

EXHIBIT "B"

COVENANTS, CONDITIONS, RESTRICTIONS, RULES AND REGULATIONS FORMING A PART OF THE CONVEYANCE EXECUTED BY ROBERT B. POPE AND DR. JERRY A. STIRMAN IN FAVOR OF THE CITY OF TYLER, AND AFFECTING LAND DESCRIBED IN CONDEMNOR'S PETITION IN CAUSE NO. 13,070 IN THE COUNTY COURT OF SMITH COUNTY, TEXAS

- (a) Any marina, club house, restaurant, or other related facilities to be constructed by Grantor and those claiming under them upon the land in question shall comply with the requirements of the City of Tyler, and all plans for the construction thereof must be submitted to, and approved by, the City Engineer prior to commencement of construction.
- (b) Cutting of trees on the land shall be limited to the extent necessary for clearing the foundation site for construction; any additional cutting of trees shall be done only upon the written consent of Grantee. Moreover, except as provided in the preceding sentence, cutting of trees on the land lying above the 378 foot elevation level by private persons claiming under Grantors is prohibited except with the written consent of Grantors.
- (c) No livestock or poultry of any kind shall be kept on any part of the land described in Exhibit "A"; PROVIDED, that this restriction does not apply to household pets such as a dog or cat. Fires for disposal of combustible trash must be contained, enclosed, and carefully supervised. Private owners shall keep their lots and grounds clean and free of all trash, garbage, and debris at all times.
- (d) No house or cottage shall be erected containing less than 250 square feet, including porch. The exterior plans shall be submitted to, and approved by, the City Engineer before construction is begun. No more than one residence and one boathouse and pier may be built on one lot; however, this provision does not apply to lots leased or sold to corporations, clubs, groups, or companies. Plans for the construction of such facilities and improvements must be submitted to, and approved by, the City Engineer before construction is begun.
- (e) Excluding boathouses, piers, etc., no building shall be constructed within less than 100 feet back of the 378 foot elevation level, nor upon less than one-half (1/2) acre of land, calculated with respect to land above elevation 378, the ground level of which building must be at least 380 feet above sea level at the lowest point to be occupied by the building; and no septic system may be constructed or maintained unless the surface of the ground where situated is at least 380 feet in such elevation. Property owners, however, in making permanent improvements, may bring the elevation of the land up to the required 380 feet above sea level by

filling with dirt or earthen materials, but such minimum elevation must be maintained.

- (f) The owner, or those claiming under the owner, of any lot carved out of the said property shall comply with the same Rules and Regulations promulgated by the City of Tyler, or to be so promulgated, for the protection of, and applicable to LAKE TYLER, insofar as the same pertain to improvements and activities on or affecting said property.
- (g) Plans and specifications for all residences, cottages, and other buildings shall make provisions for proper sanitation facilities consistent with the foregoing requirements and the requirements applicable to like facilities on LAKE TYLER.
- (h) Septic tanks with lateral absorption field shall be employed as the method of sewage disposal and a distance of at least one hundred (100) feet from the lake water surface at the spillway level elevation of 376 feet above sea level (the land where situated to be at least 380 feet in elevation). Septic tanks shall have a minimum capacity of five hundred (500) gallons and a minimum of two hundred (200) feet of lateral absorption. Installation of all septic tanks shall conform to the requirements and standards adopted and/or approved by the Tyler-Smith County Health Unit, and shall conform to requirements and specifications applicable to similar facilities in use around Lake Tyler.
- (i) Outdoor or pit-type toilets shall be, and they are prohibited.
- (j) Private owners shall collect and remove from their premises at least once weekly, all garbage and burnable trash; Provided, that burnable trash may be burned, so long as no garbage or trash is permitted to enter the lake. No dump ground or garbage incinerator shall be maintained on said land.
- (k) These restrictions, covenants and conditions may be enforced in the courts by Grantors, or by the owner of any part of said land; or by the City of Tyler, whether they act jointly or severally. In the event the City of Tyler sues for and recovers any judgment enforcing any of the applicable covenants herein set forth; it shall be entitled to recover from the offending party or parties, its costs and reasonable attorney fees.
- (l) In addition to any other sanctions and/or remedies imposed by the City of Tyler for violations of the provisions and regulations adopted by the City of Tyler hereunder, or in accordance herewith, the City Commission of the City of Tyler may, at its election, summarily and without prior notice, temporarily suspend all rights of any party, or parties, to the use of the property between elevation 386 feet and the normal water line of Lake Tyler East Reservoir, when such suspension, in the discretion of the City Commission, is necessary in order to protect, preserve and/or restore the safety and purity of the water of Lake Tyler East Reservoir for human consumption. During all periods of suspension, written

notice of such temporary suspension shall be immediately mailed to all such property owners whose access to Lake Tyler East is directly affected, to their address as shown by the records of the City of Tyler. The agents, servants and employees of the City of Tyler shall have the exclusive right to go upon the property covered by such suspension during the continuance thereof, and shall have the right to take all corrective action which the City Commission deems necessary to protect, preserve, and/or restore the safety and purity of the water of the Reservoir for human consumption. In a proper case the City Commission may expressly waive this requirement as to the exclusive right of access to the premises.

Unless sooner terminated by the voluntary action of the City of Tyler, any period of temporary suspension thus imposed hereunder shall terminate at the end of thirty (30) days after its imposition, unless the City Commission of Tyler shall determine, after a public hearing thereon, that the period of such suspension must be extended in order to protect, preserve, and/or restore the safety and purity of the water of the Lake Tyler East Reservoir for human consumption. Notice of such public hearing shall be in writing and shall be mailed to each holder or owner of the property covered by such suspension to his address as shown in the records of the City of Tyler not less than ten (10) nor more than thirty (30) days prior to the date set for such hearing, stating the date, time, place, and general purpose of such proposed hearing. The City Commission shall determine and announce at such public hearing the activity or activities which are resulting, have resulted; or, in reasonable probability, will result in an unsafe, impure, or contaminated water supply, and may continue such period of suspension until such activity or activities and conditions cease. No appeal from a determination so made hereunder shall have the effect of suspending termination of access to the Lake Tyler East Reservoir, pending final judgment or other biding order of a court of competent jurisdiction. The City of Tyler shall not be liable for any damages allegedly resulting from any such suspension. The City of Tyler will join and cooperate in all efforts and actions instituted for the earliest practical judicial determination of any appeal made hereunder.

- (m) Any plan of subdivision of the area lying above the 378 foot elevation level, inclusive of streets and roadways, shall be subject to approval by the City of Tyler and such plans shall be submitted to, and be approved by, the City Engineer prior to commencement of work on such subdivision.
- (n) Any concessionaire serving the patrons of the lake shall be required to enter into a suitable agreement with the City of Tyler governing the construction and operation of said facilities, and shall be governed by the same rules and regulations that apply to, or which may become applicable to, Lake Tyler, with the exception of any provision involving gross receipts or rental levies that may apply on Lake Tyler.

- (o) No business or commercial enterprise which, in the sound discretion of the City Commission of the City of Tyler, is not connected with the operation or use of the LAKE TYLER EAST RESERVOIR, shall be operated upon the property covered hereby. Business and commercial activities of a permitted character shall be permitted to operate on said premises only after a suitable agreement with the City of Tyler has been negotiated.
- (p) All owners or lessees of said lands around the Lake Tyler East Reservoir abutting the City of Tyler property line at 378 foot elevation, including private, individual, business, commercial, organizations, and developers of real estate, subdivisions, who desire to alter, change, or re-align the lake water line on City of Tyler property by channeling, digging, scraping, or moving of earth, in order to bring the water level closer to their property line, and/or to deepen such channel for boating, water intakes, etc., MUST first file application of plans with the City of Tyler and obtain written approval in the form of a Permit, prior to doing any work of that type.
- (q) The pumping of water from Lake Tyler East Reservoir is prohibited except that Permits may be issued by the City of Tyler to adjoining landowners and lessees to install pumps for the purpose of supplying domestic water to Lake cabins and dwellings upon application and payment of an annual permit fee of \$3.00 per month, paid twelve (12) months in advance; PROVIDED, however, that after three years, from the date hereof, the City of Tyler shall have the right upon thirty (30) days notice, to prescribe a different reasonable monthly rate for such use of the raw water taken from such Reservoir. All other sales of water from such Reservoir for any other purpose or use shall be by negotiated contract with the City of Tyler. Domestic water withdrawal shall be made with a pump not larger than $\frac{3}{4}$ h.p., with a maximum of one (1) inch discharge line.
- (r) The City of Tyler shall not be responsible for availability, purity, quality, quantity, or regularity of flow at any time, it being expressly recognized and agreed that this raw water use is subordinate to present and future municipal and industrial use.
- (s) Each such water user shall hold the City of Tyler harmless from any direct or indirect damages, injuries, or illnesses suffered by such user that might occur from such use of raw water or from the water system where raw water is used.
- (t) No permit for the use of raw water granted hereunder may be transferred or assigned, without the prior written consent of the City of Tyler.
- (u) Every private owner or lessee of any property or property right held or claimed by virtue of this instrument, or under grant, lease, or assignment from Grantors herein, MUST, within ten (10) days of acquisition of such property or property right, file a written declaration of his name, the date and source of his acquisition, his telephone number, mailing address, and place of residence, with the City

Clerk of the City of Tyler, and pay to the City of Tyler a Registration fee of Twenty-five (\$25) Dollars, which Registration shall terminate at the end of five (5) years (unless terminated sooner by voluntary action of a property owner surrendering his property rights) with the right of renewal upon payment of a like Registration fee. Such Registrations shall be transferable only upon the Records of the City of Tyler, maintained in the office of the City Clerk.

- (v) In addition to all other rights and privileges hereby created in favor of the City of Tyler, in the event subsequent developments may arise such that no other reasonable means of access from a public roadway to any land acquired by the City of Tyler for use in connection with the Lake Tyler East Reservoir is available, Grantors and the City of Tyler will agree upon an access right-of-way upon, over and across the land described; but shall have the right to designate the location of such right-of-way at any place on said land which furnishes reasonable access to such adjoining property. Grantors, however, shall have no liability for any part of the expense incurred in surveying, constructing, or maintaining such right-of-way.

The foregoing covenants and restrictions shall constitute covenants running with the land and shall be binding upon the parties hereto, their respective successors and assigns for a period of 25 years from the date hereof, at which time such covenants and restrictions shall be automatically extended for a period of 10 years, and may thereafter under like conditions be extended for successive periods of 10 years, unless by vote of the majority of the owners of lots in subdivisions authorized hereby and contemplated herein, acting by and with the consent of the City of Tyler Commission, it is agreed to change said restrictions and covenants in whole or in part, or alter the period of duration thereof. Any other provision in this paragraph to the contrary notwithstanding, however, it is mutually understood and agreed that any Rule, Regulation, or Order now in force or hereafter adopted by the City of Tyler for the protection of the waters of Lake Tyler may, at the option of the City of Tyler, be made applicable to the water of Lake Tyler East and the property herein described.

If any provision contained herein shall be declared invalid by final judgment of any court of competent jurisdiction, the validity of the remaining provisions shall not be thereby affected.