

STATE OF ALABAMA)
JEFFERSON COUNTY)

1158

COVENANT AND AGREEMENT

WHEREAS, the undersigned Kovach-Eddleman Properties, an Alabama general partnership, and 280 Associates, Ltd., an Alabama limited partnership, (hereinafter jointly called "Kovach") are the owners of that real estate located in Jefferson and Shelby County, Alabama which is described in Exhibit "A" attached hereto (hereinafter called "Real Estate"); and

WHEREAS, Kovach has entered into an agreement to sell the Real Estate to Investment Southeastern, Ltd., a Georgia limited partnership (hereinafter called "S.E."), (Kovach and S.E. shall hereinafter collectively be called "Owner"); and

WHEREAS, the Real Estate is situated within the Cahaba River-Lake Purdy Watershed (hereinafter called "Watershed") and The Water Works Board of the City of Birmingham, a public corporation (hereinafter called "Board"), desires to insure that any development of, or construction on, the Real Estate will be done so as to provide for the protection of the Watershed; and

WHEREAS, the Real Estate consists of approximately 4.413 acres in Jefferson County, City of Birmingham and 10.276 acres in Shelby County; and

WHEREAS, the Owner wishes to have the zoning classification of the Real Estate in Jefferson County, City of Birmingham changed to a zoning classification which would permit the Real Estate in Jefferson County to be used for commercial purposes; and

*Bham Water Works
G. R. Hanson
P.O. Box - 110
Bham Al. 35283*

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WHEREAS, Owner intends to use the Real Estate in Shelby County for commercial purposes; and

WHEREAS, to induce the Board not to oppose such rezoning or use of the Real Estate and as one of the conditions of the Board's entering into an extension of mains agreement with S.E. to provide water service to the Real Estate, the Owner has agreed to subject the Real Estate to certain covenants, agreements and restrictions.

NOW, THEREFORE, the Owner does hereby declare that the Real Estate shall be subject to the following covenants, agreements and restrictions, all of which shall run with the land (the Real Estate) and shall be binding upon the Owner, and its successors and assigns;

1: S.E. shall develop and comply with a sediment and erosion control plan acceptable to the Board and the Soil Conservation Service of the United States Department of Agriculture (hereinafter called Service), which plan shall employ standard engineering procedures and shall be in compliance with the procedures and standards contained in the publication entitled "Best Management Practices for Controlling Sediment and Erosion from Construction Activities," dated August, 1980, and published by the Birmingham Regional Planning Commission, and which plan must satisfactorily control the temporary and long-term sediment and erosion pollution from all present and future construction and development activities on the Real Estate. The Owner acknowledges and agrees that the plan must have the written approval of the Service and the Board and the bond referred to hereinafter must be delivered to the

Board before any improvements are constructed on the Real Estate and before the pipelines and other facilities necessary to provide water service to the Real Estate are installed. It shall be the obligation of S.E. to control satisfactorily such temporary and long-term sediment and erosion pollution and if the plan does not do so, then, notwithstanding the fact that the plan was approved by the Board and the Service, S.E. must prepare another plan which shall satisfactorily control such temporary and long-term sediment and erosion pollution (hereinafter the original plan and such other plan, if any, shall be referred to jointly as "Plan"). If S.E. fails to implement, and comply with, the provisions of the Plan as approved by the Board, the Board shall give S.E. written notice of such failure and if S.E. does not cure such failure to comply with the provisions of the Plan within thirty days of the day such notice is sent to S.E., the Board and its employees, agents, representatives and contractors shall have the right to enter upon the Real Estate and to perform whatever work may be necessary to comply with the provisions of the Plan, including the termination or correction of any practices or conditions which are not in compliance with the Plan, and S.E. shall promptly reimburse the Board for all reasonable costs and expenses incurred by the Board in connection therewith, including without limitation, court costs and attorney's fees.

2. To insure the Board that the Plan will be implemented and complied with, that the Real Estate will be maintained in accordance with the Plan and that S.E. will comply with its obli-

gations and agreements under the Plan, and to provide the Board with funds with which the Board may fulfill such obligations and agreements if S.E. does not do so, S.E. shall deliver to the Board, within ten days after the Board has approved the Plan, a surety bond, in the amount of \$3,700, the form, content and issuer of which bond shall be subject to the written approval of the Board. The bond shall be renewable annually, and S.E. shall pay the premium for the bond. At any time, either before or after the issuance and delivery of the bond, S.E. or its successors or assigns may deposit with the Board the sum of \$3,700 in lieu of the bond. The Board shall have the right to use the money, or such part thereof as may be necessary, to fulfill S.E.'s obligations and agreements under the Plan if S.E. fails to do so. If S.E. or its successors or assigns deposit cash with the Board instead of a bond, the Board will pay S.E. or its successors or assigns interest on such money at the rate at which it pays interest on other deposits held by it.

The covenants contained herein may be enforced by the Board by proceedings at law or in equity against any party or parties, person or persons violating or attempting to violate any covenant, agreement or restriction contained herein, either to restrain violation, or to enforce the performance, of the covenant, agreement or restriction or to recover damages for the failure to comply with such covenants, agreements or restrictions.

These covenants, agreements and restrictions are to run with the land and shall be binding on the Owners and their successors

and assigns (i) with respect to that portion of the Real Estate situated in Jefferson County, Alabama, for a period of thirty (30) years from the date upon which this instrument is recorded in the office of the Judge of Probate of Jefferson County, Alabama, after which time these covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the Board has been recorded in the Office of the Judge of Probate of Jefferson County, Alabama agreeing to terminate these covenants, agreements and restrictions; and (ii) with respect to that portion of the Real Estate situated in Shelby County, Alabama, for a period of thirty (30) years from the date upon which this instrument is recorded in the Office of the Judge of Probate of Shelby County, Alabama, after which time these covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the Board has been recorded in the Office of the Judge of Probate of Shelby County, Alabama agreeing to terminate these covenants, agreements and restrictions.

When any portion of the Real Estate is conveyed by S.E. to a non-related entity or person, neither S.E., nor any general partner of S.E. shall have any personal liability for S.E.'s failure to comply with the provisions, terms and conditions of the Plan, provided that the bond is in full force and effect or that said \$3,700 has been deposited with the Board in lieu of the bond. The conveyance of the Real Estate by Kovach to S.E. shall not relieve S.E. of any of its personal liabilities hereunder.

The covenants, agreements and restrictions contained herein may not be amended or changed except by the written agreement of S.E., or its successors and assigns, and the Board.

Invalidation of any one of these covenants, agreements or restrictions by judgment or court decree shall not affect any other covenants, agreements or restrictions contained herein, which shall remain in full force and effect.

This instrument supersedes that agreement dated September 17, 1984, as amended by instrument dated May 3, 1985, which agreement and instrument were recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Real Volume 2602, page 506 and Real Volume 2694, page 853, respectively, insofar as it is applicable to the Real Estate.

Any notice which is to be given by the Board or S.E. to the other party hereto shall be delivered by hand or sent by United States registered or certified mail, postage prepaid, to the parties hereto at the following addresses:

The Water Works Board of the City of Birmingham
3600 First Avenue North
Post Office Box C-110
Birmingham, Alabama 35283-0110

Investment Southeastern, Ltd.
c/o William L. Hooper
P. O. Box 725148
Atlanta, Georgia 30339

IN WITNESS WHEREOF, the undersigned Kovach-Eddleman Properties has caused this instrument to be executed by its duly authorized general partners, the undersigned 280 Associates, Ltd. has caused this instrument to be executed by its duly authorized general partners, the undersigned Investment Southeastern, Ltd. has caused

this instrument to be executed by its duly authorized general partner, and the undersigned Board has caused this instrument to be executed by its duly authorized officer, all as of this 20th day of August, 1985.

Jim Edgum
Witness

Witness

280 ASSOCIATES, LTD., an Alabama limited partnership

By: [Signature]
Frank Kovach, Jr.
General Partner

By: [Signature]
Billy D. Eddleman
General Partner

KOVACH-EDDLEMAN PROPERTIES, an Alabama general partnership

By: [Signature]
Its: General Partner

By: [Signature]
Its: General Partner

INVESTMENT SOUTHEASTERN, LTD., a Georgia limited partnership,

By: PLAZA DEVELOPMENTS, INC.,
Its General Partner

By: [Signature]
President

THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM

By: [Signature]
Its: Assistant General Manager

Attest: [Signature]
Its: Assistant Secretary

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Serry Siles, a Notary Public in and for said County in said State, hereby certify that Frank Kovach, Jr. and Billy D. Eddleman, whose names as general partners of 280 Associates, Ltd., a limited partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing instrument, they, in their capacity as such general partners, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 6th day of August, 1985.

Serry Siles
Notary Public

My Commission Expires: May 21, 1989

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Serry Siles, a Notary Public in and for said County in said State, hereby certify that Frank Kovach, Jr. and Billy D. Eddleman, whose names as general partners of Kovach-Eddleman Properties, a general partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing instrument, they, in their capacity as such general partners, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 6th day of August, 1985.

Serry Siles
Notary Public

My Commission Expires: May 21, 1989

STATE OF GEORGIA)
FULTON COUNTY)

I, Debra Ann Sword, a Notary Public in and for said County in said State hereby certify that L. H. Hearn, whose name as president of Plaza Developments, Inc., a corporation, as general partner of Investment Southeastern, Ltd., a limited part-

nership, is signed to the foregoing instrument, he as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner as aforesaid.

Given under my hand and official seal of office this 31st day of July, 1985.

Delores Jean Sewell
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Oct. 1, 1985

My Commission Expires: _____

STATE OF ALABAMA
JEFFERSON COUNTY

I, Lorathy B. Shelby, a Notary Public in and for said County in said State, hereby certify that Gene R. Harrison whose name as Assistant General Manager of The Water Works Board of the City of Birmingham, a public corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office this 20th day of August, 1985.

Lorathy B. Shelby
Notary Public

My Commission Expires: 4/12/87

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STATE OF ALABAMA
I CERTIFY THAT
1985 AUG 21 AM 10:14

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Pd. 1 00
23 50

1168
ARTICLES OF INCORPORATION
OF

FREEDOM SATELLITE TV SYSTEMS, INC.
A CLOSE CORPORATION

The Undersigned, acting as incorporators of a corporation under the Alabama Business Corporation Act, adopts the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation is Freedom Satellite TV Systems, Inc.

SECOND: The period of its duration is perpetual.

THIRD: The purpose or purposes for which the corporation is organized are: Sales and service of satellite TV systems.

FOURTH: The aggregate number of shares which the corporation shall have authority to issue is: One hundred (100) shares at one dollar (\$1.00) par value.

FIFTH: Provisions for the regulation of the internal affairs of the corporation are: None

SIXTH: The address of the initial registered office of the corporation is 2960 Highway 31 South, Pelham, Alabama, 35124.

SEVENTH: The Number of directors constituting the initial board of directors of the corporation is two and the name and address of the person who is to serve as director until the first annual meeting of shareholders or until their successors are elected and shall qualify is:

<u>NAME:</u>	<u>ADDRESS:</u>
N. H. Phipps	Route 11, Box 381-A Statesville, NC 28677
B. L. Phipps	737 Valley Drive Birmingham, Alabama 35206

EIGHTH: The name and address of each incorporator is:

<u>NAME:</u>	<u>ADDRESS:</u>
N. H. Phipps	Route 11, Box 381-A Statesville, NC 28677
B. L. Phipps	737 Valley Drive Birmingham, Alabama 35206

J. Glover
844 Elm St
Birm, AL 35206

NINTH: The corporation is a close corporation authorized by Section thru 10-2A-313, Code of Alabama (1975), as amended.

TENTH: All issued shares of stock are subject to restrictions on transfer permitted by Section 10-2A-41 & Section 10-2A-301, Code of Alabama (1975) as a member.

ELEVENTH: For purposes of determining the number of holders of record of the stock of the corporation, stock which is held in joint tenancy or common tenancy or by the entireties shall be treated as held by one share-holder.

TWELTH: All of the corporation's issued shares of all classes, exclusive of treasury shares, shall be held of record by not more than 10 persons.

The formation of the corporation as a close corporation has been authorized by the affirmative vote of all holders of and subscribers to shares of the corporation.

Dated August 21st, 1985.

N. H. Phipps
N. H. PHIPPS

B. L. Phipps
B. L. PHIPPS



STATE OF ALABAMA

I, Don Siegelman, Secretary of State, of the State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that pursuant to the provisions

of Section 10-2A-26, Code of Alabama 1975, the corporate name _____

Freedom Satellite TV Systems, Inc.

is reserved as available based only upon an examination of the corporation records on file in this office for the exclusive use of Freedom Satellite TV Systems, Inc. for a period of one hundred twenty days from this date. In the case of a domestic corporation, the name of the county in which the corporation was or is proposed to be incorporated is Jefferson. I further certify that as set out in the application for reservation of corporate name, the Secretary of State's office does not assume any responsibility for the availability of the corporate name requested nor for any duplication which might occur.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, on this day.

February 21, 1985 - expires 3-22-85

Date

Don Siegelman

Secretary of State

State of Alabama

SHELBY

County

CERTIFICATE OF INCORPORATION

OF

FREEDOM SATELLITE TV SYSTEMS, INC.

The undersigned, as Judge of Probate of SHELBY County, State of Alabama, hereby certifies that duplicate originals of Articles of Incorporation for the incorporation of FREEDOM SATELLITE TV SYSTEMS, INC., duly signed pursuant to the provisions of Section 64 of the Alabama Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Judge of Probate, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation of FREEDOM SATELLITE TV SYSTEMS, INC., and attaches hereto a duplicate original of the Articles of Incorporation.

GIVEN Under My Hand and Official Seal on this the 21st day of AUGUST, 19 85.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT IS VALID

1985 AUG 21 PM 12:31

Thomas A. Brouder, Jr.

Judge of Probate

