

1607

M-235

1158

STATE OF ALABAMA )  
JEFFERSON COUNTY )

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

Shelby Co.  
BOOK 28 PAGE 585

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Bham Water Works  
D. R. Hanson  
P.O. Box - C - 110  
Birmingham 35282

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

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BOOK

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

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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.

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Jim Edgerton  
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

[Signature]  
Witness

\_\_\_\_\_  
Witness

BOOK 28 PAGE 591

[Signature]  
Witness

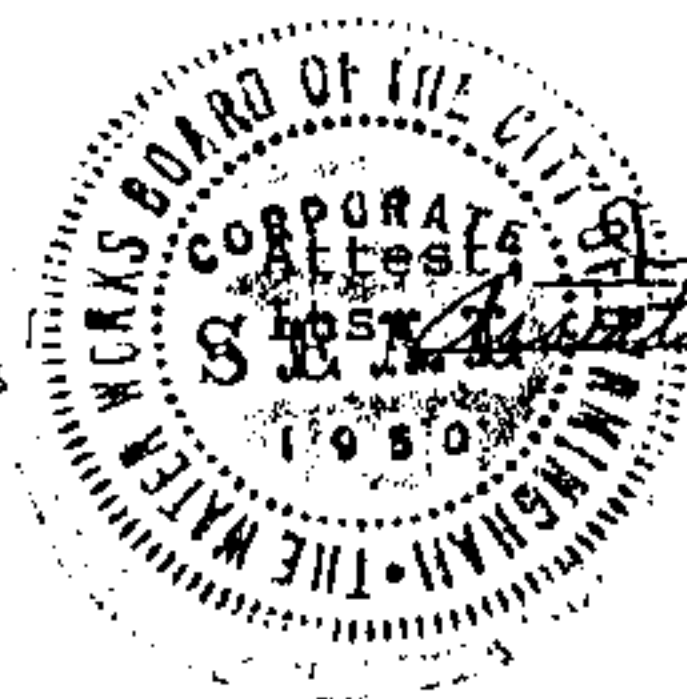
INVESTMENT SOUTHEASTERN, LTD., a Georgia limited partnership,

By: PLAZA DEVELOPMENTS, INC.,  
Its General Partner

By: L. H. L. L. L.  
President

THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM

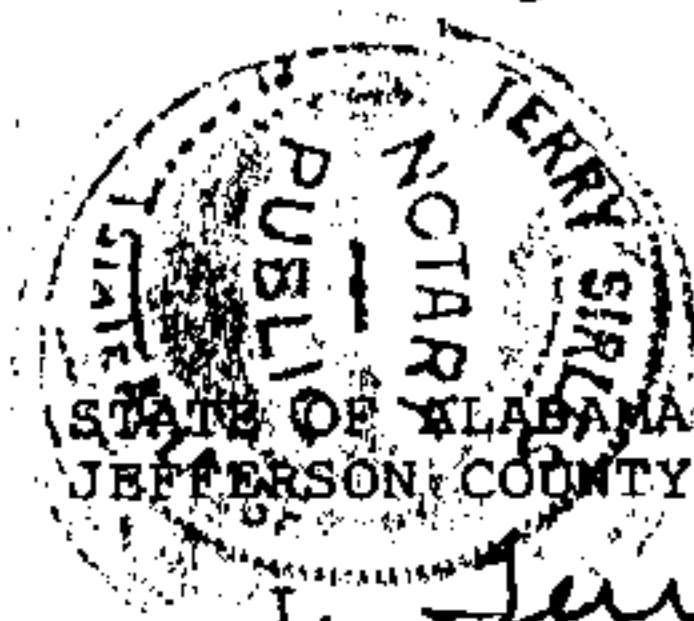
By: [Signature]  
Its: Assistant General Manager



STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, Terry 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.



Terry Siles  
Notary Public

My Commission Expires: May 21, 1989

I, Terry 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.

Terry Siles  
Notary Public

My Commission Expires: May 21, 1989

STATE OF GEORGIA )  
FULTON COUNTY )

I, Debra Ann Sward, 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 Seward  
Notary Public

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

My Commission Expires: \_\_\_\_\_

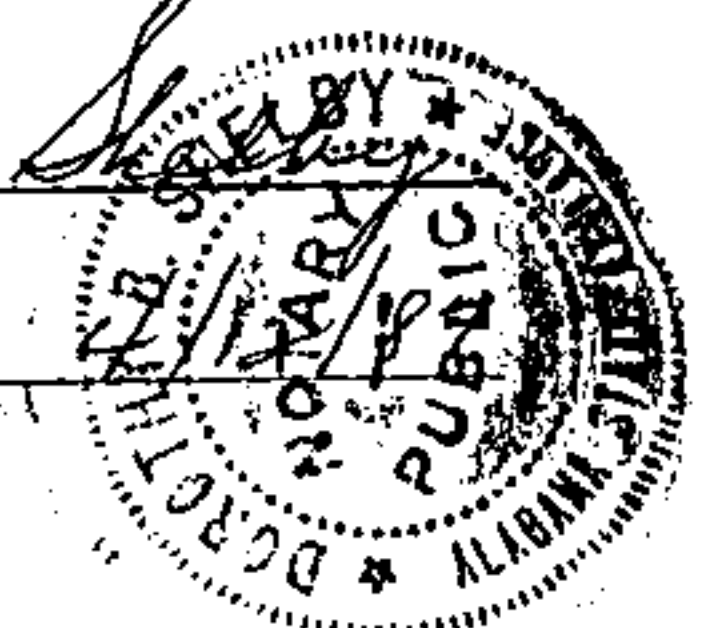
STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, Barth 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.

Barth B. Shelby  
Notary Public

My Commission Expires: \_\_\_\_\_



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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1985 AUG 21 AM 10:14

James H. Harrison  
JUDGE OF PROBATE

Rec 2250  
Ind 100  
2350

RECEIVED	
ASST. GEN. MGRS. OFFICE	
AUG 29 1985	
File No.	_____
Referred To	_____
For {	Ans. _____
	Info. _____
Date Ans.	_____

Exhibit "A"

PARCEL I:

A tract or parcel of land situated in the SW 1/4 of the SW 1/4 of Section 25, Township 18 South, Range 2 West, Jefferson County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of the SW 1/4 of the SW 1/4 of Section 25, Township 18 South, Range 2 West; thence North along the West line of said 1/4-1/4 section a distance of 524.51 feet to a point; thence  $128^{\circ}28'32''$  to the right in a Southeasterly direction a distance of 762.53 feet to a point; thence  $21^{\circ}38'50''$  to the left in a Southeasterly direction a distance of 323.18 feet to a point on the South line of said 1/4-1/4 section; thence  $165^{\circ}55'18''$  to the right in a Westerly direction along the South line of said 1/4-1/4 section a distance of 907.31 feet to the point of beginning.

Said Property consist of approximately 4.413 acres.

Parcel II:

A tract or parcel of land situated in the NW 1/4 of the NW 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Northwest corner of the NW 1/4 of the NW 1/4 of Section 36, Township 18 South, Range 2 West; thence East along the North line of said 1/4-1/4 section a distance of 907.31 feet to a point; thence  $88^{\circ}02'30''$  to the right in a Southerly direction a distance of 200.18 feet to the P. C. (point of curve) of a curve to the right having a radius of 227.33 feet and a central angel of  $37^{\circ}41'$ ; thence Southerly and Southwesterly along the arc of said curve a distance of 149.51 feet to the P. T. (point of tangent) of said curve; thence Southwesterly, tangent to said curve, a distance of 151.20 feet to the P. C. (point of curve) of a curve to the left having a radius of 1282.00 feet and a central angle of  $04^{\circ}34'26''$ ; thence Southwesterly, along the arc of said curve a distance of 102.34 feet to the P. T. (point of tangent) of said curve; thence Southwesterly, tangent to said curve, a distance of 197.20 feet to a point on the Northeasterly right-of-way of U. S. Highway No. 280; thence  $94^{\circ}34'26''$  to the right in a Northwesterly direction along said right-of-way line a distance of 503.73 feet to a point; thence  $00^{\circ}32'45''$  to the left in a Northwesterly direction along said right-of-way line a distance of 254.49 feet to a point on the West line of said 1/4-1/4 section; thence  $53^{\circ}01'13''$  to the right in a Northerly direction along said 1/4-1/4 section line a distance of 277.41 feet to the point of beginning.

Said Property consist of approximately 1.85 acres

STATE OF ALABAMA  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1986 APR 25 AM 10:32

Re Recorded  
Thomas A. [Signature]  
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$ 25.00
Index Fee	1.00
TOTAL	\$ 26.00