

**AGENDA FOR THE KERRVILLE CITY COUNCIL
SPECIAL-CALLED MEETING**

WEDNESDAY, OCTOBER 21, 2020, 5:00 P.M.

CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

The Community Vision

Kerrville will be a vibrant, welcoming and inclusive community that:

- *Respects and protects the natural environment that surrounds it;*
- *Seeks to attract economic growth and development;*
- *Provides opportunities for prosperity, personal enrichment and intellectual growth for people of all ages; and*
- *Does so while preserving the small-town charm, heritage, arts and culture of the community.*



Kerrville2050



KERRVILLE CITY COUNCIL
SPECIAL-CALLED MEETING AGENDA
OCTOBER 21, 2020, 5:00 PM
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS



***Council Workshop Procedures during the Disaster Declaration
and Citizen Participation Guidelines***

The City Council will conduct the October 21, 2020 special-called meeting as a meeting open to public attendance. COVID-19 (Coronavirus) provides unique concerns in that gathering members of the public and City staff within a physical setting may constitute a public health risk. In an effort to avoid and mitigate health risks, standard safety protocols must be observed by City Council members, City staff, and citizens/visitors attending this meeting. Anyone attending this meeting must wear a mask into City Hall, sanitize their hands, and have their temperature taken prior to entering Council Chambers. Anyone with a temperature greater than 100.1 will not be allowed entry. All attendees must wear a mask at all times. The City will observe six-foot distance seating and will designate allowable seating. Once capacity is reached, overflow seating will be provided in the Lobby and Upstairs Conference Room. The public podium will be sanitized between each speaker.

Citizens wishing to speak shall submit a completed "speaker request form" to the City Secretary before City Council special-called meeting is called to order, definitely before the item is called or read into record. Each speaker is limited to four minutes.

Instructions for Zoom callers: The Zoom platform will also be active during this meeting. The Zoom moderator will be accepting calls starting at 4:00 p.m. The deadline to place your call is 4:45 p.m. in order to register with the Zoom moderator and participate. Any calls made after the 4:45 p.m. deadline will not be answered, and microphones will be kept muted. Each speaker is limited to four minutes.

Dial the toll free number: **1-800-832-5611**. If the toll free number is not functioning, call the Zoom alternative back-up numbers **1-346-248-7799** or **1-669-900-6833**.

When your call is answered you will hear "**Welcome to Zoom, enter your Meeting ID followed by pound**". Enter in the Meeting ID below followed by the pound sign (#), when prompted, enter the webinar passcode.

The Meeting ID is **969 1221 2025#** Passcode is **629644**.

Once you have called into the meeting, your microphone will be placed on mute and your call will be placed in the call queue. At this point, you will hear silence on the phone. Do not hang up. The moderator will unmute your microphone as he/she is going down the list. Once the special-called meeting has started, you will be able to listen to proceedings even if your microphone is muted.

Note: Zoom is a third party vendor which provides the ability for remote participation. Software changes may be beyond what the City can control. If the City is notified of any issues from the third party vendor, the City will notify citizens and provide alternatives for engagement and participation.

Written comments:

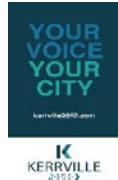
Written comments will be accepted for any agenda items, including Public Hearings. You are required to provide your first and last name, address, and identify the item you wish to comment on. All information must be provided in order for your comments to be read into record. Written comments can be provided two different ways:

- **OPTION 1 hard copy** – Comments may be dropped off at the City Hall Utility Payments Drop-Box on the north side of City Hall by 4:00 p.m. the afternoon of the meeting.
- **OPTION 2 email** - Email comments to shelley.mcelhannon@kerrvilletx.gov, and must be received by 4:00 p.m. the afternoon of the meeting. In addition, anyone may email Councilmembers via their City email addresses as specified on the City's website.

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-streaming via the City's website (www.kerrvilletx.gov). City Council meetings are recorded and the recordings are posted on the City's website.



KERRVILLE CITY COUNCIL
SPECIAL-CALLED MEETING AGENDA
OCTOBER 21, 2020, 5:00 PM
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS



CALL TO ORDER:

INVOCATION AND PLEDGE OF ALLEGIANCE:

Led by Councilmember Place 2 Kim Clarkson.

1. EXECUTIVE SESSION:

City Council may adjourn into executive (closed) session at any time to discuss any matter listed above including if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberations regarding gifts), 551.074 (personnel/officers), 551.076 (deliberation regarding security devices), and 551.087 (business prospect/economic development) of Chapter 551 of the Texas Government Code. Council will discuss the following matters in executive session:



1A. Subdivision Development Agreement with Lennar Homes of Texas Land and Construction, Ltd. for City-owned property located in the 3200 block of Loop 534 (551.071, 551.072, 551.087).

2. OPEN SESSION:



2A. Subdivision Development Agreement with Lennar Homes of Texas Land and Construction, Ltd. for City-owned property located in the 3200 block of Loop 534.

Attachment:

20201021_Agreement_Lennar Subdivision Development Agreement.pdf

ADJOURN.



**TO BE CONSIDERED BY THE CITY COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Subdivision Development Agreement with Lennar Homes of Texas Land and Construction, Ltd. for City-owned property located in the 3200 block of Loop 534.

AGENDA DATE OF: October 21, 2020 **DATE SUBMITTED:** Oct 16, 2020

SUBMITTED BY: Mark McDaniel

EXHIBITS: [20201021_Agreement_Lennar Subdivision Development Agreement.pdf](#)

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	H - Housing
Guiding Principle	H1. Provide a diverse range of housing options to meet the needs and desires of all age groups, income levels, and lifestyles
Action Item	H1.2 - Research potential funding mechanisms for the development of workforce housing, defined as 80% to 120% of area median household income

SUMMARY STATEMENT:

Lennar Homes of Texas Land and Construction, Ltd. (Lennar Homes) seeks to partner with the City of Kerrville for the development of a new residential subdivision for workforce or moderate-income housing, initially net priced between \$185,000 and \$227,000, which is up to 80% of area median family income (AMFI) as determined by the Texas Department of Housing and Community Affairs (TDHCA). Said price range may be adjusted as the TDHCA's 80% of AMFI benchmark changes or construction costs increase over time subject to requirements in the agreement.

This new subdivision is to be located on the City-owned 33.81 acres on the southwest corner of Loop 534 and the new Olympic Drive extension. Subject to further soils testing, engineering, design, annexation, zoning, and platting, the subdivision would include approximately 125 lots which would be on average 45 feet wide.

Further details of this public-private partnership are included in the attached proposed residential subdivision development agreement, including home elevations and specifications.

RECOMMENDED ACTION:

Authorize the City Manager to execute a residential subdivision development agreement with Lennar Homes of Texas Land and Construction, Ltd. to develop workforce housing, which is substantially the same as presented.

SUBDIVISION DEVELOPMENT AGREEMENT

This Subdivision Development Agreement (the “Agreement”) is made effective as of _____, _____, 2020, (the “Effective Date”) by and between **CITY OF KERRVILLE, TEXAS** (the “City”), a Texas home-rule corporation, and **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD.**, a Texas limited partnership (“Developer”), each a “Party” and collectively, the “Parties” hereto.

RECITALS

WHEREAS, City has the objective of providing for the development of moderate-income housing for its citizens, as found within both the City’s Comprehensive Plan (“*Kerrville 2050*”) and the *Kerrville Housing Study and Strategic Plan 2019*; and

WHEREAS, the City has previously acquired a 33.81-acre tract, which is situated in the Samuel Wallace Survey No. 113, Abstract No. 347 (the “Property”) by means other than condemnation, the Property more particularly described in the attached **Exhibit A**; and

WHEREAS, City, pursuant to its goal of providing for the development of moderate-income housing, issued two requests for proposals (“RFP(s)”), wherein it sought proposals from experienced developers possessing the capacity and expertise to develop moderate-income housing for its citizens; and

WHEREAS, the proposals received by the City were not in the best interest of the City, to include the requested incentives and requested structure of public-private partnerships, and the RFPs have since expired; and

WHEREAS, Developer recently contacted City and expressed interest in developing the Property in a way that matches the City’s definition of moderate-income housing by discussing plans for the Olympic Residential Subdivision which marketing name may differ subject to final approval by City and Developer; and

WHEREAS, after reviewing Developer’s plans, City has determined that the transfer of the Property to the Developer will facilitate development of the Property into moderate-income housing and thereby serves a valid public purpose; and

WHEREAS, City has determined that the Developer is qualified to receive real property conveyance(s) pursuant to Section 272.001(g) of the Texas Local Government Code, for the development of low-income or moderate-income housing within the City; and

WHEREAS, Developer desires to accept title to the Property described herein from City on the terms and conditions described herein; and

WHEREAS, City has determined that it is appropriate to convey title of the Property to Developer to facilitate the development of adequate, decent, safe, and sanitary moderate-income housing for City's citizens and that this Agreement is sufficient to effectuate and maintain the public purpose herein described; and

WHEREAS, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380, to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

WHEREAS, City has determined that making waiving various fees for Developer in accordance with this Agreement will further the objectives of City, will benefit City and City's inhabitants, and will promote local economic development and stimulate business and commercial activity in City;

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

I. Definitions

For purposes of this Agreement, each of the following terms has the meaning set forth herein unless the context clearly indicates otherwise:

“*Act of Default*” means any happening or occurrence described in Section VII hereof following notice and the expiration of a 30-day cure period.

“*City*” means the City of Kerrville, Texas, a home-rule municipal corporation of the State of Texas.

“*Certificate of Occupancy(s)*” means a Certificate of Occupancy permitting the lawful occupancy of the applicable improvements from the appropriate governmental authority having jurisdiction over the Property.

“*City Council*” means the City Council of Kerrville, Texas.

“*Commence Construction*” means (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the infrastructure or homes; (ii) all necessary permits for the construction of the infrastructure or homes have been issued by the applicable governmental authorities; and (iii) grading of the Property or construction of the building elements of the infrastructure or homes has commenced.

“Development” means Developer’s planned residential subdivision as identified within its written proposal to City, attached as **Exhibit B** (the “Proposal”).

“Effective Date” means the date contained in the first paragraph of this Agreement.

“Infrastructure” means the public streets, sidewalks, water systems, sanitary sewer systems, drainage systems, and other public improvements required by the Subdivision Code to be constructed in association with the Development.

“Payback Provisions” means Developer’s payment obligations as described in Section 8.1 herein.

“Permitted Encumbrances and Reservations” means municipal subdivision and zoning ordinances, recorded easements for public utilities serving the Property, and such other matters contained in the public records in advance of the date of Closing on the date of conveyance of the Property to Developer pursuant to this Agreement and not objected to by Developer.

“Property” means the property being an approximately 33.81 acres and situated in the Samuel Wallace Survey No. 113, Abstract No. 347, Kerrville, Kerr County, Texas, and being more particularly described in **Exhibit A**, attached hereto.

“Subdivision Code” means City’s ordinances and regulations relating to the subdivision and development of real property located within the City’s corporate limits and extraterritorial jurisdiction as set forth in document provided to Developer and currently linked on the City’s website site, and as amended and/or succeeded from time to time.

“Surface Estate” means all rights and title to the Property except the rights to water and minerals to a depth, provided that no subsurface activities intersect the boundaries of the Property at depths less than five hundred feet (500’) below the overlying surface of the Property.

“Zoning Approvals” means the final approval by the Planning and Zoning Commission and/or City Council, as appropriate, for approval of both the subdivision plat of the Property, zoning of the Property as a Single-Family Residential Zoning District (R-2), which only allows single-family detached dwelling units and as described in the Proposal, and approval of Developer’s construction plans for the Development.

“Zoning Code” means City’s zoning regulations as set forth in Chapter 60 of the Code of Ordinances, City of Kerrville, Texas, as amended or succeeded from time to time.

II. City Consideration

In consideration for Developer's agreement to satisfy the requirements set out in Section III, below, City agrees as follows:

2.1 City shall convey the Property to Developer in accordance with the following:

- A. As Is. City will convey the Property to Developer "as is, without warranty", except that City will warrant title by Special Warranty Deed, subject only to the Permitted Encumbrances and Reservations.
- B. Due Diligence. Developer is solely responsible for performing due diligence as may be necessary or prudent as to its ownership and use of the Property, to include conducting environmental and soil studies.
- C. Costs. Developer is responsible for all costs of closing including title policy, escrow fee, tax certificates, recording fees, and survey.
- D. Closing. Conveyance of the Property from the City ("**Closing**") shall be on or before the date which is fifteen (15) days after the making of all required Zoning Approvals and City Approvals (defined in 3.2 below).
- E. The Benefit. The value of the Property at the time of conveyance from the City to Developer is stipulated to be \$1,690,000.00 (the "**Benefit**") pursuant to an independent appraisal provided to City and dated March 24, 2020. The Parties acknowledge and agree that, except for the Payback Provisions, no purchase price shall be required to be paid for the Property and that City shall convey the Property to Developer for no monetary consideration. Developer shall pay any transfer or deed taxes applicable to the conveyance of the Property to Developer plus closing costs.
- F. No Transfer. The Parties agree that Developer shall not sell, transfer, or convey any part of the Property during the Term of this Agreement, without the prior written consent of City.

2.2 City shall waive development fees for Developer's development of the Property including annexation, zoning, platting, and similar fees, but excluding Parkland Dedication Fees or utility tap fees. In addition, the waiver of fees does not include fees for building permits for homes constructed within the Property.

III. Developer's Performance Obligations

3.1 Subject to completion of its due diligence on the Property and the approval of Developer's corporate investment committee on or before 30 days from the Effective Date,

Developer agrees to accept the Property from City on the terms and conditions set forth herein and, in consideration of such transfer from City to Developer, Developer shall perform all of the performance obligations described in this Article III. Developer shall design and thereafter construct the Development in strict accordance with **Exhibit B**, which in general, includes a minimum of 125 lots to only allow single-family detached dwelling units of the Developer's Watermill Collection, as more specifically provided in the Proposal, and that complies with the City's current Single-Family Residential Zoning District (R-2). The Property is subject to the City's development codes, to include its Subdivision Code, and Zoning Code, for both plat approval and rezoning respectively, both of which the City has made accessible to Developer for its review.

3.2 Developer will construct the Development according to Section 3.1. The construction shall include the Infrastructure, as designed and constructed in accordance with City's Subdivision Code, to include City's engineering standards and specifications. Developer's design plans shall be subject to review by the City's Development Review Committee, with final approval by the City Engineer ("**City Approvals**").

3.3 Developer shall comply with City's parkland dedication requirements, which City has provided to Developer and which may include the dedication of land or payment of fees as applicable.

3.4 Developer shall develop and sell homes within the Development in accordance with the following:

- A. Sales Pricing. Developer shall develop lots and sell homes within the Property at sales prices in accordance with affordability standards for moderate-income housing. The applicable standards are those established by the Texas Department of Housing and Community Affairs (TDHCA), with the net sales price of the homes being affordable to homebuyers earning up to 80 percent area median family income (AMFI). "Net sales price" means that any incentives or closing cost assistance that Developer pays on behalf of a homebuyer will be credited to the sales price of the home for purposes of this section. Based upon TDHCA regulations, the sales price of each home may not exceed \$227,000 ("Maximum Sales Price"), with the range of such sales prices being between \$185,000 and \$227,000.
- B. Applicability of Pricing. The range of sales prices, including the Maximum Sales Price, is only applicable to the initial sale of a home.
- C. Proof of Sales Price. For each sale, Developer shall provide City, each month, with copies of all purchaser's signed HUD-1 settlement statements relating to the sale of a home within the Property for the preceding month, which HUD-1 statements shall be redacted to exclude disclosure of Social Security Numbers, Driver's License numbers, and account numbers.

D. Increase in Maximum Sales Price. Where the relevant AMFI threshold is increased or construction costs beyond the reasonable control of Developer increase prior to completion and sale of the final home within the Development and Developer believes that the Maximum Sales Price needs to be increased due to significant increases in the cost of construction materials beyond its reasonable control, for example, where an increase in lumber prices or similar costs of materials occurs requires Developer to increase the Maximum Sales Price by at least 2.9%, Developer shall provide the City Manager with specific documentation, including without limitation specific third party cost data or invoices, to justify such increase of the Maximum Sales Price for approval. Consideration and possible approval by the City Manager shall not be unreasonably withheld or delayed and approval shall automatically occur in the event no response is received from the City Manager within 30 days after the City's receipt of such documentation. Any such increase may only occur once per calendar year. In addition, the Maximum Sales Price of a completed home and lot shall be adjusted annually to reflect the then current AMFI and TDHCA's definition of "moderate-income housing" and shall be effective with respect to contracts for the sale of lots with completed homes entered after the effective date of any such adjustments; provided that such adjustment of the Maximum Sales Price does not constitute a decrease.

3.5 Developer shall post and maintain an irrevocable letter of credit ("LOC") or similar security instrument, in a form and with terms acceptable to City, including with the City as payee to secure payment for the Payback Provisions for the amount of \$1,690,000.00; that the issuance is by a financial institution which will allow presentment of the LOC either in person at an office located within Kerr County or another county within 100 miles thereof or electronically; that the LOC shall only require as a sole condition of payment the presentment of the LOC accompanied by an affidavit from the City Manager stating that the conditions under Article VIII have occurred; and that the LOC remain valid for the term of this Agreement.

IV. Developer's Performance Schedule

4.1. Developer further agrees to comply with the following performance schedule:

- (i) Not later than 2 months after Closing, Commence Construction of the Infrastructure, which Developer estimates will cost \$5,000,000.
- (ii) Not later than 18 months after Closing, Commence Construction of homes on the Property.
- (iii) Not later than 30 months after Closing, complete the construction of and obtain certificates of occupancy for homes on no less than 10% of the lots platted within the Development.

(iv) Developer will continue to complete construction of no less than 10% of the homes on the lots per year until the completion of all 125 homes with the Development.

The schedule specified above to be collectively referred to as "Schedule" hereinafter.

V. Developer's Failure to Achieve Progress Milestones

5.1 Failure to Achieve Schedule. The failure of Developer to comply with the Schedule shall be deemed an Act of Default of this Agreement, subject to the expiration of the applicable cure period in **Article VII** below and Force Majeure (defined below), and the Agreement may be terminated by City, subject to the provisions of Section 4.1 and Sections 5.2 and 5.3.

5.2 Extension. If Developer is rendered wholly or partly unable to comply with the Schedule because of an event of Force Majeure, Developer's deadline under the Schedule shall be extended to the extent subject to the Section 10.1, below.

5.3 Notice of Force Majeure Event of Delay Required. As a condition precedent to Developer's right to an extension of time to complete the Schedule pursuant to an event of Force Majeure, Developer shall deliver to City written notice, describing in reasonable detail the event causing the delay, when and how Developer obtained knowledge of the event of Force Majeure and of the actual or anticipated delay caused thereby, and the date the event commenced or occurred, not later than 15 days after the date Developer obtains both (a) knowledge or reasonable cause to believe that such event of Force Majeure has commenced or occurred and (b) knowledge or reasonable cause to believe that the event of Force Majeure either has resulted in or may result in delay in achieving the Schedule. Developer shall use commercially reasonable efforts to remedy any inability to perform and minimize the impact of any delay.

VI. Condition Precedent

6.1 It shall be a condition precedent to Developer's obligations under Sections 3.2 through 3.5 that the Zoning Approval occurs.

6.2 [Intentionally omitted].

6.3 The Parties understand that such approvals depend upon the decisions of the City's Planning and Zoning Commission and/or City Council and that neither Party has control over the decision making of the Commission or the City Council. Neither Party makes any representation or promise as to the Commission's actions, nor does either Party rely on the other Party concerning such decisions. Nothing herein shall be deemed an agreement by the City to approve any specific zoning regulation or a delegation of the City Council's legislative discretion or authority with respect to the adoption of zoning and other land use regulations.

VII. Substantial Compliance and Acts of Default

7.1 Failure by either Party to timely and substantially comply with any performance obligation, requirement, duty, or covenant shall be considered an Act of Default (subject to Force Majeure), if uncured within thirty (30) days of receiving written notice from the other Party detailing the Party's noncompliance with this Agreement. Failure of Developer to timely and substantially cure an Act of Default will give the City the right to terminate this Agreement, as reasonably determined by the City by providing written notice of termination to Developer. Failure of City to timely and substantially cure a default will give the Developer sole remedy is seek mandamus to make City perform.

VIII. Payback Provisions

8.1 In the event Developer defaults on any Developer performance obligations, covenants or the performance schedule pursuant to this Agreement (subject to Force Majeure), and such default is not cured within 90 days of written notice thereof, then, in any such event, Developer shall immediately pay to City the amount of the Benefit, referred to herein as "Payback Provisions".

IX. Term of This Agreement

9.1 The term of this Agreement shall begin on the Effective Date and end on December 31, 2032 (the "Term"), unless earlier terminated in accordance with the terms of this Agreement. The Developer's payment obligations under the Payback Provisions of Section 8.1 of this Agreement shall survive the expiration of the Term.

X. Force Majeure

10.1 It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by any event or cause beyond the reasonable control or a Party, including by reason of war, acts of terrorism, civil commotion, riots, acts of God, landslides, strikes, lockouts or other industrial disturbances, pandemics, epidemics, explosions, fires, inability to obtain necessary materials, supplies or permits due to existing or future pricing, rules, regulations, orders, laws or proclamations of governmental authorities (both Federal and State), including both civil and military, abnormally severe weather conditions involving excessive precipitation, sustained high winds, or other weather conditions that create an unsafe condition on site, any of which prevents a significant majority of the planned work at the Property from being executed, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such requirement shall be extended for a period of time equal to the period such party was delayed. The delayed party will use commercially reasonable efforts to minimize the period of delay wherever possible.

XI. Indemnity

11.1 DEVELOPER AGREES TO DEFEND, INDEMNIFY, AND HOLD CITY, ITS RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY THE “CITY”) HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO A RESULT OF ANY CLAIM OF ANY KIND, MADE BY ANY PARTY WHO IS NOT A PARTY OF THIS AGREEMENT, WHEN THE BASIS OF SUCH CLAIM, IN WHOLE OR PART IS AN ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY DEVELOPER UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE ACTION OR OMISSIONS OF THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

XII. Miscellaneous

12.1 Authority. Each Party hereby represents and warrants to each other Party that this Agreement is within its authority and that such Party has been duly authorized and empowered to enter into this Agreement. Developer acknowledges that this Agreement may be terminated and the conveyance withheld if Developer's certification pursuant to this section is inaccurate.

12.2 Representations and Warranties by Developer. Developer warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of such Party has been duly authorized to act for and bind such Party. Developer acknowledges that this Agreement may be terminated and the conveyance withheld if this certification is inaccurate.

12.3 Franchise Tax Certification. As a business organization, Developer certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the business organization, is exempt from the payment of such taxes, whichever is applicable. Developer acknowledges that this Agreement may be terminated and the conveyance may be withheld if Developer's certifications pursuant to this section are inaccurate.

12.4 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their successors and permitted assigns. Developer shall not assign this Agreement without the written approval of the City Council. An assignment to a

subsidiary or affiliate company of Developer shall not be prohibited under the section. If Developer assigns this Agreement without written approval of the City Council, this Agreement shall terminate immediately upon notice by City delivered to Developer notwithstanding the provisions of Section 7.1 to the contrary, and, notwithstanding the Payback Provisions to the contrary, Developer shall be required to pay back the Benefit to the City not later than sixty (60) days after written demand therefor.

12.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

12.6 Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the Parties created hereunder are performable by the Parties in the City of Kerrville, Texas. Venue shall be in a court of appropriate jurisdiction in Kerr County, Texas.

12.7 Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the Parties.

12.8 No Joint Venture. It is acknowledged and agreed by the Parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the Parties.

12.9 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the Parties hereto.

12.10 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

12.11 No Waiver. Either Party's failure to take action to enforce this Agreement in the event of a default by the other Party or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent the non-defaulting Party from taking action to enforce this Agreement on subsequent occasions.

12.12 Notices. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

City

City Manager
City Hall, 701 Main Street
Kerrville, Texas 78701

DEVELOPER

Lennar Homes of Texas Land and Construction, Ltd.
1922 Dry Creek Way, Suite 101
San Antonio, Texas 78259
Attn: Clifton Karam
Email: clifton.karam@lennar.com

12.13 Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

12.14 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

12.15 Duplicate Originals. The Parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each Party has stated the execution date below the signature of its authorized representative. If the Parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

12.16 Further Assurances. City and Developer agree to execute all instruments and documents and to take all actions reasonably necessary and appropriate to consummate the transfer and donation of the Property and shall use their best efforts to close in a timely manner.

12.17 Public Announcements/Press Releases. Without the prior written consent of the other Party, neither City nor Developer will, unless required by law, including, without limitation, a registration statement or compliance with the Public Information Act (Ch. 552, Tx. Gov't Code) or court order, issue any press releases relating to this Agreement or the Development, except as reasonably and necessarily required for City or Developer to perform its obligations herein, until Developer has acquired the Property at closing.

(signatures begin on following page)

EXECUTED THIS THE ____ DAY OF _____, 2020.

CITY OF KERRVILLE, TEXAS

Mark McDaniel, City Manager

ATTEST:

Shelley McElhannon, City Secretary

Approved as to Form:

**LENNAR HOMES OF TEXAS
LAND AND CONSTRUCTION,
LTD.**

By: U.S. Home Corporation, a
Delaware corporation, its general
partner

By: 
CTAABF3E7777450...
Brian Barron,
Vice President

Michael C. Hayes, City Attorney

EXHIBIT A

FIELD NOTE DESCRIPTION
33.81 ACRES

VOL. 1077 OF 0355

Being a tract of land containing 33.81 acres situated in the Samuel Wallace Survey No. 113, Abstract No. 347, Kerr County, Texas and being a portion of a 711 acre tract of record in Volume 71, Page 573, Deed Records of Kerr County, Texas and being also more particularly described by metes and bounds as follows:

BEGINNING at a $\frac{1}{2}$ " iron rod found in the west right of way line of Texas State Highway Loop No. 534 and being the east corner of the Kee Subdivision, a subdivision of record in Volume 5, Page 304, Plat Records of Kerr County, Texas and being also the most southeasterly corner of the subject tract;

THENCE with the common line of said subdivision and the subject tract, with a fence, N 45°02'W, 551.78 feet to a $\frac{1}{2}$ " iron rod found at a fence corner post at the intersection of the southeast line and the northeast occupied fence line of a certain parcel being 100 acres of record in Volume 140, Page 162, Deed Records of Kerr County, Texas and being the north corner of said subdivision;

THENCE with the southeast line of said 100 acres, N 44°39'E, 97.79 feet to a $\frac{1}{2}$ " iron rod set for the east corner of said 100 acres;

THENCE through the interior of said 711 acre tract and with northeast line of said 100 acres, generally running approximately 98 feet northeast of and parallel to the northeast occupied fence line of said 100 acres, N 45°02'W, 1664.44 feet to a $\frac{1}{2}$ " iron rod set in the south right of way line of a proposed 80' wide public roadway being the extension of Olympic Drive and being in a curve to the right with a 560 foot radius and a central angle of 37°30' and being the most westerly corner of the subject tract;

THENCE with the south right of way line of said proposed extension of Olympic Drive and continuing through the interior of said 711 acres; along the arc of said curve to the right a distance of 369.73 feet (chord bearing & distance, N 74°12'E, 363.05') to a $\frac{1}{2}$ " iron rod set for the end of said curve;

THENCE continuing with the south right of way line of said proposed extension of Olympic Drive and continuing through the interior of said 711 acres, S 86°23'E, 1337.96 feet to a $\frac{1}{2}$ " iron rod set in the west right of way line of the aforementioned Texas State Highway Loop No. 534 and being the northeast corner of the subject tract;

THENCE with the west right of way lines of said Highway the following calls:

S 03°37'W, passing at 178.07 feet a found TxDOT typ. 1 concrete right of way monument and continuing a total distance of 877.74 feet to another found TxDOT typ. 1 concrete right of way monument;

S 03°14'W, passing at 229.71 feet a found TxDOT typ. 1 concrete right of way monument and continuing a total distance of 392.82 feet to another found TxDOT typ. 1 concrete right of way monument;

S 14°42'W, 191.22 feet to a found TxDOT typ. 1 concrete right of way monument;

and S 17°14'W, 203.18 feet to the POINT OF BEGINNING and containing 33.81 acres within these metes and bounds.

This description is a companion to a Plat of Survey dated May 11, 2000 and was prepared this 6th day of June 2000.


Charles Digges, RPLS
Texas Registration No. 4061
File#00041901-33.81ac msword DP



Metes and Bounds

EXHIBIT B

LENNAR®

Watermill Collection

Chesters

A



B



Plan 3400
1,034 sq. ft.

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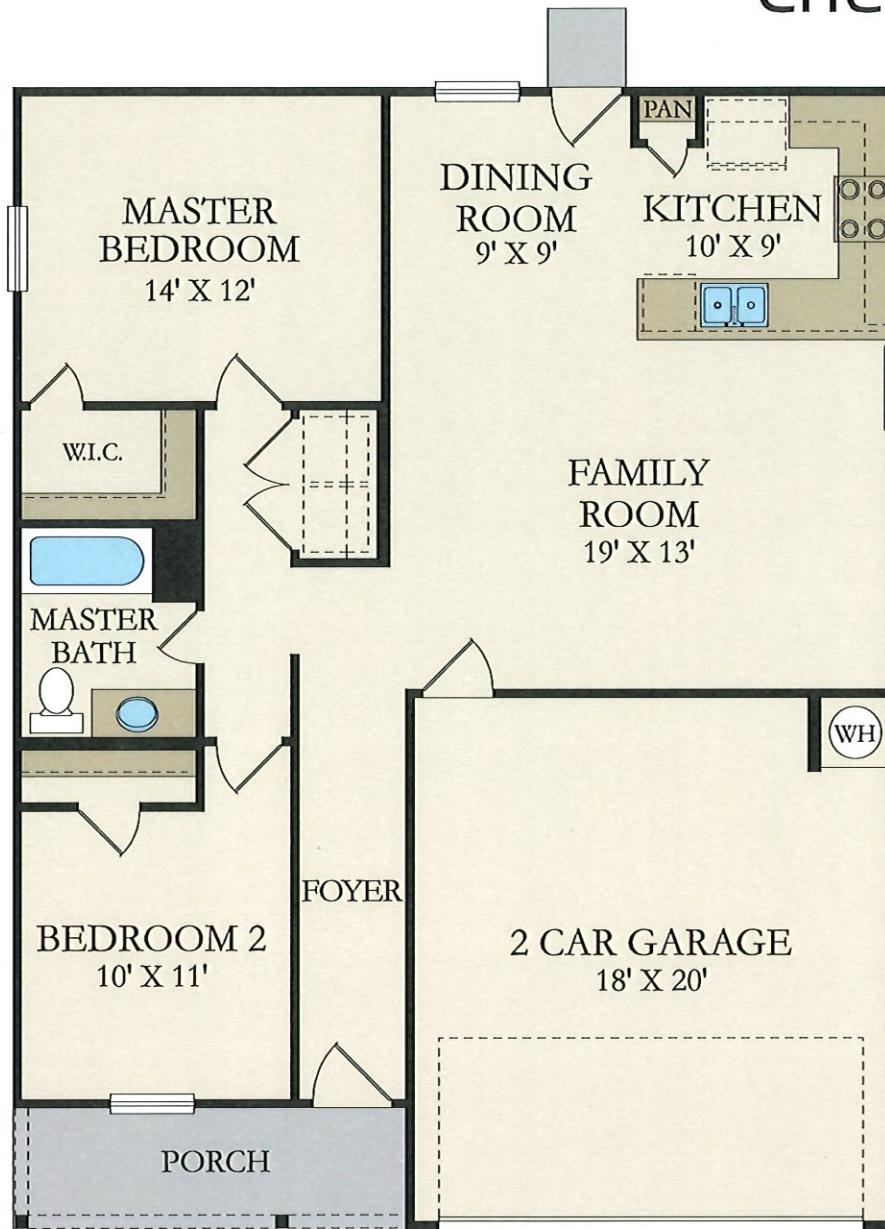
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Watermill Collection

Chesters



Plan 3400
1,034 sq. ft.

Starts: 09.02.19

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LENNAR®

Watermill Collection

Malvern

A



B



Plan 3403
1,047 sq. ft.

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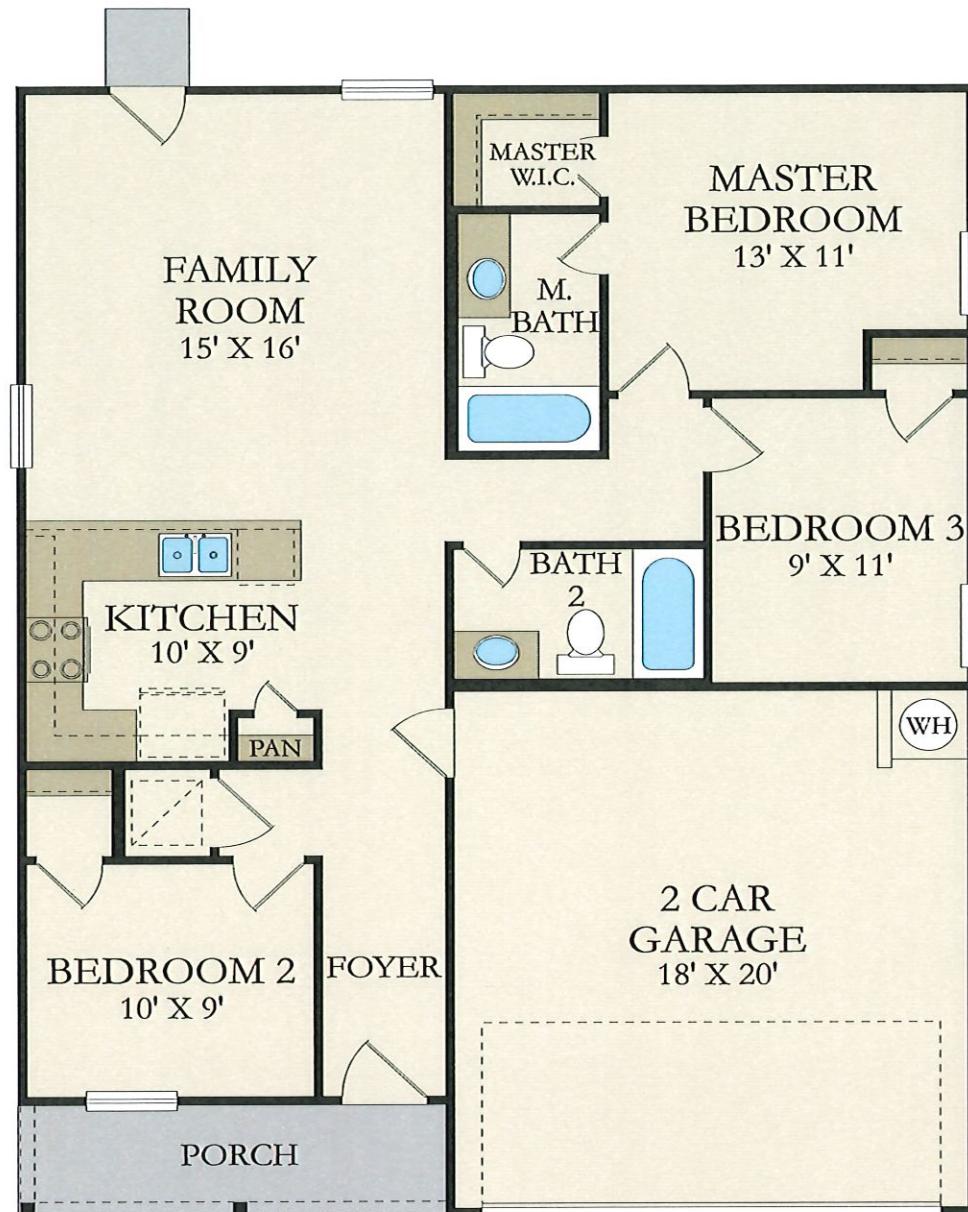
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LENNAR®

Watermill Collection

Malvern



Plan 3403
1,047 sq. ft.

Starts: 10.07.19

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LENNAR®

Watermill Collection

Fullerton

A



B



Plan 3410
1,217 sq. ft.

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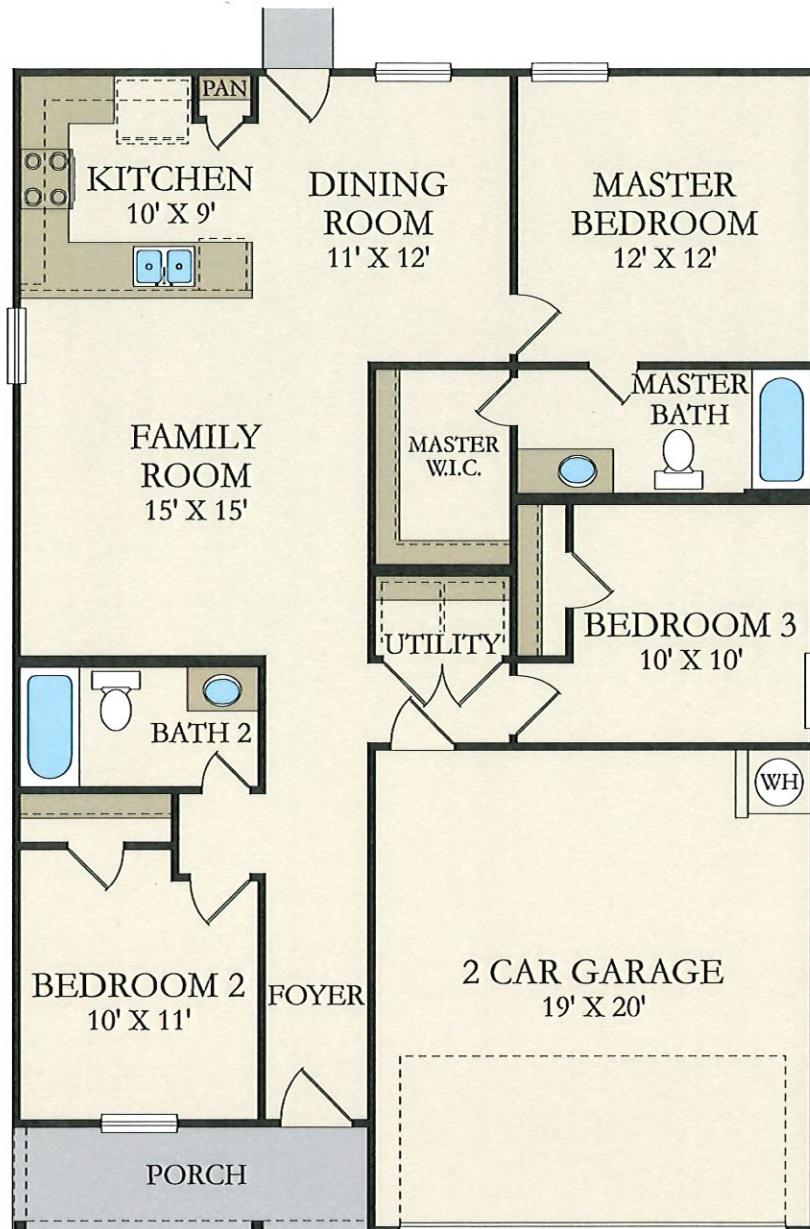
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LENNAR®

Watermill Collection

Fullerton



Plan 3410
1,217 sq. ft.

Starts: 09.02.19

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LENNAR®

Watermill Collection

Gannes

A



B



Plan 3420
1,474 sq. ft.

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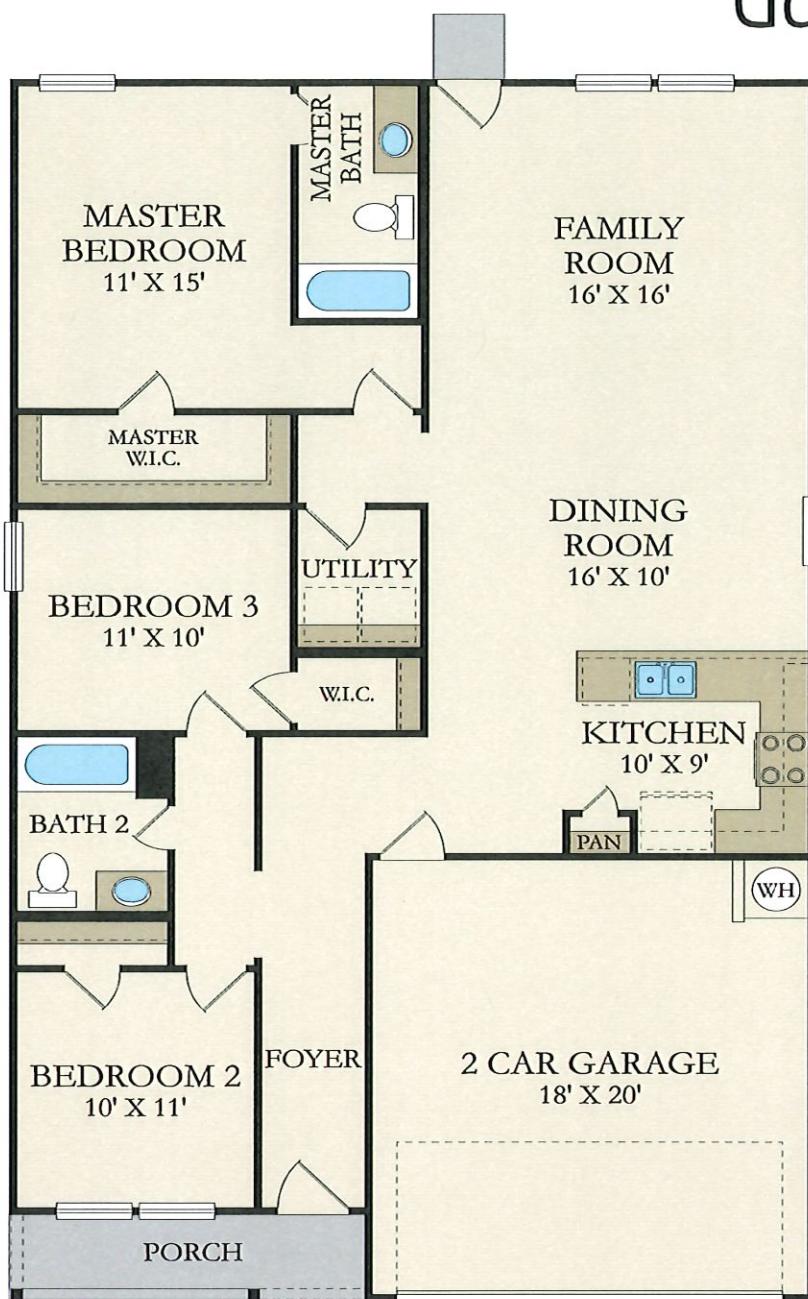
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LENNAR®

Watermill Collection

Gannes



Plan 3420
1,474 sq. ft.

Starts: 11.04.19

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LENNAR®

Watermill Collection

Nettleton

A



B



Plan 3430
1,667 sq. ft.

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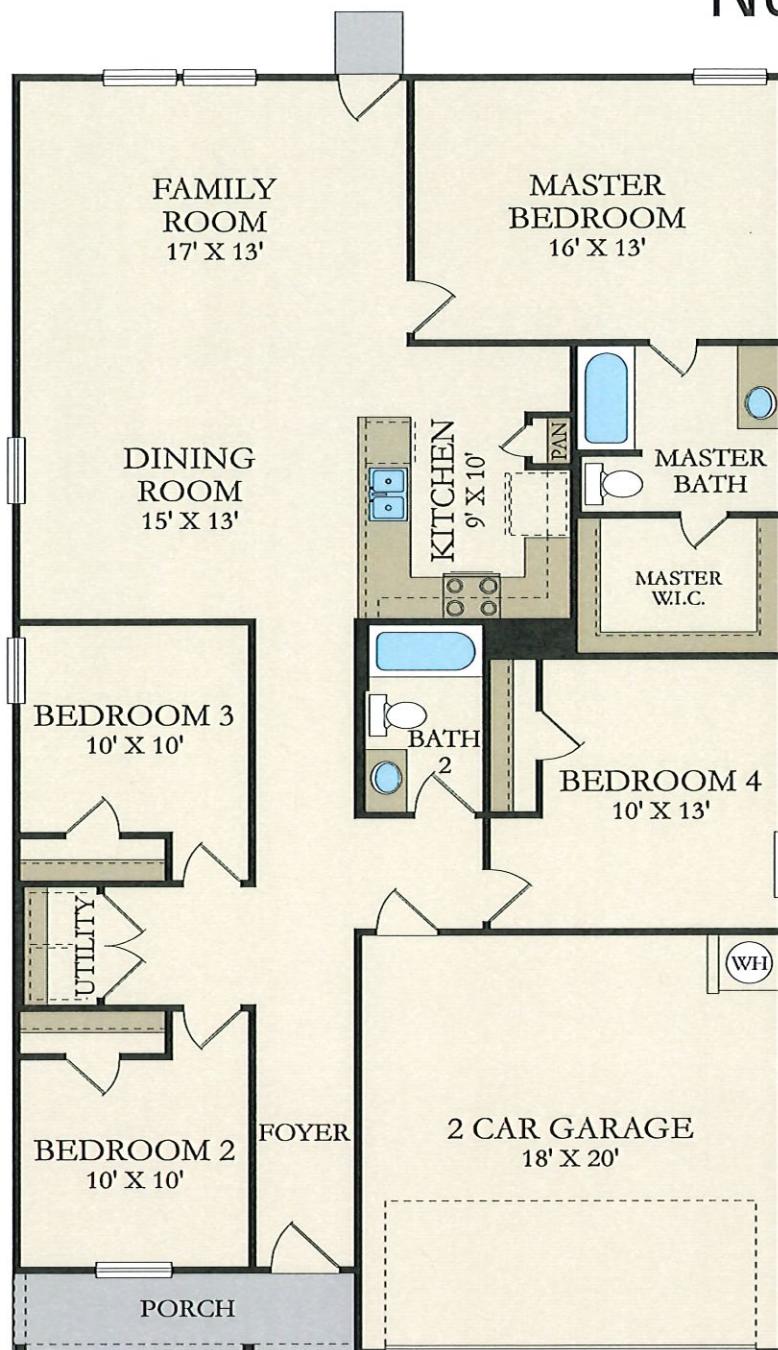
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LENNAR®

Watermill Collection

Nettleton



Plan 3430
1,667 sq. ft.

Starts: 09.02.19

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LENNAR®

Watermill Collection

Selsey

A



B



Plan 3440
1,874 sq. ft.

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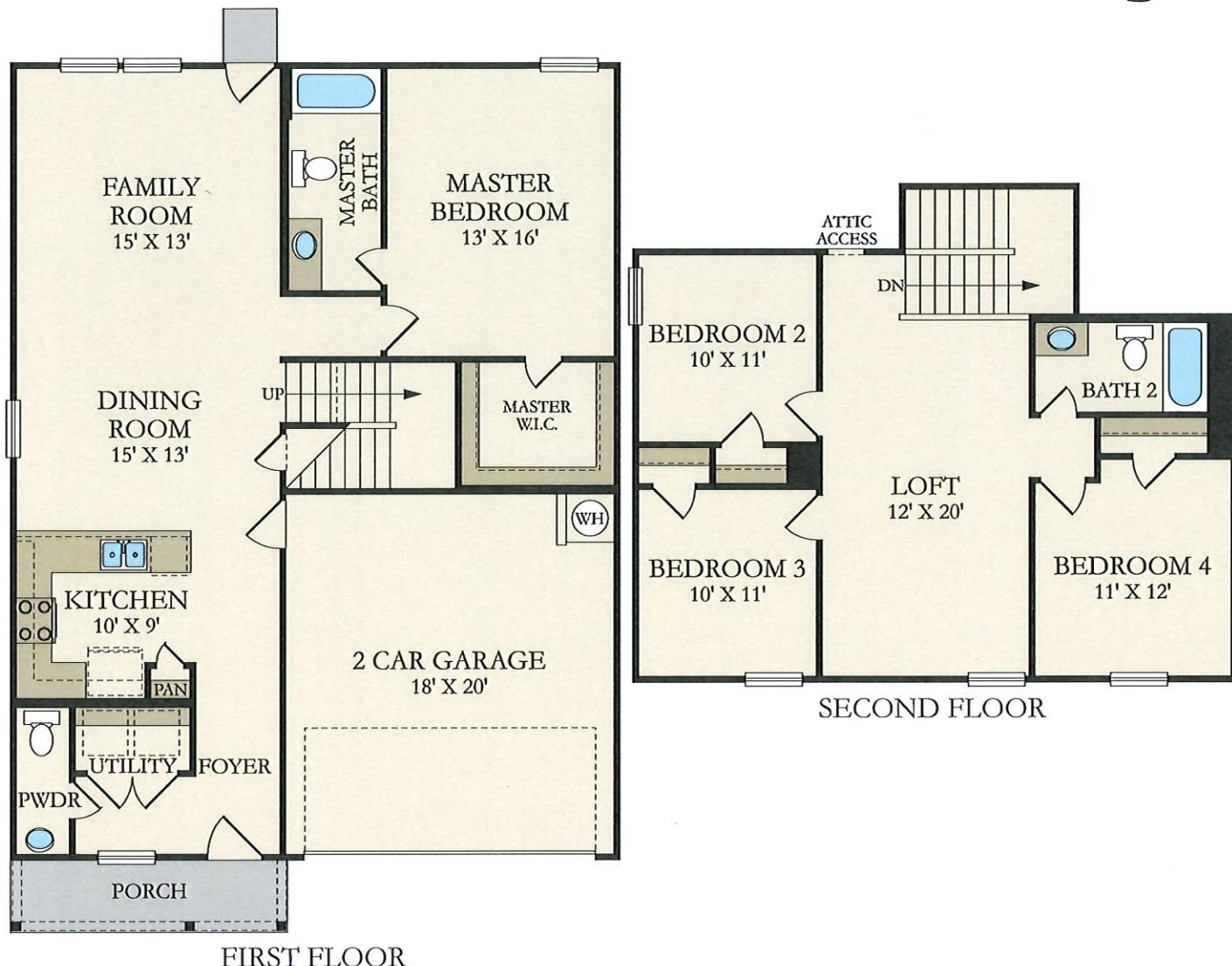
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LENNAR®

Watermill Collection

Selsey



Plan 3440

1,874 sq. ft.

Starts: 09.02.19

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Broadview - Stonehill - Cottage Watermill - Belmar

Everything's Included Features

Interior Features

- 2-panel smooth finish interior doors
- Rounded drywall corners
- Monterey drag texture
- Satin nickel door hardware
- Upgraded carpet & carpet pad
- Block for ceiling fans
- Upgraded luxury hard surface flooring in kitchen, dining, family and utility room
- Programmable thermostat
- Pre-wired for cable

Bathroom Features

- Chrome plumbing fixtures & accessories
- Shaver height cabinets with hardware
- Hard surface vanity tops
- WaterSense® certified faucets & shower heads
- WaterSense® certified commodes

Exterior Features

- Low-maintenance fiber-cement siding
- Sod at front, sides and 20' from corner of home at rear
- 6' backyard fencing
- Front exterior hose bib

Kitchen Features

- Stainless steel GE Energy Star® appliance package
 - Circulating vent hood over range
 - free-standing range
 - Multi-cycle dishwasher
- Shaker style full overlay cabinets with hardware
- Stainless steel sink
- Hard surface kitchen countertops
- WaterSense® certified single-lever faucet

Energy Efficient Features

- Energy Star Certified
- Energy efficient LED lighting throughout
- R30 ceiling insulation
- R15 blown-in blanket wall insulation
- Energy efficient HVAC system
- Energy efficient water heater
- MERV 11 media filter
- Insulated low-E glass vinyl windows
- Radiant barrier roof decking
- Roof ridge ventilation & air vents
- Third party, code-certified inspection process

EVERYTHING'S
INCLUDED™

Effective: 02.01.2020

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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	10/16/2020 2:00:07 PM
Signing Complete	Security Checked	10/16/2020 2:00:15 PM
Completed	Security Checked	10/16/2020 2:00:15 PM
Payment Events	Status	Timestamps