee.

17. **Notice.** Any notice required to be sent under the provisions of this Agreement shall be deemed to have been properly sent when mailed by Registered or Certified United States Mail, Return Receipt Requested, postage prepaid, to the following addresses:

THE GRANTEE:

The Water Works and Sewer Board of the City
of Birmingham
c/o Mr. Michael O. Vann, General Manager
3600 First Avenue North
P.O. Box 830110
Birmingham, AL 35283-0110

THE GRANTOR:

Barbara M. Tickle
1000 Garland Cove
Birmingham, Alabama 35242

18. **Amendments.** This Easement may be amended only by a written instrument signed by Grantor and Grantee or their respective heirs, executors, successors and permitted assigns (as limited by the terms and provisions of Section 14 above).

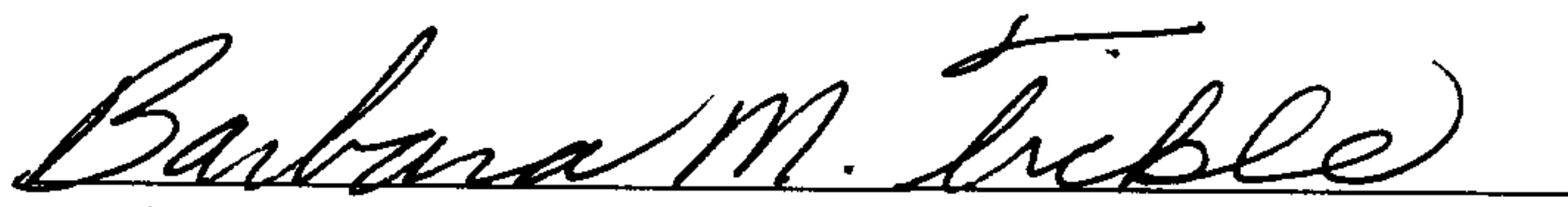
19. **Binding Effect.** This Easement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.


TO HAVE AND TO HOLD the same Easement perpetually unto the Grantee, its successors and assigns.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and has caused its corporate seal to be hereunto affixed and attested by its respective officers, who have been hereunto duly authorized, this 17th day of September, 2002.


GRANTOR:


Barbara M. Tickle


T. Charles Tickle

GRANTEE:

**THE WATER WORKS AND SEWER BOARD
OF THE CITY OF BIRMINGHAM**

By: 
Michael O. Vann
General Manager

WITNESSED:



EXHIBIT A

Legal Description

WWB/Tickle - 139166

A parcel of land situated in the Northwest quarter of the Northeast quarter of Section 28 in the Southwest quarter of the Southeast quarter of Section 21 all in Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at a 3 inch capped iron found locally accepted to be the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 28; thence run West along the South line of said quarter-quarter section for a distance of 986.65 feet to an iron pin set; thence turn an angle to the right of 125 deg. 51 min. 17 sec. and run in a Northeasterly direction for a distance of 92.65 feet to an iron pin set; thence turn an angle to the left of 11 deg. 59 min. 53 sec. and run in a Northeasterly direction for a distance of 479.26 feet to an iron pin set; thence turn an angle to the right of 04 deg. 20 min. 21 sec. and run in a Northeasterly direction for a distance of 122.38 feet to an iron pin set; thence turn an angle to the right of 02 deg. 52 min. 33 sec. and run in a Northeasterly direction for a distance of 304.53 feet to an iron pin set; thence turn an angle to the left of 03 deg. 04 min. 03 sec. and run in a Northeasterly direction for a distance of 590.42 feet to an iron pin set; thence turn an angle to the left of 04 deg. 28 min. 12 sec. and run in a Northeasterly direction for a distance of 192.65 feet to an iron pin set; thence turn an angle to the left of 05 deg. 46 min. 55 sec. and run in a Northeasterly direction for a distance of 151.70 feet to an iron pin set; thence turn an angle to the right of 12 deg. 47 min. 48 sec. and run in a Northeasterly direction for a distance of 191.27 feet to an iron pin set; thence turn an angle to the left of 05 deg. 15 min. 36 sec. and run in a Northeasterly direction for a distance of 114.64 feet to an iron pin set on the East line of the Southwest quarter of the Southeast quarter of said Section 21; thence turn an angle to the right of 155 deg. 57 min. 50 sec. and run in a Southerly direction along the East line of said quarter-quarter section for a distance of 663.89 feet to a 2 inch open-top iron found, said found iron being the Northeast corner of the Northwest quarter of the Northeast quarter of said Section 28; thence turn an angle to the left of 00 deg. 53 min. 09 sec. and run in a Southerly direction along the East line of said quarter-quarter section for a distance of 1329.15 feet to the point of beginning; being situated in Shelby County, Alabama.