

**ORDINANCE #0062
ADOPTING MODEL SUBDIVISION RULES**

WHEREAS, the Town Council of the Town of Indian Lake is empowered to prepare, adopt and administer rules and regulations pertinent to development; and

WHEREAS, the Town Council have reviewed the "Model Subdivision Rules" prepared by the Texas Water Development Board and Consulting Engineer, and determined that is will embrace the quality of development in the Town of Indian Lake and recommend adoption of the said rules; and

WHEREAS, the Town Council will advertise and announce a public hearing in order to receive comments from parties in interest and other citizens; and

WHEREAS, the "Model Subdivison Rules" will assist the Town Council in fulfilling its function for ensuring the public health, safety and welfare;

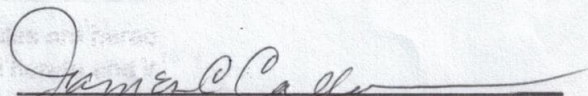
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF INDIAN LAKE:

Section 1. The Model Subdivision Rules are hereby adopted as part of the Town Code. A copy is hereby attached hereto and incorporated herein.

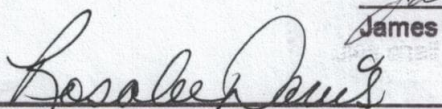
Section 2. The Model Subdivision Rules shall be available for review at Town Hall.

Motion for Adoption was made by Burt Obermeyer and Seconded by Irene Romero, the vote for adoption was 5 Ayes
 0 Nays

Passed and approved this 25 day of February, 1999.



James C. Collum, Mayor

Attestcd: 

Rosalee Davis, City Secretary



MODEL SUBDIVISION RULES

CHAPTER 1 GENERAL AND ADMINISTRATION PROVISIONS

SECTION 1.1 AUTHORITY AND SCOPE OF RULES

These rules are adopted under the authority of Chapter 212 of the Local Government Code, and Section 16.342 of the Texas Water Code. Notwithstanding any provisions to the contrary, these rules apply only to residential development with tracts of five acres or less.

SECTION 1.2 PURPOSE

It is the purpose of these rules to promote the public health of the town residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of this town and to establish the minimum standards for water and wastewater facilities.

SECTION 1.3 EFFECTIVE DATE

The rules become effective on the 25 day of FEB., 1999.

SECTION 1.4 REPEALER

Any regulations or ordinances adopted previous to the 25 day of FEB, 1999, are hereby repealed except as to such section which are retained herein.

SECTION 1.5 PLAT REQUIRED

- (a) The owner of a tract of land located within the corporate limits of the Town of Indian Lake or within the Town of Indian Lake Extraterritorial Jurisdiction as defined in Chapter 42 or the Local Government Code who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks, or other parts of tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to streets, alleys, squares, parks, or other parts must have a plat of the subdivision prepared.
- (b) (1) No subdivided land shall be sold or conveyed until the divider:
- (A) has received approval of a final plat of the Tract; and
 - (B) has filed and recorded with the town clerk of the town in which the tract is located a legally approved plat.

- (2) A division of a tract is defined as including a metes and bounds description, or any description of less than a whole parcel, in a deed of conveyance or in a contract for a deed, using any other method to convey property.

SECTION 1.6 SUPERSESSION

The rules supersede any conflicting regulations of the town.

SECTION 1.7 SEVERABILITY

If any part or provision of these regulations, or application thereof, to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgement shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgement shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The council hereby declares that it would have enacted the remainder of these regulations without any such part, provision or application.

SECTION 1.8 CONFLICT OF INTEREST

- (a) Any member of the town council court who has a substantial interest in a subdivided tract shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with town clerk.
- (b) For the purposes of this section a person with substantial interest is one who:
 - (1) has an equitable or legal ownership interest in the tract with a fair market value of two thousand five hundred dollars (\$2,500) or more;
 - (2) acts as a developer of the tract;
 - (3) owns ten percent (10%) or more of the voting stock or shares of or owns either ten percent (10%) or more or \$5,000 or more of the fair market value of a business entity that:
 - a. has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more; or
 - b. acts as a developer of the tract; or
 - (4) receives in a calendar year funds from a business entity described by subdivision (3) that exceed ten percent (10%) of the person's gross income for the previous year.
- (c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who, under subsection (b), has a substantial interest in the tract.
- (d) For the purposes of this section, a tract includes the subdivided tract as a whole, not an individual lot.

- (e) The finding by a court of a violation of this section of these rules does not render voidable an action of the town council court unless the measure would not have passed the town council court without the vote of the member who violated this section.

SECTION 1.9 DEFINITIONS

The following words and terms, when used in these rules, shall have the following meanings.

Town Council, or Council the Town of Indian Lake town council.

Drinking water - all water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensils or article used in the course of preparation or consumption of food or beverages for human beings.

Engineer - a person licensed and authorized to practice engineering in the State of Texas under the Texas Engineering Practice Act.

Final Plat - a map or drawing and any accompanying material of a proposed subdivision prepared in a manner suitable for recording in the town records and prepared as described in these regulations.

Lot - any undivided tract or parcel of land contained within a block and designated on a subdivision plat by an alpha-numeric identification and having frontage or access to an existing or proposed private or public street.

Non-public water system - any water system supplying water for domestic purposes which is not a public water system.

Platted - recorded with the town in an official plat record.

Public Water system - a system for the provision to the public for piped water for human consumption, which includes all uses described under the definition for drinking water. Such a system must have a potential for at least (15) service connections or serve at least twenty-five (25) individuals at least sixty (60) days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than fifteen (15) connections or less than twenty-five (25) individuals but owned by the same person, a public water system when the total potential service connections in the combined systems are fifteen (15) or greater or if the total number of individuals served by the combined systems total twenty-five (25) or at least sixty (60) days out of the year.

Purchaser - shall include purchasers under executory contracts for conveyance of real property.

Sanitarian - a person registered as a Professional Sanitarian by the Texas Department of Health under the authority of Vernon's Ann. Tex. Civ. Sta. Article 4477-3.

Sewerage facilities - the devices and systems which transport domestic wastewater from residential property, treat wastewater, and dispose of the treated water in accordance with the minimum state standards contained or referenced in these rules.

Subdivider - any owner of land or authorized agent thereof proposing to divide or dividing land so as to constitute a subdivision.

Subdivision - any tract of land divided two or more parts for the purpose of laying out lots, or suburban lots, or building lots, and streets, alleys, squares, parks, or other portions intended for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto. A subdivision includes resubdivision (replat) of land which was previously divided.

Water facilities - any devices and systems which are used in the supply, collection, development, protection, storage, transmission, treatment, and/or retail distribution of water for safe human use and consumption.

CHAPTER 2 MINIMUM STANDARDS

SECTION 2.1 SCOPE OF STANDARDS

The establishment of residential developments with tracts of five acres or less where the water supply and sewer services do not meet the minimum standards of this Chapter are prohibited. Subdivisions with tracts of five acres or less are presumed to be residential developments unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.

SECTION 2.2 WATER FACILITIES DEVELOPMENT

(a) **Public Water Systems.**

- (1) Where drinking water is to be supplied to a subdivision from a central system, the water quality and system design, construction and operations shall meet the minimum criteria set forth in 25 TAC 337.201 - 337.212, "Rules and Regulations for Public Water Systems", and 25 TAC 337.1 - 337.18, "Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems."
- (2) Subdividers who propose to supply drinking water by connecting to an existing central system must provide a written agreement with the public water surveyor. The agreement must accommodate the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of thirty (30) years.

- (b) Non-public water systems. Where individual wells are proposed for the supply of drinking water to residential establishments, the following conditions and requirements shall be observed:
- (1) a test well or wells located so as to be representative of the quality of water generally available from the supplying aquifer shall be drilled by the subdivider and the produced waters sampled and submitted to a private laboratory for a complete chemical and bacteriological analysis of the parameters on which there are drinking water standards. The results of such analysis shall be made available to prospective property owners.
 - (2) the water quality of individual wells must, after treatment, meet the standards of quality for community water systems established by 25 TAC Sections 337.3, 337.4, 337.10, and 337.14.
- (c) Transportation of potable water. The conveyance of potable water by transport truck or other mobile device to supply the domestic needs of the subdivision is not an acceptable method, except on an emergency basis. Absence of a water system meeting the standards of these rules due to the negligence of the subdivider does not constitute an emergency.

SECTION 2.3 WASTEWATER DISPOSAL

(a) Organized Sewerage Facilities

- (1) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the Texas Natural Resource Conservation Commission in accordance with 31 TAC Chapter 305 "Consolidated Permits" and obtain approval of engineering planning materials for such systems under 31 TAC Chapter 317 "Design Criteria for Sewerage Systems" from the Texas Natural Resource Conservation Commission.
- (2) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written agreement with the permittee. The agreement must accommodate the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of thirty (30) years. Engineering plan for the proposed wastewater collection lines must be approved by the Texas Natural Resource Conservation Commission prior to construction.

(b) One-Site Facilities

- (1) One-Site Facilities which serve single family or multi-family residential dwelling with anticipated wastewater generations of one thousand (1,000) gallons per day up to five thousand (5,000) gallons per day must be designed by a registered professional engineer or registered professional sanitarian.

- (2) Proposals for on-site sewerage facilities for the on-site disposal of sewage in the amount of five thousand (5,000) gallons per day or greater must be presented to the Texas Natural Resource Conservation Commission for determination of the necessity for a wastewater permit from that agency. Each such disposal facility must be designed by a registered professional engineer.
- (3) On-Site sewerage facilities not required to obtain a wastewater permit from the Texas Natural Resource Conservation Commission must apply for and receive a permit from the Texas Department of Health or its authorized agent as required by the procedures established in 25 TAC 301.101 through 301.109.
- (4) On-Site Sewage Disposal near lakes. On-Site sewerage facilities proposed near lakes must be licensed and installed in strict accordance with requirements established by the Texas Natural Resource Conservation Commission in their rules 31 TAC Chapter 285.
- (5) On-Site Wastewater Disposal in Recharge Zones. On-site sewerage facilities proposed within aquifer recharge zones must be licensed and installed in strict accordance with requirements established by the Texas Natural Resource Conservation Commission in 31 TAC Chapter 313 and applicable Texas Department of Health regulations.
- (6) Review, Inspection and Permitting of On-Site Sewerage Facilities. The Texas Department of Health or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with Chapter 366 of the Texas Health and Safety Code and rules 25 TAC Sections 301.11 through 301.17 and any additional applicable sections, "Construction Standards of On-Site Sewerage Facilities." In addition to the unsatisfactory on-site disposal systems listed in 25 TAC 301.16, pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

**SECTION 2.4 GREYWATER SYSTEM FOR REUSE OF TREATED
WASTEWATER**

- (a) Organized or Municipal Sewerage Systems. Any proposal for sewage collection, treatment and disposal which includes greywater reuse shall meet minimum criteria of 31 TAC, Chapter 310.1 - 310.7, "Use of Reclaimed Water," promulgated and administered by the Texas Natural Resource Conservation Commission.
- (b) On-Site Sewerage Facilities. Any proposal for on-site sewage disposal which includes provisions for greywater use shall meet the minimum criteria of 25 TAC. Chapter 301, Section 301.17, contained within the "Construction Standards for On-Site Sewerage Facilities" promulgated by the Texas Department of Health.

SECTION 2.5 SLUDGE DISPOSAL

The disposal of sludge from water treatment and wastewater treatment facilities shall meet the criteria of 25 TAC, Chapter 325, Subchapters N and X, and 31 TAC Chapter 317.

SECTION 2.6 SETBACKS

In areas that lack a nationally recognized fire code as listed in Section 235.002 Local Government code (Acts 1989, 71st Leg., ch. 296) and lack of water lines sized for fire protection, setbacks from roads and rights-of-ways shall be a minimum of ten (10) feet, (5) feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water supplies.

SECTION 2.7 NUMBER DWELLING PER LOT

No more than one single family detached dwelling shall be located on each tract. A notation of this restriction shall be placed on the face of the final plat. This restriction shall be placed in all deeds and contracts for deeds for real estate sold within the subdivision. Notice of this restriction must be given by the seller to purchasers prior to execution of any binding agreement for sale or conveyance of any real estate. Proposals which include multi-family residential shall include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design.

CHAPTER 3 PLAT APPROVAL

SECTION 3.1 APPLICATIONS FOR PLAT APPROVAL

- (a) Owner representation. An application for approval of a plat shall be filed with the town by the record owner of the property to be subdivided or the duly authorized agent of the record owner.
- (b) Standards. All plats with a tract or tracts of five acres or less for residential developments shall comply with the minimum standards of Chapter 2 of these rules.

SECTION 3.2 FINAL ENGINEERING REPORT

The final plat shall be accompanied by an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the county shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve the subdivision. The plat shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under Section 3.4 of this Chapter, the schedule shall include the start dates and completion dates.

- (A) Non-public water systems. Where individual wells are proposed for the supply of drinking water to residences establishments, the subdivider shall include the quantitative and qualitative results of sampling the test wells in accordance with Section 2.2 of these rules. The results of such analysis shall be made available to the prospective property owners. The engineer shall issue a statement concerning availability of groundwater supplies to serve the fully developed subdivision over the next thirty (30) years. Such statement may be based on information available from the Texas Water Development Board's Groundwater Unit of the Water Data Collection and Planning Division. The description of the needed sanitary control easement shall be included.
- (B) On-site sewerage facilities. Where private on-site sewerage facilities are proposed the final engineering report shall include the soils information and percolation test results required for a Subdivision Construction Authorization under Chapter 8 of the town's rules for On-Site Sewerage Facilities.
- (C) Centralized public water systems.
 - (I) Where water supplies are to be provided by an existing political subdivision of the state, including a town, municipal utility district, water control and improvement district, nonprofit water supply corporation, or an existing investor-owned water supply corporation, the subdivider shall furnish an executed contractual agreement between the subdivider and the governing board of the entity or owner of the utility to the effect that necessary arrangements have been made by the subdivider and the entity for the provision of a sufficient water supply to serve the ultimate needs of the subdivision for a term of not less than thirty (30) years.

Before final plat approval, plans and specifications for the proposed water facilities system shall have been approved by all entities having jurisdiction over the proposed project. Entities having jurisdiction, in this instance, may include the political subdivision in addition to the Texas Department of Health and the Town Utility Department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include comments regarding the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision.

- (II) Where there is no existing entity or owner to construct and maintain the proposed water facilities and distribution facilities, the subdivider shall establish an investor-owned utility and obtain a Certificate of Convenience and Necessity (CCN) from the Texas Natural Resource Conservation Commission and include evidence of the CCN issuance with the plat. Before final plat approval, plans and specifications for the proposed water facilities system shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include an analysis of the long term (30 years) quantity and quality of the available groundwater supplies relative to

the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated to satisfy the ultimate fully developed needs of the subdivision.

(D) Centralized sewerage facilities.

- (I) Where wastewater treatment capacity is to be provided by a political subdivision of the state, including town, municipal utility district, water control and improvement district or nonprofit water supply corporation, or an existing investor-owned water supply corporation, subdivider shall furnish evidence of a contractual agreement between the subdivider and the governing board of the entity or owner of the utility to the effect that necessary arrangements have been made by the subdivider and the entity for the provision of sufficient wastewater treatment capacity to serve the ultimate full build-out needs of the subdivision for a term of not less than thirty (30) years. Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the Texas Natural Resource Conservation Commission and plans and specification for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.
- (II) Where there is no existing entity or owner to construct and maintain the proposed wastewater treatment and collection facilities, the subdivider shall establish an investor-owned utility by obtaining a Certificate of Convenience and Necessity (CCN) from the Texas Natural Resource Conservation Commission. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the Texas Natural Resource Conservation Commission and plans and specification for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.

SECTION 3.3 ADDITIONAL INFORMATION

A town may, at its option, require additional information necessary to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process. Such information may include, but not be limited to:

- (a) layout of proposed street and drainage work
- (b) legal description of the property
- (c) existing area features
- (d) topography
- (e) flood plains
- (f) description of existing easements
- (g) layout of other utilities
- (h) notation of deed restrictions
- (i) public use areas
- (j) proposed area features

SECTION 3.4

FINANCIAL GUARANTEES FOR IMPROVEMENTS

- (a) Applicability. If an adequate public or non-public water system or wastewater facility is not available from another entity, or are not constructed by the subdivider, to serve lots intended for residential purposes of five acres or less at the time final plat approval is sought, then the town council shall require the owner of the subdivided tract to execute an agreement with the town secured by a bond or other alternative financial guarantees such as a cash deposit or a letter of credit. Lots of five acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.
- (b) Bonds. The bond shall meet the following requirements:
- (1) The bond or financial guarantee shall be payable to the municipal judge of the town, in his official capacity, or the judge's successor in office.
 - (2) The bond or financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.
 - (3) The bond shall be executed with sureties as may be approved by the town commissioners court. The town shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:
 - (A) registration with the Secretary of State and be authorized to do business in Texas; and
 - (B) authorization to issue bonds in the amount required by the town commissioner court; and:
 - (C) rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 560. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

- (4) The bond shall be conditioned upon construction or installation of water and wastewater facilities meeting the criteria established by Chapter 2 of these rules and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the town council.
- (c) Letter of credit. A letter of credit shall meet the following requirements:
- (1) Any letter or credit submitted as financial guarantee for combined amounts greater than \$10,000 and less than \$250,000 must be from financial institutions which meet the following qualifications:
 - (A) Bank qualifications:
 - (I) Must be federally insured,
 - (II) Sheshunoff rating must be ten or better and primary capital must be at least six percent (6.0%) of total assets, and
 - (III) Total assets must be at least twenty-five million dollars.
 - (B) Savings and loan association qualifications:
 - (I) Must be federally insured,
 - (II) Tangible capital must be at least one and half percent (1.5%) of total assets and total assets must be greater than twenty-five million dollars, or tangible capital must be at least three percent (3.0%) of total assets if total assets are less than twenty-five million dollars.
 - (III) Sheshunoff rating must be thirty or better.
 - (C) Other financial institutions qualifications:
 - (I) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a Town investment,
 - (II) the investment instrument must be registered in the Town's name and the Town must receive safekeeping receipts for all collateral before the letter of credit is accepted.

- (2) Any letter of credit submitted as a financial guarantee for combined amounts greater than \$250,000.00 must be from financial institutions which meet the following qualifications:
 - (A) Bank Qualifications:
 - (I) Must be federally insured,
 - (II) Sheshunoff rating must be thirty or better and primary capital must be at least seven percent (7.0%) of the total assets, and
 - (III) Total assets must be at least seventy-five million dollars.
 - (B) Savings and loan association qualifications:
 - (I) Must be federally insured,
 - (II) Tangible capital must be at least three percent (3.0%) of total assets and total assets must be greater than seventy-five million dollars, or tangible capital must be at least five percent (5.0%) of total assets if total assets are less than seventy-five million dollars,
 - (III) Sheshunoff rating must be thirty or better.
 - (C) Other financial institutions qualifications:
 - (I) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a town investment,
 - (II) the investment instrument must be registered in the town's name and the town must receive safekeeping receipts for all collateral before the letter of credit is accepted.
- (3) The letter of credit shall list as sole beneficiary the Municipal Judge of the town, in his official capacity, or the Judge's successor in office, and must be approved by the municipal judge of the town. The form of the letter of credit shall be modeled after the form in Exhibit A to these rules.
- (4) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under Chapter 2 of these rules and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the town council.
- (D) Financial guarantee. The town will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities in the subdivision.

SECTION 3.5 REVIEW AND APPROVAL OF FINAL PLATS

- (a) Scope of review. The town will review the final plat to determine whether it meets the standards of Chapter 2 and the requirements of Chapter 3.
- (b) Disapproval authority. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under these rules.
- (c) Prerequisites to approval. Final plat approval shall not be granted unless the subdivider has accomplished the following:
 - (1) dedicated the sites for the adequate water and wastewater treatment facilities to the appropriate political subdivision or investor owned utility responsible for operation and maintenance of the facilities, and
 - (2) provided evidence that the water facilities and wastewater facilities have been constructed and installed in accordance with criteria established within these rules and approvals from the Texas Health Department and Texas Natural Resource Conservation Commission as appropriate, of the plans and specifications for such construction, including any change orders filed with these agencies, or
 - (3) obtained all necessary permits for the proposed water facilities and wastewater facilities and has entered into a financial agreement with the town secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision for water and sewerage facilities with bond or financial guarantee meeting the criteria established in Chapter 3 of these rules.

SECTION 3.6 TIME EXTENSIONS FOR PROVIDING FACILITIES

- (a) Reasonableness. The town council of the town may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if the Town finds the extension is reasonable and not contrary to the public interest.
- (b) Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.
- (c) Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of Chapter 2 of these rules.

CHAPTER 4 ENFORCEMENT

SECTION 4.1 OVERSIGHT

The owner, by submitting a plat, acknowledges the authority of the town and state agencies to lawfully enter and inspect property for purposes of execution of their statutory duties. Such inspection will not release the owner from any obligation to comply with the requirements of these rules.

CHAPTER 4.2 GENERAL ENFORCEMENT AUTHORITY OF Town

- (a) Legal Action. At the request of the town council, a town attorney or other prosecuting attorney may file an action in a town of competent jurisdiction to:
 - (1) enjoin the violation or threatened violation of a requirement established by or adopted by the Town-Council under Chapter 212 of the Local Government Code; or
 - (2) recover damages in an amount adequate for the town to undertake any construction or other activity to bring about compliance with a requirement established by or adopted by the town council under Chapter 212.
- (b) Offense. A person commits an offense if the person knowingly or intentionally violates a requirement established by or adopted by the town council under Chapter 212. An offense under this section is a Class B misdemeanor.

SECTION 4.3 ENFORCEMENT OF SUBDIVISION RULES

- (a) Civil penalty. A person who violates a rule adopted by a town pursuant to Section 16.343 of the Water Code is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each violation and for each day of a continuing violation but not in excess of \$5,000 per day.
- (b) Criminal Penalty. A person commits an offense if the person knowingly or intentionally violates a rule adopted pursuant to Section 16.343 of the Water Code by a town or municipality. A member of the commissioner's court commits an offense if the member violates Section 1.8 of these rules.
- (c) Offense Class. An offense under subsection (b) of this section is a Class B misdemeanor. An offense under Section 1.8 of these rules is a Class A misdemeanor.

SECTION 4.4 INJUNCTION

In addition to other remedies, the attorney general, the town or district attorney for the town in which the violation occurred, or other local officials are authorized to apply to the district court for and the court in its discretion may grant the state or political subdivision without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions enjoining a violation of the rules.

SECTION 4.5 ENFORCEMENT OF MODEL RULES BY ATTORNEY GENERAL

In addition to enforcement by a political subdivision, the attorney general may bring suit to enforce a rule adopted under Section 16.350 of the Water Code, to recover the penalty provided by Section 16.352 of the Water Code, to obtain injunctive relief to prevent the violation or continued violation of a political subdivision's rules, or to enforce the rules, recover the criminal penalty, and obtain injunctive relief.

SECTION 4.6 ENFORCEMENT OF ENGINEERING CERTIFICATE

- (a) **Attorney General Action.** The attorney general may take any action necessary to enforce a requirement imposed by or under Chapter 212 of the Local Government Code, or to ensure that the water and sewer service facilities are constructed or installed to service a subdivision in compliance with the model rules adopted under Section 16.343, Water Code.
- (b) **Civil Penalty.** A person who violates Chapter 212 of the Local Government Code, or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat or on the document attached to the plat, as required by Section 232.0035 is subject to a civil penalty of not less than \$500 nor more than \$1,000 plus court costs and attorney's fees.
- (c) **Offense.** An owner of a tract of land commits an offense if the owner knowingly or intentionally violates a requirement imposed by or under Chapter 212 of the Local Government Code or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on a plat or on a document attached to a plat, as required by Chapter 212. An offense under this subsection is a Class B misdemeanor.
- (d) **Definition.** A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

**EXHIBIT A
IRREVOCABLE LETTER OF CREDIT NO.**

TO: _____, Texas

DATE: _____, 1999

We hereby authorize you to draw at sight on _____ (NAME AND LOCATION OF BANK), for the account of _____ (NAME OF CUSTOMER) (the "Customer"), up to the aggregate amount of _____ DOLLARS (\$) (the "Stated Amount") available by our draft, accompanied by a certification by the Town administrator, any accompanied by a certification by the Town administrator, any Assistant Town administrator, the Director of Financial Services, the Assistant Director of Financial Services, the Director of the Office of Land Development Services, or any Assistant Director of the Office of Land Development Services that the following condition exists:

"A Condition of Draw exists under the Subdivision Construction Agreement dated _____, 1999, by and between Subdivider and the Town of Indian Lake (the "Agreement"). Town is in substantial compliance with the terms of said Agreement and has calculated the amount of this draft in accordance with terms of the Agreement."

Drafts must be drawn and presented by or on (EXPIRATION DATE) by the close of business of the Issuer of this credit and must specify the date and the number of this credit. Drafts will be honored within five calendar days of presentment. We hereby engage all drawers that drafts drawn and presented in accordance with this credit shall be duly honored. Partial draws are permitted and the letter of credit shall be reduced by the amount of such partial draws as of such partial draws shall on no account exceed the Stated Amount of this credit, and upon any draw or reduction letter which exhausts this credit, the original of this credit will be surrendered to us.

Except as expressly stated, this credit shall be subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce (Publication No. 400).

This credit is irrevocable prior to its expiration date unless both parties consent to revocation in writing:

Address of Issuer:

Issuer

Officer

Signature, Authorized

SUBDIVISION CONSTRUCTION AGREEMENT

1. **Parties.** The parties to this Subdivision Construction agreement (the "Agreement") are (individually and collectively, the "Subdivider") and the Town of Indian Lake, Texas (the "Town").
2. **Effective Date.** This Agreement is effective on the date the Town approves the final plat for the subdivision described in Paragraph 3 of this agreement by the Planning Commission's approval of the plat in accordance with Town ordinances (the "Effective Date").

Recitals

3. Subdivider is the owner of the land included in the proposed final subdivision plat of the subdivision, as shown in Town's file Number (the "Subdivision") and more particularly described by the metes and bounds description attached and incorporated into this Agreement as Exhibit A (the "Property"); and
4. Subdivider seeks authorization from the Town to subdivide the Property in accordance with the requirements imposed by Texas statute and the Town's ordinances, regulations, and other requirements; and
5. Town ordinances require the completion of various improvements in connection with development of the subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effect of substandard subdivisions; and
6. The purpose of this Agreement is to protect the Town from the expense of completing subdivision improvements required to be installed by the Subdivider; and
7. This agreement is authorized by and consistent with state law and the Town's ordinances, regulations, and other requirements governing development of a subdivision.

IN CONSIDERATION of the foregoing recitals and the mutual covenants, promises, and obligations by the parties set forth in this Agreement, the parties agree as follows:

Subdivider's Obligations

8. **Improvements.** The Subdivider agrees to construct and install, at Subdivider's expense, all subdivision improvements required to comply with Town orders, ordinances, regulations, and policies governing subdivision approval, specifically including without limitation those improvements listed on Exhibit B attached and incorporated by reference into this Agreement (collectively, the "Improvements," any one of which is an "Improvement"). All Improvements shall be constructed in conformity to the Town's requirements, procedures, and specifications, pursuant to construction plans, permits and specifications, approved by the Town prior to commencement of construction, and subject to inspection, certification, and acceptance by the Town.

9. **Completion.** Unless a different time period is specified for a particular Improvement in Exhibit B, construction of all the Improvements shall be completed no later than three (3) years after the Effective Date (the "Completion Date"); provided, however, that if the Subdivider or the Issuer delivers to the Town no later than the Completion Date a substitute Letter of Credit satisfying the criteria established by Paragraph 11 and which has an expiration date no earlier than one year from the Completion Date, then the Completion Date shall be extended to the expiration date of that substitute Letter of Credit or any subsequent substitute Letter of Credit provided in accordance with this Paragraph. Upon completion of each of the Improvements, the Subdivider agrees to provide to the Town a complete set of construction plans for the Improvements, certified "as built" by the engineer responsible for the preparing the approved construction plans and specifications.

10. **Warranty.** The Subdivider warrants the Improvements constructed by Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees will be free from defects for a period of one (1) year from the date the Town accepts the dedication of a completed Improvement or group of Improvements (the "Warranty Period"), as such Improvement or group of Improvements is separately identified and listed on Exhibit B, except the Subdivider does not warrant the Improvements for defects caused by the events outside the control of the Subdivider or licensees. The Subdivider agrees to repair any damage to the Improvements before activities. As a condition of the Town's acceptance of dedication of any of the Improvements, the Town may require the Subdivider to post a maintenance bond or other financial security acceptable to the Town to secure the warranty established by this Agreement. If the Improvements have been completed but not accepted, and neither the Subdivider nor Issuer is then in default under this Agreement or the Letter of Credit, at the written request of the Subdivider or to Issuer the Town shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to an amount equal to the face amount of the maintenance bond or other financial security acceptable to the Town.

11. **Security.** To secure the performance of Subdivider's obligations under this Agreement, Subdivider agrees to provide adequate financial guarantees of performance in the form of a surety bond acceptable to the Town, a cash deposit to be held by the Town in escrow, or an irrevocable letter of credit in the amount of _____ Dollars (\$ _____) (the "Stated Amount"), which amount is the estimated total cost of constructing each of the Improvements as shown on Exhibit B. If a letter of standard form acceptable to the Town, shall have an expiration date no earlier than one year from the date of its issuance, and shall be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the Town's financial institution rating system in effect at the time the initial letter of credit is issued pursuant to this Agreement (the "Issuer"), during the term of this Agreement and subject to the terms of Paragraph 22 of this Agreement, the Town may revise the standard form letter of credit it reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this agreement. A letter of credit satisfying the criteria of this Paragraph (and any substitute or confirming letter of credit) is referenced to in this agreement as the "Letter of Credit".

12. Reduction in Letter of Credit. After the acceptance of any Improvement, the amount which the Town is entitled to draw on the Letter of Credit shall be reduced by an amount equal to ninety percent (90%) of the Quoted cost of the accepted Improvement, as shown on Exhibit B. Upon completion of an Improvement, at the written request of Subdivider or Issuer, and if neither the Subdivider nor Issuer is then in default under this agreement or the Letter of Credit, the Town shall complete, execute, and deliver to the Issuer a reduction letter verifying the acceptance of the Improvement and documenting that the Stated Amount has been reduced by stating the balance of the Stated Amount remaining after the reduction required by the first sentence of this Paragraph. No later than sixty (60) days after its receipt of a written request to reduce the Stated Amount submitted by the Subdivider or the Issuer, the Town shall determine the estimated Remaining Cost and shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to the Estimated Remaining Cost if the Town determines the Stated Amount exceeds the Estimated Remaining Cost. Notwithstanding the preceding sentence, the Town shall not be required to authorize reduction in the Stated Amount more frequently than every ninety (90) days. As used in this Paragraph, "Estimated Remaining Cost" means the amount the Town estimates to be the cost of completing all Improvements incomplete as of the time of such estimate.

Town's Obligations

13. Inspection and Certificate. The Town agrees to inspect Improvements during and at the completion for construction and, if completed in accordance with the standards and specifications for such Improvements, to certify the Improvements as being in compliance with town standards and specifications. The inspections and certifications will be conducted in accordance with standard policies and requirements. The Subdivider grants the Town, its agents, employees, officers, and contractors an easement and license to enter the Property to perform such inspections as it deems appropriate.

14. Notice of Defect. The Town will provide timely notice to the Subdivider whenever inspection reveals that an Improvement is not constructed or completed in accordance with the standards and specifications for health or safety, and the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than five (5) day and the Town may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the default.

15. Use of Proceeds. The Town will disburse funds drawn under the Letter of Credit only for the purposes of completing the Improvements in conformance with the Town's requirements and specifications for the Improvements, or to correct defects in or failures of the Improvements. The Subdivider has no claim or rights under this Agreement to funds drawn under the Letter of Credit or any accrued interest earned on the funds. All funds obtained by the Town pursuant to one or more draws under the Letter of Credit shall be maintained by the Town in an interest bearing account or accounts until such funds, together with accrued interest thereon (the "Escrowed Funds"), are disbursed by the town. The Town may disperse all or portions of the Escrowed Funds as Improvements are completed and accepted by the Town, or in accordance with the terms of a written construction contract between the Town and a third party for the

construction of Improvements. Escrowed Funds not used or held by the Town for the purpose of completing an Improvement, together with interest accrued thereon, shall be paid by the Town to the Issuer of the Letter of Credit no later than sixty (60) days following the Town acceptance of the Improvement or its decision not to complete the Improvement using Escrowed Funds, whichever date is earlier.

16. Return of Excess Escrowed Funds. No later than sixty (60) days after its receipt of a written request from the Subdivider or the Issuer to return Excess Escrowed Funds to the Issuer, the Town shall disburse to the Issuer from the Escrowed Funds all Excess Escrowed Funds. For purposes of this Paragraph, "Excess Escrowed Funds" means the amount of Escrowed Funds exceeding one hundred ten percent (110%) of the estimated cost of constructing Improvements the Town intends to construct but which have not been accepted, as such cost is shown on Exhibit B. Notwithstanding the first sentence in this paragraph, the Town shall not be required to disburse Excess Escrowed Funds more frequently than every ninety (90) days.

17. Cost Participation by Town. If the Town and Subdivider agree the Town will participate in the expense of installing any of the improvements, the respective benefits and obligations of the parties shall be governed by the terms of a community Facilities Construction Agreement executed by the parties thereto, and the terms of that agreement shall control to the extent of any inconsistency with this agreement.

18. Conditions of Draw on Security. The Town may draw upon any financial guarantee posted in accordance with Paragraph 11 upon the occurrence of one or more of the following events:

- a. Subdivider's failure to construct the improvements in accordance with Paragraph 8 of the agreement.
- b. Subdivider's failure to renew or replace the Letter of Credit at least forty-five (45) days prior to the expiration date of the Letter of Credit;
- c. Subdivider's failure to replace or confirm the Letter of Credit if the Issuer fails to maintain the minimum rating acceptable to the town, in accordance with Paragraph 11 of this agreement; or
- d. Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment of conveyance in lieu of foreclosure.

The Town shall provide written notice of the occurrence of one or more of the above events to the Subdivider, with a copy provided to the Issuer. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraph (a), the Town shall provide notice to the Subdivider and the Issuer of the specific default and the notice shall include a statement that the town intends to perform some or all of Subdivider's obligations under Paragraph 8 for specified Improvements if the failure is not cured. The notice with respect to a default under subparagraph (a) shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit, unless, in the reasonable opinion of the Town, the failure creates

an immediate and substantial harm to the public health or safety, in which case the notice shall state why the failure creates an immediate and substantial harm to the public health or safety, and shall be given no less than five (5) days before presentation of draft on the Letter of Credit. In the event of a draw based on Subparagraph (a), the Town shall be entitled to obligations under Paragraph 8, up to the amount allocated according to Exhibit B for any Improvements it states its intent to construct or complete in accordance with the standards and specifications for such improvement. The subdivider hereby grants to the Town, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements.

Where a letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraph (b), (c), or (d), the notice shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit. In lieu of honoring a draft based on an event described in subparagraph (b) or (c) the Issuer or a substitute or confirming Letter of Credit if the event is described by Subparagraph (c). If the Issuer has acquired all or a portion of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on an event described in subparagraph (d) the Issuer may deliver to the Town a substitute or confirming Letter of Credit.

19. Procedures for drawing on the Letter of Credit. The Town may draw upon the Letter of credit in accordance with paragraph 18 by submitting a draft to the Issuer in compliance with the terms of the Letter of Credit governing such draft. The Letter of Credit must be surrendered upon presentation of any draft which exhausts the Stated Amount of such Letter of Credit.

20. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the reasonable cost of completing Improvements in conformance with the Town's requirements, procedures, and specifications. For Improvements upon which construction has not begun, the estimated cost for the Improvements shown on Exhibit B will be the prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Letter of Credit establishes the maximum amount of the Subdivider's liability.

21. Remedies. The remedies available to the Town, the Subdivider, and Issuer under this Agreement and the laws of Texas are cumulative in nature.

22. Provisions for the Benefit of Issuer. The provisions of Paragraphs 9, 10, 11, 12, 15, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, and 36 of this Agreement for the benefit of the Issuer may not be modified, released, diminished, or impaired by the parties without the prior written consent of the Issuer.

23. Third Party Rights. No person or entity who or which is not a party of this Agreement shall have any right of action under this Agreement, nor shall any such person or entity other than the Town (including without limitation a trustee in bankruptcy) have any interest in or claim to funds draw on the Letter of Credit and held in escrow by the Town in accordance with this Agreement. Notwithstanding the preceding sentence, the Issuer shall have a right of action to enforce any provision of this Agreement where the Issuer is specifically named as a beneficiary of such provision pursuant to Paragraph 22.

24. Indemnification. The Subdivider hereby expressly agrees to indemnify and hold the Town harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees for the defense of such claims and demands, arising from any breach on the part of subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractor, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the Town if the Town is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act of negligence of subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements, except where such suit is brought by the Subdivider. The Subdivider is not any employee or agent of the Town. Notwithstanding anything to the contrary contained in this agreement, the Subdivider does not agree to indemnify and hold the Town harmless from any act or negligence of the Town, its agents, contractors, employees, tenants, or licensees.

25. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute continuing waiver unless expressly provided for by a written amendment to this Agreement, nor with the waiver of any default under this agreement by deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the Town, the Subdivider, or the Issuer, their heirs, successors or assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

26. Attorney's Fees. Should either party or the Issuer, to the extent Issuer is named as specific beneficiary, be required to resort to litigation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

27. Assignability. The benefits and burdens of this Agreement are personal obligations of the subdivider and also are binding on the heirs, successors, and assigns of the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the express written approval of the Town. The Town's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required security. The Town agrees to release or reduce, as appropriate, the Letter of Credit provided by the Subdivider if it accepts substitute security for all or any portion of the improvements. The Town, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment shall be effective upon notice to the Subdivider and the Issuer.

28. Expiration. This Agreement shall terminate upon the expiration of the approval of the proposed final plat of the Subdivision or if the Subdivision is vacated by the Subdivider.

29. **Notice.** Any notice required or permitted by this Agreement is effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if the Subdivider:

Attn:

if to Town:

Attn:

if to the Issuer:

at Issuer's address shown on the Letter of Credit

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of the change is provided to the other party in accordance with the provisions of this Paragraph.

30. **Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise enforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

31. **Personal Jurisdiction and Venue.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement or the Issuer, whether arising out of or relating to the Agreement or the Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for _____ County, Texas, or the United States District Court for _____ District of Texas, _____ Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Letter of Credit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

32. **Release Upon Completion.** Upon acceptance of all Improvements, the Town agrees: (a) to complete, execute and deliver to the Subdivider and the Issuer a release in recordable form releasing the Subdivider and the Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement except those contained in Paragraph 10, and (b) to return

to the Issuer the Letter of Credit and any Escrowed Funds not expended or obligated by the Town for the completion of the Improvements.

33. Captions Immaterial. The numbering, order, and captions or headings of the paragraphs of this agreement are for convenience only and shall not be considered in construing this agreement.

34. Entire Agreement. This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent written modification executed by both parties.

35. Authorization to Complete Blanks. By signing and delivering this agreement to the appropriate official of the Town, the Subdivider authorized completion of this Agreement by filling in the Effective Date below.

36. Binding Agreement. The execution and delivery of this agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the Town. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Letter of Credit.