

RESOLUTION NO. R2019-20

A RESOLUTION OF THE CITY OF BURNET APPROVING A CHAPTER 380 AGREEMENT TO PROVIDE ECONOMIC INCENTIVES TO LANGLEY HOMES INC TO CREATE SINGLE FAMILY HOUSING OPPORTUNITIES IN THE CITY OF BURNET.

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, under Chapter 380 of the Texas Local Government Code, the City of Burnet (the "**City**") has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the city limits; and

WHEREAS, the lack of moderately priced Single-family residential home-sites hinders business and industrial development within the City; and

WHEREAS, Langley Homes, Inc. (the "**Developer**") is a corporation formed under the laws of the State of Texas and a homebuilder/developer within the community; and

WHEREAS, Developer desires to develop a residential subdivision consisting of streets, utilities, drainage improvements, suitable for Single-family residential housing; and

WHEREAS, the proposed residential subdivision will provide housing opportunities; thus contributing to the economic development of the City by making it more attractive to business and industrial projects, generating increased development, increased real property value and tax revenue for City, increased related neighborhood services, and have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, Developer has requested financial incentives from the City to facilitate the development of the project; and

WHEREAS, the City of Burnet City Council finds, that without the requested incentives, the project cannot go forward; and

WHEREAS, the City of Burnet City Council finds that the project promotes state and local economic development and shall stimulate local business and commercial activity; and, is therefore, an eligible project for the purpose of the Texas Local Government Code 380; and

WHEREAS, Developer has agreed, in exchange and as consideration for incentives from the City, to satisfy and comply with certain terms and conditions:

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

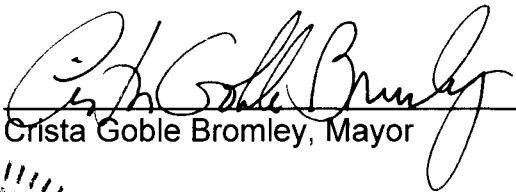
Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City of Burnet City Council and made a part hereof for all purposes as findings of fact.

Section 2. Approval and Authorization. The agreement attached hereto as Exhibit "A" is hereby approved and the City Manager is hereby authorized to execute an agreement, substantially similar to Exhibit "A", and all documents necessary to accomplish the purposes of this resolution.

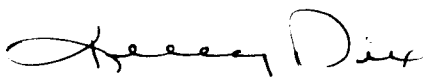
Section 3. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't Code*.

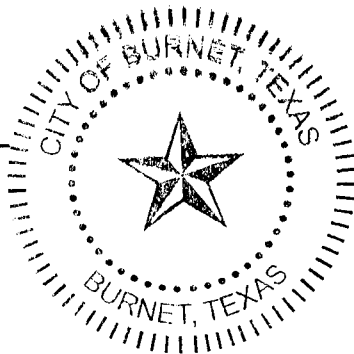
Section 4. Effective Date. This resolution shall be effective immediately upon approval by the City Council.

APPROVED AND ADOPTED on this the 24th day of September, 2019.


Crista Goble Bromley, Mayor

ATTEST:


Kelly Dix, City Secretary



VENDOR I.D.	NAME	STATUS	CHECK DATE	AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-2/2/2016	LANGLEY CONSTRUCTION GROUP, IN	R	2/12/2016			161625		
49 5200-8210	C/O - Course Improvements		DESIGN&ENGINEER BATH	2,900.00				2,900.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-4/18/2016	LANGLEY CONSTRUCTION GROUP, IN	R	5/06/2016			162466		
49 5200-8210	C/O - Course Improvements		ROCK COLUMNS	16,756.00				16,756.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-8/19/2016	LANGLEY CONSTRUCTION GROUP, IN	R	5/27/2016			162731		
49 5200-8210	C/O - Course Improvements		GRILL,ROCK WORK&GRAN	29,954.75				29,954.75
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-9/14/2016	LANGLEY CONSTRUCTION GROUP, IN	R	9/23/2016			164039		
10 5121-3903	Maintenance-Streets		FLATWORK-WASHINGTON	2,500.00				2,500.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-11/21/2016	LANGLEY CONSTRUCTION GROUP, IN	R	12/09/2016			165322		
10 5121-3903	Maintenance-Streets		JOHNSON STREET DRAIN	4,450.00				4,450.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-CH-09182017	LANGLEY CONSTRUCTION GROUP, IN	R	9/22/2017			168484		
46 5111-8850	City Hall Remodel		LANGLEY CONSTRUCTION	29,275.00				29,275.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-09/18/2017	LANGLEY CONSTRUCTION GROUP, IN	R	9/29/2017			168547		
10 5115-3501	Building Maintenance		CONCRETE CONSTR-ROOF	9,200.00				9,200.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-01/30/2018	LANGLEY CONSTRUCTION GROUP, IN	R	2/02/2018			170364		
10 5111-8502	Capital Outlay		CITY HALL REMODEL	12,508.00				12,508.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-01/30/2018A	LANGLEY CONSTRUCTION GROUP, IN	R	2/09/2018			170469		
10 5123-3501	Building & Grounds Maintenance		DAMAGE ROCK COLUMN @	600.00				600.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-05/14/2018	LANGLEY CONSTRUCTION GROUP, IN	R	5/18/2018			171556		
46 5115-8850	Animal Shelter Remodel		LANGLEY CONSTRUCTION	25,000.00				25,000.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-4172018	LANGLEY CONSTRUCTION GROUP, IN	R	7/06/2018			172119		
48 5300-8900	Electric Capital Improvments		OVERPAYMENT-COTTAGES	8,936.41				8,936.41

VENDOR I.D.	NAME	STATUS	CHECK DATE	AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-07/10/2018	LANGLEY CONSTRUCTION GROUP, IN	R	7/20/2018			172288		
46 5115-8850	Animal Shelter Remodel		ANIMAL SHELTER REMOD	9,125.00				
10 5115-3501	Building Maintenance		ANIMAL SHELTER REMOD	2,595.00				11,720.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-06/13/2019	LANGLEY CONSTRUCTION GROUP, IN	R	7/05/2019			176003		
46 5123-9020	Park Improvements		JACKSON ST PAVERS	42,000.00				42,000.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-06/24/2019	LANGLEY CONSTRUCTION GROUP, IN	R	7/12/2019			176084		
46 5123-9020	Park Improvements		JACKSON ST PAVERS	7,998.00				7,998.00
5663	LANGLEY CONSTRUCTION GROUP, IN							
I-290	LANGLEY CONSTRUCTION GROUP, IN	R	10/04/2019			177010		
47 5100-8110	FBO REMODEL		FLOORING	21,744.72				21,744.72

** T O T A L S **	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	15	225,542.88	0.00	225,542.88
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
EFT:	0	0.00	0.00	0.00
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	0 VOID DEBITS	0.00		
	VOID CREDITS	0.00	0.00	0.00

TOTAL ERRORS: 0

** G/L ACCOUNT TOTALS **

G/L ACCOUNT	NAME	AMOUNT
10 5111-8502	Capital Outlay	12,508.00
10 5115-3501	Building Maintenance	11,795.00
10 5121-3903	Maintenance-Streets	6,950.00
10 5123-3501	Building & Grounds Maintenance	600.00
	*** FUND TOTAL ***	31,853.00
46 5111-8850	City Hall Remodel	29,275.00
46 5115-8850	Animal Shelter Remodel	34,125.00
46 5123-9020	Park Improvements	49,998.00
	*** FUND TOTAL ***	113,398.00
47 5100-8110	FBO REMODEL	21,744.72
	*** FUND TOTAL ***	21,744.72

** G/L ACCOUNT TOTALS **

G/L ACCOUNT	NAME	AMOUNT
48 5300-8900	Electric Capital Improvments	8,936.41
	*** FUND TOTAL ***	8,936.41
49 5200-8210	C/O - Course Improvements	49,610.75
	*** FUND TOTAL ***	49,610.75

VENDOR SET: 99	BANK: 99	TOTALS:	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
			15	225,542.88	0.00	225,542.88
BANK: 99		TOTALS:	15	225,542.88	0.00	225,542.88
REPORT TOTALS:			15	225,542.88	0.00	225,542.88

A/P HISTORY CHECK REPORT

10/08/2019 11:21 AM

SELECTION CRITERIA

VENDOR SET: 99-City of Burnet
VENDOR: 5663 - LANGLEY CONSTRUCTION GR
BANK CODES: All
FUNDS: Exclude: 52

CHECK SELECTION

CHECK RANGE: 000000 THRU 999999
DATE RANGE: 10/01/2014 THRU 99/99/9999
CHECK AMOUNT RANGE: 0.00 THRU 999,999,999.99
INCLUDE ALL VOIDS: YES

PRINT OPTIONS
SEQUENCE: CHECK NUMBER

PRINT TRANSACTIONS: YES
PRINT G/L: YES
UNPOSTED ONLY: NO
EXCLUDE UNPOSTED: NO
MANUAL ONLY: NO
STUB COMMENTS: YES
REPORT FOOTER: NO
CHECK STATUS: NO
PRINT STATUS: * - All

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT (this “*Agreement*”) is entered into to be effective as of the date described herein (the “*Effective Date*”), by and between the City of Burnet, Texas (the “*City*”), a Texas municipal corporation located in Burnet County, Texas, and Langley Homes, Inc., a corporation formed under the laws of the State of Texas (the “*Developer*”), otherwise known as the “*Parties*” to this Agreement.

RECITALS

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, under Chapter 380 of the Texas Local Government Code, the City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City limits; and

WHEREAS, the lack of moderately priced Single-family residential housing hinders business and industrial development within the City; and

WHEREAS, Developer desires to develop a residential subdivision consisting of streets, utilities and drainage improvements suitable for Single-family residential housing; and

WHEREAS, the proposed residential subdivision will provide housing opportunities; thus contributing to the economic development of the City by making it more attractive to business and industrial projects, generating increased development, increased real property value and tax revenue for City, increased related neighborhood services, and have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, City desires to offer incentives to Developer to enable Developer to develop the residential subdivision pursuant to this Agreement; and

WHEREAS, City and Developer are executing and entering into this Agreement to set forth certain terms and obligations of City and Developer with respect to such matters, including any grant of real property, fee waivers or other incentives made to Developer in exchange for the Developer’s investment, construction and use of the real property as a residential subdivision; and

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WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties; and

WHEREAS, City Council approved this Agreement and authorized the City Manager to execute same pursuant to Resolution NO. R2019-20, passed and approved on September 24, 2019.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and commitments described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, City and Developer agree as follows:

**ARTICLE I
AUTHORITY & BINDING REPRESENTATIONS**

City's execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, and by the Resolution authorizing same and shall constitute a valid and binding obligation of City. The above recitals (the "**Recitals**") are incorporated by reference herein. Developer's execution and performance of this Agreement constitutes a valid and binding obligation of Developer, obligating Developer to proceed with the development of the Project as provided by this Agreement. City acknowledges that Developer is acting in reliance upon City's performance of its obligations under this Agreement (including those presented in the Recitals) in making its decision to commit substantial resources to develop the Project and Developer acknowledges that City is acting in reliance upon Developer's representations (including those presented in the Recitals) and its full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources to the Project.

**ARTICLE II
DEFINITIONS**

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“Architectural Performance Standards” means the additional requirements above the minimum Code requirements, as shown on Exhibit “A”, which shall apply within the Property.

“Association” shall mean a property owners, or homeowners, association, which shall require mandatory membership of each and every owner of a lot within the Subdivision.

“CC&Rs” shall mean Covenants Conditions and Restrictions which shall require the collection of dues and assessments from the association’s members for, among other things, the purpose of maintaining the common areas of the Subdivision.

“City Manager” means City Manager of the City of Burnet, Texas and/or his or her designees.

“Code” means the City of Burnet’s Code of Ordinances as same may be amended, revised or recodified from time to time.

“Detention and Water Quality Pond” means onsite detention facilities in accordance with City’s Drainage Criteria Manual that receives and stores storm water runoff and functions as a water quality pond for purpose of managing non-point source pollution in accordance with the City’s non-point source pollution ordinance.

“Force Majeure” means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, and lockouts.

“Plat” means a Final Plat as defined in Chapter 98 of the Code.

“Primary Structure” means a structure in which the principal use of the lot is conducted. For the purposes of this Agreement, the Primary Structure required to be constructed on each lot shall be suitable for Single-family residential housing.

“Project” means the development of the Property as a residential Subdivision consisting of streets, utilities, drainage improvements, the Detention and Water Quality Pond and other appurtenances; and subdivision lots suitable for the construction of Single-family residential home-sites consistent with the building standards and land use regulations defined in the City of Burnet Code of Ordinances as Single-family residential – District “R-1”, as further shown on Exhibit “B”.

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“Property” means a 21.97 acre tract of land out of the Sarah Ann Guest Survey No. 1503, Abstract No. 1525 in Burnet County, Texas and being a portion of that certain 184.63 acre tract of land conveyed to CGG Holdings III, LLC in Document No. 201202604 of the official public records of Burnet County, Texas, which is more particularly described in Exhibit “C”.

“Public Records” means the records of the County Clerk of Burnet County wherein the recordation of Plats of the subdivision of property in the City of Burnet’s corporate limits and extra-territorial jurisdiction are deposited.

“Sidewalks” means those public improvements meant for use by pedestrian traffic constructed to the specifications required by the Code.

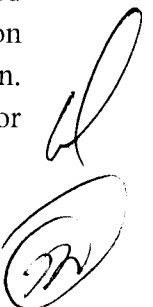
“Single-family” means a single-family dwelling as defined by Chapter 118 of the Code.

“Subdivision” means the division of the Property, in accordance with the requirements of the Code and Texas Local Government Code Chapter 212, including lots, streets, utilities, drainage improvements and other appurtenances.

ARTICLE I PROJECT SCOPE

SECTION 1.1 The Project. The Project shall consist of the development of the Property as a residential Subdivision as provided for herein and as further shown in Exhibit “B”. Any modification to the Plat, or the Project, shall require prior written consent of the City. Except as otherwise provided for herein, the Project shall be developed in full compliance with the Code.

SECTION 1.2 The Detention and Water Quality Pond. The Detention and Water Quality Pond shall be on a separate lot owned in common by the members of the Association. Improvements, maintenance, upkeep, repair, and/or replacement of the Detention and Water Quality Pond shall be the responsibility of the Association and its members. The Detention and Water Quality Pond shall be designed by the Developer’s consulting engineer to comply with Code requirements, including the requirement that the Detention and Water Quality Pond shall detain the additional storm-water runoff caused by the development of the Subdivision. In addition, as a material part of the consideration received by Developer under this Agreement, the Detention and Water Quality Pond shall be oversized, at the Developer’s sole cost and expense, to such size and specifications as is sufficient to capture the additional storm-water runoff caused by proposed improvements to portions of Elm, Lamar and Clark Streets, as further shown on Exhibit “D”. The Detention and Water Quality Pond shall be dedicated to the Association. Nothing contained herein shall be construed to be an obligation of the City to perform, or



otherwise contribute to such improvements to the Detention and Water Quality Pond. The City Engineer shall provide a determination as to the extent of the necessary oversizing, which shall be final and binding on Developer.

SECTION 1.3 Sidewalks. Sidewalks shall be constructed as part of the Project in accordance with the Code, save and except the following:

- 1) Those portions of Sidewalks located in all areas of the Subdivision, other than those fronting on Single-family residential lots shall be constructed prior to the City's acceptance of infrastructure within the Project.
- 2) Those portions of Sidewalks fronting Single-family residential lots shall be constructed at the time of construction of the Primary Structure on the lots. In no event shall a certificate of occupancy be issued for a Primary Structure until such Sidewalks are completed.

SECTION 1.4 Architectural Performance Standards. The City shall have the right to deny the issuance of a permit, or certificate of occupancy, for any Primary Structure if the Primary Structure, or associated lot, is not in compliance with the Architectural Performance Standards provided for herein. Such consent shall not be unreasonably withheld.

SECTION 1.5 Covenants, Conditions and Restrictions. CC&Rs, as attached hereto as Exhibit "E", shall be applicable to the Property and run with the land in perpetuity.

SECTION 1.5.1 The CC&Rs shall be executed by Developer and recorded in the office of the Burnet County Clerk, within thirty (30) days of the Effective Date of this Agreement.

SECTION 1.5.2 The CC&Rs shall comply with Texas Property Code Chapter 209, and other applicable law, and shall provide for the following:

- 1) The CC&Rs shall provide for the establishment of an architectural control committee (the "Architectural Control Committee"), which shall review the proposed construction of improvements within the Subdivision, for compliance with the Architectural Performance Standards, herein. The CC&Rs shall indicate the City's right to deny a permit or certificate of occupancy for Primary Structures or lots that do not conform with the Architectural Performance Standards.
- 2) The CC&Rs shall cause the creation of an Association, which shall require mandatory membership of each and every owner of a lot within the Subdivision. The CC&Rs shall mandate the collection of dues and assessments from the Association's members for, among other things, the purpose of maintaining the

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common areas of the Subdivision, including mowing and landscaping of the rights-of-ways within Property. Such common areas shall specifically include the Detention and Water Quality Pond. The CC&Rs shall assure that adequate funds are collected through dues and assessments to provide for the maintenance, upkeep, repair and replacement of all common areas by the Association and its members.

- 3) The CC&Rs shall provide that, irrespective of zoning, no lot within the Property shall be developed with any type of dwelling, other than a Single-family residential dwelling.

ARTICLE II DEVELOPER'S DUTIES AND OBLIGATIONS

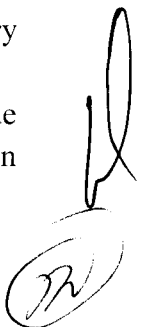
SECTION 2.1 Local Providers. Developer agrees to make good faith efforts to give preference and priority to suppliers and/or subcontractors whose primary place of business is located within Burnet County except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business.

SECTION 2.2 Payment of All Indebtedness and Obligations. The payment of all indebtedness and obligations incurred by Developer in connection with the development and construction of the Project and the operation of the Project shall be solely the obligations of Developer. City shall not be obligated to pay any indebtedness or obligations of Developer.

SECTION 2.3 Payment of Taxes. Developer shall make timely payment of Developer-owned Personal Property and Ad Valorem Taxes during the term of this Agreement.

SECTION 2.4 Reports. Developer shall, upon request, deliver to the City the following reports:

- 1) Certification of full compliance with all requirements of this Agreement.
- 2) A report of any sale, lease or transfer of any lot.
- 3) A report providing a detailed analysis of the Developer's progress towards the Project's completion including reporting on the status of the construction of public infrastructure required to serve the Subdivision.
- 4) A report documenting the use of suppliers and/or subcontractors whose primary place of business is located within Burnet County for the Project.
- 5) Upon written request by City Manager, Developer shall promptly provide additional information reasonably necessary to determine if Developer is in

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compliance with this Agreement. All information required by this Agreement shall be submitted to the City Manager at the address specified for giving notice in this Agreement.

SECTION 2.5 Title Insurance. The Developer shall provide every purchaser of a lot, or lots, purchased from the Developer with an owner's policy of title insurance for the amount of the land, and improvements (if any), at the time of purchase.

SECTION 2.6 Transfer of Electrical CCN. The Developer shall fully cooperate with the City to transfer the Certificate of Convenience and Necessity with the Public Utility Commission of Texas (CCN) to the City for any portion of the Property that is not in the City's electrical CCN, including but not limited to the execution of any and all applications and affidavits necessary for such transfer.

SECTION 2.7 Extension of Off-Site Electrical Service. Developer shall, at its sole costs and expense, extend off-site underground three phase electrical service to those portions of the Property located within the City's Electrical CCN. Notwithstanding the foregoing, the Developer shall have no obligation to extend off-site service to those portions of the Property not in the City of Burnet's Electrical CCN.

SECTION 2.8 Underground Electrical Service within the Project. The Developer shall, in accordance with City Code, install underground electrical service within the Project.

SECTION 2.9 Phase I Completion Date. The Developer shall complete Phase I of the Project as shown on Exhibit "B" by December 31, 2020.

ARTICLE III CITY'S DUTIES AND OBLIGATION

SECTION 3.1 Permit, Water/Wastewater Tap and Electrical Connection Waivers. The City hereby agrees to waive all building permit fees, standard tap fees and standard electrical connection fees for each Single-family residential dwelling constructed on the Property prior to the end of the Term of this Agreement. For the purposes of this Agreement, standard taps fees shall include the water meters and meter boxes. The meter boxes shall be provided by the City. The Parties acknowledge that nothing herein shall be construed to be a waiver of the City's impact fees.

SECTION 3.2 Municipal Fees. The City shall waive all platting and subdivision fees, except for electrical engineering, non-point source pollution BMP (Best Management Practices)

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operating permits, and actual out-of-pocket expenses for engineering review services by the City Engineer. Notwithstanding the foregoing, this provision shall not negate the Developer's obligation to provide fiscal surety for the construction and maintenance of public infrastructure, as required by the Code.

SECTION 3.3 Parkland Dedication. The City shall waive any parkland dedication requirements, or fees-in-lieu of parkland dedication associated with the development of the Project.

SECTION 3.4 Acceptance of Infrastructure. Upon the Developer's completion of the Project, in accordance with the Code (including maintenance surety requirements) and this Agreement, the City shall accept the roads, water lines, wastewater lines and electrical system within the Project. Developer may, in its' discretion, record a copy of the resolution of acceptance in the Public Records.

SECTION 3.5 Road Construction. The City shall reconstruct one block of Lamar Street from Pecan Street to Elm Street and one block of Clark Street from Pecan Street to Elm Street within one year of recordation of the Plat for Phase II of the Project as shown on Exhibit "B", or by December 31, 2023, whichever shall come later. However, the City shall have no obligation to construct said roads if the Developer fails to record the Plat for Phase II prior to the expiration of this Agreement.

SECTION 3.6 Zoning. The Parties acknowledge that the Property is not currently designated with the appropriate zoning classification for the Project contemplated in this Agreement; and before this Agreement can become effective the Property must be rezoned to a classification that allows the Project uses.

SECTION 3.7 Variances. The Project, as contemplated, requires a subdivision variance to the block length requirements of Section 98-48 of the Code to allow for the Project to be constructed in accordance with Exhibit "A". Additionally, the Project, as contemplated, requires a variance to Section 8.6 of the City of Burnet Drainage Criteria Manual to reduce the required freeboard from one foot to six inches. Variances shall be requested pursuant to applicable Code provisions. In the event either or both Variances are denied, the Parties shall work in good faith to modify the scope of the Project so that it may be completed in compliance with the block length and freeboard requirements prescribed in the Code.

ARTICLE IV



TERM OF AGREEMENT

SECTION 4.1 **Term.** The term (the “*Term*”) of this Agreement shall end on December 31, 2024.

ARTICLE V COVENANTS

SECTION 5.1 **Developer’s Covenants and Duties.** Developer covenants and warranties to the City the following:

SECTION 5.1.1 **Developer’s fulfillment of duties and obligations.** Developer agrees to timely and fully perform Developer’s obligations and duties as stated herein.

SECTION 5.1.2 **Developer representations.** Developer covenants and warranties to the City each and every statement is true and correct that follows:

- 1) Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement. In that regard, Developer shall, within thirty (30) days of the Effective Date of this Agreement, provide to the City the following:
 - a. Certificate of Formation certified by the Secretary of State of the State of Texas (the “*Secretary of State*”).
 - b. Certificate of Existence issued by the Secretary of State.
 - c. Certificate of Franchise Tax Account Status issued by the Comptroller of Public Accounts of the State of Texas (the “*Comptroller*”).
 - d. Corporate Resolution authorizing Developer to enter into this Agreement and authorize the signatory to execute this Agreement on behalf of Developer.
- 2) The execution of this Agreement has been duly authorized by Developer’s authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in material contravention of any law, rule, regulation, or of the provisions of Developer’s by-laws, or of any Agreement or instrument to which Developer is a party to or by which it may be bound.
- 3) Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and as of the date of Developer’s execution of this Agreement, Developer has not been informed of any potential involuntary bankruptcy proceedings.



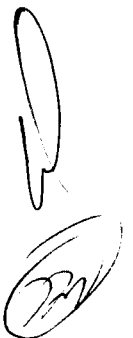
- 4) To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the city of Burnet and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
- 5) Developer shall timely and fully comply with all of the terms and conditions of this Agreement in all material respects.
- 6) Developer shall, at its own cost and expense, maintain or cause to be maintained, any portion of a public improvement until acceptance by the City, as evidenced by written acceptance by the City Manager, such acceptance not to be unreasonably withheld, conditioned, or delayed.
- 7) No Property with a lien still attached may be offered to the City for dedication.
- 8) In accordance with Texas Government Code Chapter 2264.051, Developer certifies that it, and all branches, divisions or departments of the Developer do not and will not knowingly employ an undocumented worker, as that term is defined in by Texas Government Code Chapter 2264.
- 9) Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by Developer the development of the Project.

SECTION 5.2 City's Covenants and Duties. The City's covenants and warranties to Developer the following:

SECTION 5.2.1 City's fulfillment of duties and obligations. Contingent on Developer's substantial compliance with its covenants and duties, City agrees to timely and fully perform the City's obligations and duties as stated in herein.

SECTION 5.2.2 City's representations. The City covenants and warranties to Developer each and every statement is true and correct that follows:

- 1) City is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.
- 2) The execution of this Agreement has been duly authorized by City's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in material contravention of any law, rule, regulation, or of the provisions of state statute, the Code, or of any Agreement or instrument to which the City is a party to or by which it may be bound.



- 3) The City is not a party to any bankruptcy proceedings currently pending or contemplated, and as of the date of the City's execution of this Agreement, the City has not been informed of any potential involuntary bankruptcy proceedings.
- 4) The City shall timely and fully comply with all of the terms and conditions of this Agreement in all material respects.

SECTION 5.3 Further Actions. City and Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions.

ARTICLE VI DEFAULT AND TERMINATION

SECTION 6.1 Default and Remedies. The Parties acknowledge and agree that the City's purpose for entering into this Agreement is to facilitate the creation of additional Single-family residential homes within the City.

If either Party should default in the performance of any obligation of this Agreement, the other Party shall provide such defaulting Party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.

In the event of default or the breach of any obligation, covenant, representation, or warranty contained herein, and in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved shall have such remedies as are available in law or equity for breach of contract, including termination of this Agreement; provided, however, that in no event shall either Party be liable to the other in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as lost profits or revenue, non-operation or increased expense of operation, or for any punitive or exemplary damages.

SECTION 6.2 Termination. This Agreement shall terminate upon the earliest occurrence of any one of the following:

- (i) the written agreement of the Parties; or



- (ii) the issuance of a Certificate of Occupancy for a Single-family residence for each lot within the Project; or
- (iii) the end of the Term of this Agreement.

This Agreement may be terminated by the City upon default, and failure to cure by Developer.

SECTION 6.3 Force Majeure. Neither Party shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons of Force Majeure.

ARTICLE VII PERSONAL LIABILITY OF PUBLIC OFFICIALS

No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement. The grant payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

ARTICLE VIII MISCELLANEOUS

SECTION 8.1 Entire Agreement. This Agreement, including exhibits hereto, contains the entire Agreement between the Parties with respect to the transactions contemplated herein.

SECTION 8.2 Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by all Parties.

SECTION 8.3 Assignment of Agreement. This Agreement may not be assigned by the Developer without the prior written consent of the City.

SECTION 8.4 Covenants Running with the Land. Notwithstanding any provision of this Agreement to the contrary, the Parties hereby acknowledge and agree that the covenants, promises and obligations contained in this Agreement provide both benefits to and burdens on the Property and this Agreement shall be recorded in the Public Records of Burnet County, Texas and the covenants, promises and obligations shall run with the land and be binding on all Parties having any right, title and interest in the Property or any portion thereof, and Developer shall incorporate this Agreement by reference, in its entirety, in the declarations of any CC&Rs affecting the Property. All of Developer's successors and assigns shall be jointly and severally liable in the event of Developer's default.

SECTION 8.5 Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

SECTION 8.6 Remedies. Upon breach of any of the covenants or the representations and warranties contained herein, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved Party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no Party shall be liable to any other Party for incidental or consequential damages.

SECTION 8.7 Notices. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

DEVELOPER:

**Langley Homes, Inc.
Ricky Langley, President
717 N Water Street
Burnet, Texas 78611**

CITY:

**City of Burnet
David Vaughn, City Manager
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611**

SECTION 8.8 Applicable Law. This Agreement is made and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in State courts located in Burnet County, Texas.

SECTION 8.9 Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties herein that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.



SECTION 8.10 No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION 8.11 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against any party.

SECTION 8.12 Provisions to Survive Closing on Property and Expiration date of this Agreement. The following Sections shall survive the termination of this Agreement and shall remain in full force and effect as follows:

- 1) Section 1.3 (entitled "Sidewalks") shall remain in full force and effect until all sidewalks, as required by this Agreement, have been completed and accepted by the City.
- 2) Section 1.4 (entitled "Architectural Performance Standards") shall remain in full force and effect.
- 3) Section 1.5 (entitled "Covenants, Conditions and Restrictions") shall remain in full force and effect.
- 4) Section 2.4 (entitled "Required Reports") shall remain in full force and effect until the initial sale of all improved lots.
- 5) Section 2.5 (entitled "Title Insurance") shall remain in full force and effect until the initial sale of all improved lots.

SECTION 8.13 Exhibits. All Exhibits attached to this Agreement are incorporated herein for all purposes:

- Exhibit "A" Architectural Performance Standards**
- Exhibit "B" The Project**
- Exhibit "C" Legal Description of Property**
- Exhibit "D" Road Drainage Area**
- Exhibit "E" Form of CC&Rs**

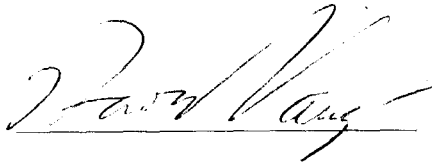
SECTION 8.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.



SECTION 8.15 Effective Date. This Agreement shall have immediate effect upon the passage and approval of an Ordinance rezoning the Property to a classification allowing the uses contemplated for the Project; provided that should no such Ordinance be passed and approved on or before January 31, 2020, this Agreement shall become void and shall have neither have any legal effect nor place any obligations on either Party.

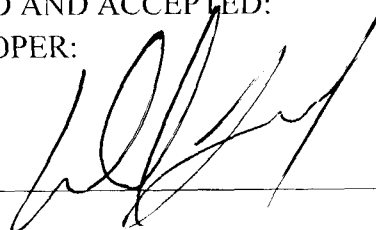
(Signatures on next page)

CITY OF BURNET:

By:  Date: 9/30/19

City of Burnet
David Vaughn, City Manager
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

AGREED AND ACCEPTED:
DEVELOPER:

By:  Date: 10/4/19

Langley Homes, Inc.
Ricky Langley, President
717 N Water Street
Burnet, Texas 78611



ARCHITECTURAL PERFORMANCE STANDARDS

- The first floor front and side elevations, of Primary Structures shall be constructed of at least fifty percent (50%) masonry. Gables may be another form of siding or masonry product. Masonry shall be defined as being brick, natural or synthetic stone, or conventional stucco. Neither an Exterior Insulation and Finishing System (EIFS), nor Cementous board or panel products, shall be considered to be masonry.
- Single-family homes shall have a minimum of 1,350 square feet of living space. Living space shall only be calculated from interior space and shall not include garage space or porches.
- Single-family homes shall include a minimum of three (3) bedrooms and two (2) bathrooms.
- Single-family homes shall include a minimum two-car garage.
- Single-family homes shall have a concrete driveway, a minimum of eighteen (18) feet in width and shall be constructed from the garage to the public street.
- All Primary Structures shall include water heater, lighting, central heat and air-conditioning, and other amenities designed to promote energy savings in accordance with federal, state and local codes and regulations.
- All Primary Structures shall have a roof pitch of 5:12 or greater.
- All Primary Structures shall have a minimum of two roof elevations.
- Metal roofs are allowed, roof material must be non-reflective. Galvalume is considered non-reflective.
- Front yards, including street side yards of corner lots, must be sodded.
- R-1 minimum lot width 60' at building set back.

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Exhibit "B" The Project



1590 OLLIE LANE
 MARBLET HILLS, TN 38654
 PHONE: 588-3308/3304-691-8815
 WWW.COPLINASSOCIATES.COM



[Handwritten signature]

Exhibit "C" Legal Description of Property

CUPLIN & ASSOCIATES, Inc.
land surveyors & planners

Prepared For: Langley Homes, Inc.
Project No. 19965
Date: 6-12-19

BEING 21.97 ACRES OUT OF THE SARAH ANN GUEST SURVEY NO. 1503, ABSTRACT NO. 1525 IN BURNET COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 184.63 ACRE TRACT OF LAND CONVEYED TO CGG HOLDINGS III, LLC IN DOCUMENT NO. 201202604 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS. SAID 21.97 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY SEPARATE METES AND BOUNDS AS FOLLOWS.

BEGINNING at a 1/2" iron rod found with plastic survey cap stamped HLS, in the south line of Pecan Street, for the northeast corner of that certain Lot No. 1, Block No. 36 of the Johnson Addition, the most northerly northwest corner of said 184.63 acre tract and the most northerly northwest corner hereof;

THENCE N76°42'42"E, a distance of **49.57 feet** to a 1/2" iron rod set with plastic survey cap stamped CUPLIN, in the west line of that certain 20.82 acre tract conveyed to Don R. Meredith and Donna Meredith in Document No. 201008727 of the Official Public Records of Burnet County, Texas, for a northerly corner of said 184.63 acre tract and the most northerly northeast corner hereof;

THENCE S13°46'25"E, with the west line of said 20.82 acre tract, an easterly line of said 184.63 acre tract and an easterly line hereof, a distance of **378.67 feet** to a 1/2" iron rod set with plastic survey cap stamped CUPLIN, for a southwesterly corner of said 20.82 acre tract, an angle point of said 184.63 acre tract and an angle point hereof;

THENCE S66°58'44"E, a distance of **667.52 feet** to a 1/2" iron rod set with plastic survey cap stamped CUPLIN, for an angle point of said 20.82 acre tract, an angle point of said 184.63 acre tract and the most easterly northeast corner hereof;

THENCE S13°44'33"E, a distance of **120.09 feet** to a 1/2" iron rod set with plastic survey cap stamped CUPLIN, for the southeast corner hereof;

THENCE S76°15'27"W, a distance of **1,912.61 feet** to a 1/2" iron rod set with plastic survey cap stamped CUPLIN, in the east right-of-way line of Westfall Street (Burnet County Road No. 330) and the west line of said 184.63 acre tract, for the southwest corner hereof;

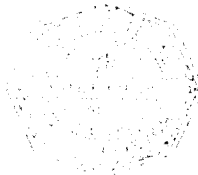
THENCE N13°44'33"W, a distance of **563.01 feet** to a 1/2" iron rod set with plastic survey cap stamped CUPLIN, at the point of intersection of the east right-of-way line of Westfall Street and the south right-of-way of Elm Street, for the northwest corner of said 184.63 acre tract and the northwest corner hereof;

THENCE N76°38'26"E, with the south right-of-way line of said Elm Street, the north line of said 184.63 acre tract and the north line hereof, a distance of **1,330.78 feet** to a 1/2" iron rod found with plastic survey cap stamped RPI.S 4452, for the southeast corner of said Elm Street, an angle point of said 184.63 feet and an angle point hereof;

THENCE N14°11'13"W, with the east line of that certain Lot No. 8, Block No. 36 of said Johnson Addition, the east line of said Lot No. 1, the west line of said 184.63 acre tract and the west line hereof, a distance of **344.56 feet** to the POINT OF BEGINNING and calculated to contain 21.97 acres.

I hereby certify that this survey was performed on the ground and was surveyed by me or under my direct supervision and that this professional service meets or exceeds the current minimum standards of practice as established by the Texas Board of Professional Land Surveying. Basis of Bearings are to Texas Coordinate System, Central Zone. A Plat of Survey of even date was prepared as is intended to accompany the above described tract of land.

Kyle P. Cupin Date: 6/12/2019
Kyle P. Cupin, Registered Professional Land Surveyor No. 5938



1500 Ollie Lane, Marble Falls, Texas 78654
PH: 325.388.3300 Fax: 325.388.3320 Prof. Firm No. 10126900
www.cuplinassociates.com

Page 2 of 2

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Exhibit "D" Road Drainage Area

Date: Sep 24, 2019, 9:49am User ID: Williamh01
File: A:\19-2008 Westfall Langley\Design\EXHIBITS\POND.dwg



Exhibit "E" Form of CC&Rs

**Declaration of Restrictive Covenants of the
Westfall Villages Subdivision**

Basic Information

Date: May 1, 2017

Declarant: Langley Homes, Inc., a Texas corporation

Declarant's Address:

Langley Homes, Inc.
717 N. Water St.
Burnet, Texas 78611

Property Owners Association: Westfall Villages Property Owners Association, an unincorporated Texas nonprofit association

Property Owners Association's Address: 717 N. Water St.
Burnet, Texas 78611

Property: BEING a 21.97 acre tract of land out of the Sarah Ann Guest Survey No. 1503, Abstract No. 1525 in Burnet County, Texas and being a portion of that certain 184.63 acre tract of land conveyed to CGG Holdings III, LLC in Document No. 201202604 of the official public records of Burnet County, Texas, and being more particularly described in the attached Exhibit "A" to which reference is herein made for all purposes.

Definitions

"ACC" means the Architectural Control Committee established in this Declaration.

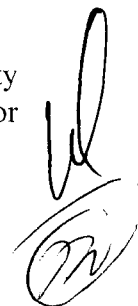
"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

"Board" means the Board of Directors of the Property Owners Association.

"Bylaws" means the Bylaws of the Property Owners Association adopted by the Board.

"Code" means the City of Burnet's Code of Ordinances as same may be amended, revised or recodified from time to time.

"Common Area" means the Detention and Water Quality Pond and all other property within the Subdivision not designated as a Lot on the Plat and that has not been accepted for



maintenance by the applicable governmental body. Declarant will convey the Common Area to the Property Owners Association.

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means Langley Homes, Inc., a Texas corporation, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

"Declarant Control Period" means a period in which Declarant reserves the right to facilitate the development, construction, and marketing of the subdivision and the right to direct the size, shape, and composition of the subdivision. During the Declarant Control Period, the Declarant may amend the Covenants, Bylaws, Management Certificate, Rules or any dedicatory instrument. However, the Declarant may not incorporate less restrictive architectural restrictions than are contained in the original declaration. The Declarant Control Period shall cease when all Lots are conveyed to owners other than a Declarant or a builder in the business of constructing homes who purchased the lots from the Declarant for the purpose of selling completed homes built on the lots. During the Declarant Control Period the Declarant may appoint and remove board members and the officers of the Association, other than board members or officers elected by members of the Association. In accordance with Texas Property Code Section 209.00591, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a Declarant or a builder in the business of constructing homes who purchased the lots from the declarant for the purpose of selling completed homes built on the lots, at least one-third of the board members must be elected by owners other than the Declarant.

"Detention and Water Quality Pond" means onsite detention facilities in accordance with City's Drainage Criteria Manual that receives and stores storm water runoff and functions as a water quality pond for purpose of managing non-point source pollution in accordance with the City's non-point source pollution ordinance, which shall be platted as a separate lot within the Subdivision.

"Easements" means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

"Dedicatory Instruments" means this Declaration and the Bylaws, rules of the Property Owners Association, and standards of the ACC, as amended.

"Lot" means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

"Member" means Owner.

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"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded in Instrument No. **ENTER RECORDING INFORMATION** of the real property records of Burnet County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence and as defined by Chapter 118 of the Code.

"Structure" means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

Clauses and Covenants

A. Imposition of Covenants

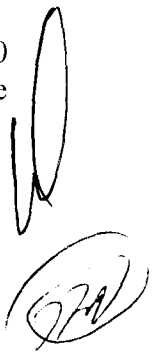
1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

B. Plat and Easements

1. The Plat, Easements, and all matters shown of record, including the Chapter 380 Economic Development Agreement between Declarant and the City of Burnet, affecting the Property are part of this Declaration and are incorporated by reference.

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2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

C. Use and Activities

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family as described herein.

2. *Prohibited Activities.* Prohibited activities are -

- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any dumping of rubbish;
- e. any storage of –
 - i. building materials except during the construction or renovation of a Residence or a Structure;
 - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
 - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry, except for common domesticated household pets, such as dogs and cats, not to exceed 4 confined to a fenced yard or within the Residence;
- h. any commercial or professional activity except reasonable home office use;
- i. the drying of clothes in a manner that is visible from any street;



- j. the display of any sign except –
 - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
 - ii. political signage not prohibited by law or the Dedicatory Instruments;
- k. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- l. moving a previously constructed house onto a Lot;
- m. interfering with a drainage pattern without ACC approval;
- n. hunting and shooting; and
- o. occupying a Structure that does not comply with the construction standards of a Residence.

D. Construction and Maintenance Standards

- 1. *Lots*
 - a. *Subdivision Prohibited.* No Lot may be further subdivided.
 - b. *Easements.* No easement in a Lot, other than those easements conveyed to the City of Burnet for a governmental purpose may be granted without ACC approval.
 - c. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.
- 2. *Residences and Structures*
 - a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.
 - b. *Maximum Height.* The maximum height of a Residence shall be one story not to exceed 25' at the peak.
 - c. *Required Area.* The total area of a Residence must be at least 1,350 square feet and shall only be calculated from interior space, exclusive of porches, garages, or carports.
 - d. *Damaged or Destroyed Residences and Structures.* Any Residence or

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Structure that is damaged must be repaired within 30 days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within 60 days and the Lot restored to a clean and attractive condition.

3. *Building Materials for Residences and Structures*

a. *Roofs.* Only composite or non-reflective metal roofs may be used on Residences and Structures. All roof stacks must be painted to match the roof color. For the purposes of this Section, Galvalume is to be considered non-reflective.

Nothing herein shall be interpreted to prohibit or restrict a property owner who is otherwise authorized to install shingles on the roof of the owner's property from installing shingles that are (1) designed primarily to be wind and hail resistant, (2) provide heating and cooling efficiencies greater than those provided by customary composite shingles or (3) provide solar generation capabilities; and that, when installed: (A) resemble the shingles used or otherwise authorized for use on property in the subdivision; (B) are more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use on property in the subdivision; and (C) match the aesthetics of the property surrounding the owner's property.

b. *Exterior Walls.* All Residences must have at least 50 percent of the front and side exterior walls made of stone, stucco or brick, minus windows and doors, unless otherwise approved by the ACC.

c. *Driveways and Sidewalks.* All driveways must have a concrete driveway, a minimum of eighteen (18) feet in width and shall be constructed from the structure of the residence to the public street and all sidewalks and driveways must be surfaced with concrete, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock.

d. Single-family homes shall include a minimum of three (3) bedrooms and two (2) bathrooms.

e. Single-family homes shall include a minimum two-car garage or two-car covered carport.

f. All primary structures shall include water heater, lighting, central heat and air-conditioning and other amenities designed to promote energy savings in accordance with federal, state and local codes and regulations.

g. All primary structures shall have a roof pitch of 5:12 or greater.



- h. All primary structures shall have a minimum of two roof elevations.
- i. Front yards, including side yards of corner lots, must be sodded.
- j. R-1 minimum lot width is 60' at building set back.

E. Property Owners Association

1. *Establishment and Governance.* The filing of this Declaration establishes the Property Owners Association as an unincorporated nonprofit association that is governed by this Declaration and the Bylaws. The Property Owners Association has the powers of an unincorporated nonprofit association and a property owners association for the Subdivision under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per Lot. When more than one person is an Owner, each is a Class A Member, but only one vote may be cast for a Lot.

b. *Class B.* The Class B Member is Declarant and has two votes for each Lot owned as specified in the Bylaws. The Class B Membership ceases and converts to Class A Membership on the earlier of –

- i. when the Class A Members' votes exceed the total of Class B Member's votes
- ii. The Declarant assigns all rights and interest under this Agreement
- iii. The Declarant no longer owns any Lot or portions of a Lot

F. ACC

1. *Establishment*

a. *Purpose.* The ACC is established as a committee of the Property Owners Association to assist the Property Owners Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.



b. *Members.* During the Declarant Control Period, the ACC consists of Declarant. Upon the expiration of the Declarant Control Period, the ACC consists of at least 3 persons appointed by the Board. The Board may remove or replace an ACC member at any time.

c. *Term.* ACC members serve until replaced by the Board or they resign.

d. *Standards.* Subject to Board approval, the ACC may adopt standards that are more restrictive and do not conflict with the other Dedicatory Instruments to carry out its purpose. The ACC may not adopt standards that are any less restrictive than those contained in the original Declaration. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.

2. *Plan Review*

a. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.

b. *Procedures*

i. *Complete Submission.* Within 14 days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within 30 days after complete submission, the submitted plans and specifications are deemed approved.

c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within 5 days after the ACC's action. The Board shall determine the appeal within 7 days after timely notice of appeal is given. The determination by the Board is final.

d. *Records.* The ACC will maintain written records of all requests submitted

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to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

e. *No Liability.* The Property Owners Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

f. *City of Burnet Right to Enforce.* There is herein provided in favor of the City of Burnet, as a third party beneficiary, the right to deny a permit or certificate of occupancy for Residences, Structures or Lots that do not conform with the Architectural Performance Standards which shall apply to the primary structure constructed upon any Lot within the Subdivision as required in Section 1.4 of the Chapter 380 Economic Development Agreement.

G. Assessments

1. *Authority.* The Property Owners Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners Association, and to improve and maintain the Common Areas. The Property Owners Association shall be responsible for mowing and landscaping of the right-of-ways not associated with a Lot, and the Detention and Water Quality Pond.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by the Declarant and hereby assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.

4. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

5. *Regular Assessments*

a. *Rate.* Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment is \$100.00.

b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.

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c. *Collections.* Regular Assessments will be collected yearly in advance, payable on the first day of January of each year.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefitting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a 2/3 vote at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

10. *Delinquent Assessments.* Any Assessment not paid within 14 days after it is due is delinquent.

H. Remedial Rights

1. *Late Charges and Interest.* A late charge of \$50.00 is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of 5 percent per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.

3. *Judicial Enforcement.* The Property Owners Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

4. *Remedy of Violations.* The Property Owners Association may levy a fine against an Owner for a violation of the Dedicatory Instruments.

5. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the



Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.

6. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

I. Common Area

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners Association to -

a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;

b. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments;

c. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and

d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of 2/3 of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Dedicatory Instruments.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

4. *Storm Water Retention/Detention Facility.* Upon conveyance of the Storm Water Retention/Detention Facility by Declarant to the Association, it shall be the sole obligation of the Association to maintain the Storm Water Retention/Detention Facility in accordance with all state, federal and/or municipal regulations and the Board may issue assessments to assure such maintenance. The duty to maintain shall bind and inure to the benefit of the Association and its heirs, successors and assigns.

J. General Provisions

1. *Term.* This Declaration runs with the land and is binding in perpetuity.

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.

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3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended at any time by a vote of 67 percent of Owners entitled to vote on the amendment. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

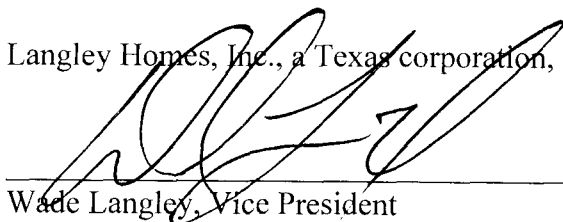
5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.

6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

8. *Annexation of Additional Property.* On written approval of the Board and not less than 75 percent of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

Langley Homes, Inc., a Texas corporation,



Wade Langley, Vice President

STATE OF TEXAS)

COUNTY OF BURNET)

This instrument was acknowledged before me on Oct. 4, 2019, by Wade Langley, as the Vice President of Langley Homes, Inc., a Texas corporation, on behalf of said corporation.

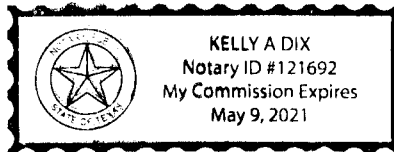


Kelly Dix

Notary Public, State of Texas

My commission expires: 5-9-21

After recording, please return to:
Law Office of Cody Henson, PLLC
205 S. Pierce St.
Burnet, TX 78611
Tel: (512) 756-4100
Fax: (512) 756-2900



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