

RZ-2000-SU-012
CENTEX HOMES - Buckley's Reserve
PROFFER STATEMENT

MAY 8, 2000
AUGUST 8, 2000
SEPTEMBER 7, 2000
SEPTEMBER 12, 2000
SEPTEMBER 20, 2000

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Board of Supervisors' approval of rezoning application RZ-2000-SU-012, as proposed, for rezoning from the R-1, WS to the PDH-4, WS District, the owners and Centex Homes (the "Applicant"), for themselves and their successors and assigns, hereby proffer that development of Tax Map Parcels 55-2-((3))-A and A1 and 55-4-((1))-12, 13, 15, 15A, 15B, 16, 16A and 17, containing approximately 72.60323 acres and an approximately 1.36448 acre portion of the public right-of-way of Summit Drive, (the "Property") shall be in accordance with the following proffered conditions:

1. **Substantial Conformity**. The Property shall be developed in substantial conformance with the Conceptual Development Plan and Final Development Plan ("CDP/FDP") consisting of six (6) pages prepared by BC Consultants, entitled Buckley's Reserve, dated January 2000, revised through September 21, 2000 and as further modified by these proffered conditions.
2. **Final Development Plan Amendment**. Notwithstanding that the CDP/FDP consists of six (6) sheets and said CDP is the subject of Proffer 1 above, it shall be understood that (i) the CDP shall consist of the entire plan relative to the general layout, points of access, types of units, location of streets, the maximum number of units, general limits of clearing and grading and the general location of open space; and (ii) the Applicant has the option to request a Final Development Plan Amendment ("FDPA") from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to the remaining elements.
3. **Minor Modifications to Design**. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the approved FDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the FDP provided such changes are in substantial conformance with the CDP/FDP and proffers and do not increase the total number of units or decrease the minimum amount of open space.
4. **Maximum Density**. A maximum of 247 dwelling units shall be permitted on the Property inclusive of affordable dwelling units ("ADUs"). The Applicant shall provide ADUs as required by Section 2-800 of the Zoning Ordinance. The number of ADUs to be provided may be reduced based on the adoption of future amendments to the ADU ordinance, or commensurate with any reduction in the number of market rate units on the Property. The Applicant reserves the right to develop fewer than the maximum

number of units referenced in this paragraph without the need for a PCA or CDPA/FDPA.

5. Limits of Clearing and Grading. The Applicant shall conform to the approximate limits of clearing and grading shown on the CDP/FDP subject to the installation of utilities and/or trails, if necessary, as approved by the Department of Public Works and Environmental Services ("DPWES"). All limits of clearing and grading shall be protected by temporary fencing, a minimum of four feet in height. The temporary fencing shall be installed prior to any work being conducted on the site, and signage identifying "Keep Out - Do Not Disturb" shall be provided on the temporary fence and made clearly visible to all construction personnel. Any necessary disturbance shall be accomplished in the least disruptive manner possible within reason. Any area located within the limits of clearing and grading that must be disturbed due to the installation of trails and/or utilities shall be replanted with the application of straw, mulch, grass seed and/or a mix of native vegetation seeds.
6. Landscaping and Design Amenities. Landscaping shall be consistent with the quality, quantity and the locations shown on Sheet 3 of the CDP/FDP. Actual types and species of vegetation shall be determined pursuant to more detailed landscape plans submitted for review and approval by the County Urban Forester and DPWES at the time of site plan review. Site amenities such as entry signs, light posts, the tot lots, benches, the gazebo, and community mailboxes shall be of a quality consistent with the illustratives shown on Sheets 5 and 6 of the CDP/FDP.
7. Fairfax Center Area Roadway Contribution. The Applicant shall contribute to the Fairfax Center Area Road Fund in accordance with the "Procedural Guidelines" adopted by the Board of Supervisors (the "Board") on November 22, 1982, as amended, subject to credit for all creditable expenses, as determined by the Fairfax County Department of Transportation and DPWES.
8. Right-of-Way Dedication. All right-of-way dedicated in conjunction with these proffers and as depicted on the CDP/FDP shall be conveyed to the Board in fee simple upon demand by the County or at the time of recordation of the final record plat, whichever occurs first, and shall be subject to Proffer 26 regarding reservation of development intensity to the residue of the subject Property.
9. Vacation/Abandonment of a Portion of Summit Drive. Prior to final approval of the first subdivision construction plan and release of the first final subdivision plat for recordation, the Applicant shall obtain vacation and/or abandonment of the approximately 1.36448 acre portion of existing Summit Drive shown on the Rezoning Plat dated July 6, 2000, and prepared by BC Consultants, on which it is identified as "PORTION OF SUMMIT DRIVE TO BE VACATED BY SEPARATE INSTRUMENT." In the event the Board of Supervisors does not approve the vacation and/or abandonment of this portion of right-of-way of Summit Drive, and failure to obtain such approval precludes development in substantial conformance with the CDP, the Applicant shall obtain a Proffered Condition Amendment to the extent necessary to develop the Property. The Applicant hereby waives any right to claim or assert (i) any

vested right in any plan approved under the assumption of accomplishment of such vacation and/or abandonment, or (ii) a taking or any other cause of action that otherwise may have arisen out of a Board decision to deny in whole or in part the right-of-way vacation and/or abandonment request. If deemed necessary, pursuant to statute and practice, by the County upon review of the vacation/abandonment request, the Applicant shall reimburse the County for the original land acquisition cost associated with the condemnation of the right-of-way for Summit Drive. The reimbursement amount shall be mutually agreed upon to by the County and the Applicant.

10. Emergency Access. Subject to VDOT approval, the Applicant shall construct an emergency access to Route 29 as generally shown on the CDP/FDP; the location may be shifted as required by VDOT. The emergency access way shall be located within a 30 foot wide emergency access easement running to Fairfax County and shall consist of a 24 foot wide aisle of grass block pavers, "filter rings", or other similar material designed to bear the weight of an emergency vehicle while allowing grass to grow through it. All non-emergency traffic shall be prohibited from using this access way.
11. Traffic Signal. The Applicant shall submit a traffic signal warrant study for the Route 29/Summit Drive intersection not later than first site plan submission. If installation of the signal is approved by VDOT by the time of final site plan approval, the Applicant shall construct the traffic signal not later than issuance of the first Residential Use Permit ("RUP") for the proposed development. If the signal is not approved by VDOT by the time of final site plan approval, the Applicant shall construct the signal at such time as approved by VDOT and requested by VDOT and/or the County prior to final bond release. If the signal is not approved by VDOT prior to final bond release, Applicant shall escrow with the County funds sufficient for construction of the signal as determined by DPWES. The signal shall be designed as may be required by VDOT and DPWES based on ultimate intersection traffic projections.
12. Route 29/Lee Highway Trail. In accordance with the CDP/FDP, and subject to approval of a trail "waiver", the Applicant shall resurface the existing 6.5 foot wide Type I Asphalt Bicycle Trail recently constructed by the County along the Property's Route 29 frontage, in the existing VDOT right-of-way and subject to VDOT authorization.
13. Open Space. At the time of recordation of the final subdivision plat, the Applicant shall convey common open space parcels, as depicted on the CDP/FDP, to a private Homeowners' Association ("HOA") for use as common open space and stormwater management/BMP purposes. All common open space areas shall be maintained by the HOA.
14. Environmental Quality Corridor. If requested by the Board or the Fairfax County Park Authority (the "FCPA"), the Applicant shall convey in fee simple to the FCPA or the Board the Environmental Quality Corridor ("EQC") as depicted on the CDP/FDP, for public park purposes at or prior to the time of final record plat approval for each section adjacent to the EQC. If the EQC is not conveyed to the County, it shall be conveyed to the HOA at the time of recordation of the final subdivision plat. The EQC

area shall not be disturbed except for the removal of dead, dying or diseased vegetation and except for road crossings depicted on the CDP/FDP, construction of the regional stormwater management pond, installation of trails, the installation of utilities if necessary, and grading associated with such activities. Any necessary disturbance shall be accomplished in the least disruptive manner possible. To the extent possible, utility crossings of the EQC shall be co-located with road crossings.

15. **Recreational Facilities.** The Applicant shall comply with Paragraph 2 of Section 6-110 and with Section 16-404 of the Zoning Ordinance by providing improvements within the designated Neighborhood Park located on the Property:
 - A. The Applicant shall construct the following recreational improvements: (i) two tot lots, one each in the locations shown on the CDP/FDP; (ii) a 4' asphalt trail located in the northern portion of the property adjacent to Little Rocky Run (iii) a 4' asphalt trail system located in the open space area adjacent to the townhouse portion of the community as depicted on the CDP/FDP (iv) a 4' wood chip trail system throughout the site in the general locations depicted on the CDP/FDP with nine (9) adjacent fitness stations; if approved by DPWES, the westernmost leg of this trail, in closest proximity to the Willowmeade subdivision, shall be constructed within the public sewer easement; (v) a pocket park to include landscaping, seating area and a gazebo adjacent to the Regional Stormwater Management Pond; (vi) a total of eight landscaped seating areas with benches; one at each tot lot and the other six located adjacent to the wood chip or asphalt trails.
 - B. The location and type of recreational amenities constructed by the Applicant shall be consistent with the quality, quantity and character of the illustrative designs as depicted on Sheet 5 of the CDP/FDP, subject to final engineering and subject to approval by DPWES at the time of site plan approval;
 - C. In the event the total value of recreational improvements constructed by the Applicant is less than the proffered \$955 per market rate unit, the Applicant shall provide a cash contribution to the Park Authority for the remainder of the recreational facility contribution, to be used solely for recreational improvements in the Sully District, at the time of issuance of the first building permit for the final phase of the development.
16. **Energy Conservation.** All homes constructed on the property shall meet the thermal standards of the Virginia Power Energy Saver Program for energy efficient homes, or its equivalent, as determined by DPWES, for either electric or gas energy systems.
17. **Garages.** The Applicant shall place a covenant on each garage unit that prohibits the conversion of the garage to any use to the extent that such use precludes motor vehicle storage. This covenant shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the HOA and to the Board. Prior to recordation, the covenant shall be approved by the Fairfax County Attorney's office.

The HOA documents and the residential sales contract to the original purchaser of each lot shall expressly state this use restriction.

18. **Private Streets.** All private streets shall be constructed with materials and depth of pavement standards consistent with public street standards, as determined by DPWES. The HOA shall be responsible for the maintenance of all private streets. The HOA documents shall expressly state that the HOA shall be responsible for the maintenance of the private streets serving the development.
19. **Storm Water Management.** Storm Water Management (SWM) and Best Management Practices (BMPs) requirements for the Property shall be provided by Regional Pond R-8 (the "Pond") in the general location shown on the CDP/FDP subject to the following:
 - A. The Applicant shall construct the Pond as a wet pond facility in accordance with plans and specifications approved by DPWES, provided that the Board of Supervisors shall have entered into a written agreement with the Applicant, in a form and substance reasonably acceptable to the Applicant and to the Board of Supervisors, under which the Board of Supervisors shall: (a) own the Pond, (b) maintain the Pond in accordance with the standard level of maintenance provided by Fairfax County for regional storm water management ponds, (c) reimburse the Applicant for costs over and above normal on-site detention requirements from standard pro rata share contributions pursuant to terms in the written agreement, and (d) absolve the Applicant from, i.e., shall agree to not assess the Applicant for, any pro rata share contribution towards the Pond. The actual cost of the pond will equal the total costs incurred by the Applicant in connection with the construction of the pond and its acceptance by the County, including, without limitation, the cost of design, engineering, substantiated direct overhead and construction. The actual cost will not include the value of the land conveyed for the pond and its ancillary easements. Any costs reasonably necessary, as determined by DPWES, to accommodate all lots adjacent to the pond as shown on the CDP/FDP, including deepening the basin and/or fill to raise the elevations of lots, shall be included in the actual cost of the pond for reimbursement purposes.
 - B. At the time of bond release as to the Pond or when deemed appropriate by DPWES, the Applicant shall dedicate and convey in fee simple to the Fairfax County Board of Supervisors, the land shown on the CDP/FDP needed for construction of the Pond as a wet pond and all easements necessary to access and maintain the Pond as determined by DPWES and the Maintenance and Stormwater Management Division.
 - C. The Applicant shall require all subcontractors to document, through invoices, canceled checks, quantity take-offs, and other information as required by DPWES, the actual cost of the Pond. The reasonableness of all reimbursable costs shall be mutually agreed upon by DPWES and the Applicant.
 - D. In order to restore a natural appearance to the proposed regional stormwater management pond, a landscape plan shall be submitted as part of the first

submission of the site plan and/or subdivision plan showing extensive landscaping in appropriate planting areas surrounding the pond, in keeping with the planting policies of DPWES.

20. **ADUs.** ADUs shall be of an architectural style generally consistent with the market rate units in the development. All ADUs shall contain a garage and have a brick front.
21. **Residential Noise Attenuation.** To address potential noise impacts from the Fairfax County Parkway and Route 29, the Applicant shall:
 - A. Use building materials with the following characteristics pursuant to commonly accepted industry standards to achieve a maximum interior noise level of approximately 45 dBA Ldn as follows:
 1. All residential units located within 150 feet of the centerline of the Fairfax County Parkway or within 170 feet of the centerline of Route 29 which are impacted by highway noise levels of between 70 and 75 dBA Ldn and not otherwise shielded by structures or topography shall have the following acoustical attributes: Exterior walls shall have a laboratory STC rating of at least 45; doors and windows shall have a laboratory STC rating of at least 37. If glazing constitutes more than twenty percent (20%) of any façade, they should have the same laboratory STC as walls. Measures to seal and caulk between exterior wall surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
 2. All residential units located within 335 feet of the centerline of the Fairfax County Parkway or within 365 feet of the centerline of Route 29 which are impacted by highway noise levels of between the 65 and 70 dBA Ldn and not otherwise shielded by structures or topography shall have the following acoustical attributes: Exterior walls shall have a laboratory STC rating of at least 39; and doors and windows shall have a laboratory STC rating of at least 28. If glazing constitutes more than twenty percent (20%) of any façade, they should have the same laboratory STC as walls. Measures to seal and caulk between exterior wall surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
 - B. When necessary to achieve a maximum exterior noise level at rear patios of 65 dBA Ldn, noise attenuation structures such as acoustical fencing, walls, earthen berms or combinations thereof, shall be provided for those outdoor recreation areas, including rear yards, that are unshielded by topography or structures. If acoustical fencing or walls are used, they should be architecturally solid from the ground up with no gaps or openings and shall not exceed Zoning Ordinance height limitations for the zoning district.

- C. As an alternative to "A" or "B" above, the Applicant may elect to have a refined acoustical analysis performed, subject to approval of DPWES, to verify or amend the noise levels and impact areas set forth above and/or to determine which units may have sufficient shielding from vegetation and other structures to permit a reduction in the mitigation measures prescribed above; or to determine minimum STC ratings for exterior walls, windows, and doors.
22. Tree Preservation. For the purposes of maximizing the preservation of trees in tree save areas, the Applicant shall prepare a tree preservation plan. The tree preservation plan shall be submitted to the County Urban Forestry Branch of DPWES for review and approval as part of the first site plan submission. This plan shall be prepared by a certified arborist and coordinated with and approved by the County Urban Forester and shall provide for preservation of specific quality trees or stands of trees within the tree save areas depicted on the GDP to the maximum extent reasonably feasible, subject to installation of necessary utility lines, trails, and to the maximum extent reasonably feasible without precluding the development of a unit typical to this project on each of the lots shown on the GDP. The County Urban Forester may require modifications of such plans to the extent these modifications do not alter the number of dwelling units shown on the GDP, reduce the size of the proposed units, significantly move their location on the lot, or require the installation of retaining walls greater than 2 feet in height and not to exceed 50 square feet of wall face. The tree preservation plan shall include the following elements:
- A. A tree survey which identifies the species, size, accurate dripline and condition of all trees 12" and greater in diameter located within 20' of either side of the limits of clearing and grading in designated tree save areas. The conditions analysis shall be conducted by a certified arborist using methods outlined in the latest edition of the Guide for Plant Appraisal.
- B. All tree save areas shall be protected during clearing, grading and construction by temporary fencing, a minimum of four feet in height, placed at the dripline of trees to be preserved, or at the limits of clearing and grading, whichever is greater. The temporary fencing shall be installed prior to any work being conducted on the site, and signage identifying "Keep Out - Do Not Disturb" shall be provided on the temporary fence and made clearly visible to all construction personnel.
- C. Additionally, the HOA covenants shall require that trees in open space areas and tree save areas will not be disturbed except for (i) the removal of diseased, dead, dying, or hazardous trees or parts thereof; or (ii) selective maintenance to remove noxious and poisonous weeds.
23. Driveways. There shall be no individual driveway access to Route 29. Existing curb cuts for individual driveways on Route 29 and the access ramp to Route 29 shall be scarified, removed and revegetated by the Applicant.

24. Sebastian Drive Cul-De-Sac. If the existing temporary turnaround at Sebastian Drive is deemed by VDOT to be insufficient, and if the Applicant is provided the necessary R-O-W and/or easements by the owners of Tax Map Parcel 55-4-((6))-11 and/or Tax Map Parcel 55-4-((6))-12, the Applicant shall construct, off-site, a reduced temporary cul-de-sac on Sebastian Drive.
25. Service Drive. The Applicant shall escrow funds, in an amount deemed to be appropriate by DPWES, sufficient to construct a service drive parallel to Route 29 west of the entrance/spine road and ending at the western Property line, generally as shown on the CDP/FDP.
26. Density Credit. All intensity of use attributable to land areas dedicated and conveyed to the Board pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the subject Property.
27. Blasting. In the event blasting is necessary, before any blasting occurs on the Property, the Applicant shall: (i) ensure that the Fairfax County Fire Marshall has reviewed the blasting plans; (ii) follow all safety recommendations made by the Fire Marshall; and (iii) provide independent, qualified inspectors approved by DPWES to inspect wells located on tax map parcels 55-4-((6))-11, 12, 13, 14, 15, 16, and 17 (the "Inspected Wells"). The inspector shall check the flow rate for each of the Inspected Wells before and after blasting. If allowed by County or State regulations, the Applicant shall repair any damage to, or replace the Inspected Well(s) determined by the inspector to have been damaged as the result of blasting on the Property, or the Applicant shall pay for the hook-up of public water to serve any house whose well has been damaged by blasting on the Property.
28. Tree Preservation Adjacent to Proposed Lots 45-47. To the rear (western side) of proposed Lots 45-47, inclusive, Applicant shall provide natural tree save to a depth of 20 feet from the Property boundary as shown on the CDP/FDP. Supplemental plantings shall be provided as shown on the CDP/FDP.
29. Successors and Assigns. Each reference to "Applicant" in this Proffer Statement shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.
30. Counterparts. To facilitate this execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all the parties to the Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

[SIGNATURES ON FOLLOWING PAGES]

CENTEX HOMES

By: _____

Title: _____

Applicant and Title Owner of Parcel 55-4-((1))-12

CENTEX HOMES, as "Nominee" for Bessie
Jennett Buckley Grigsby Under Memorandum dated
8/17/00, and Recorded Among the Land Records at
DB 11484, Pg. 1670

Title Owner of Parcel 55-4-((1))-12 (the "BJG Lot")

By: _____

Title: _____

BBV BUILDING COMPANIES, INC.

By: _____

Title: _____

Title Owner of Parcels 55-2-((3))-A, A1

RAYMOND K. BUCKLEY

Title Owner of Parcel 55-4-((1))-13

BY: _____

Robert K. Davis, Agent and Attorney-in-Fact

Brenda Diane King

BRENDA DIANE KING

Title Owner of Parcel 55-4-((1))-15

Fern M. Payne

FERN M. PAYNE,

as sole surviving tenant by the entirety
Title Owner of Parcel 55-4-((1))-15A

THOMAS E. COZZO, TRUSTEE

Title Owner of Parcel 55-4-((1))-15B

LINDA L. WOLFSON

Co-Owner of Parcels 55-4-((1))-16, 16A

BY: _____

Dayna Nickel, Agent and Attorney-in-Fact

DAYNA NICKEL

Co-Owner of Parcels 55-4-((1))-16, 16A

NEIL M. MacDONALD, JR., TRUSTEE (Sole
Surviving Trustee under the MacDonald Trust)

Co-Owner of Parcel 55-4-((1))-17

RALPH G. LOUK, TRUSTEE

Co-Owner of Parcel 55-4-((1))-17

FERN M. PAYNE,
as sole surviving tenant by the entirety
Title Owner of Parcel 55-4-((1))-15A

Thomas E. Cozzo, Trustee

THOMAS E. COZZO TRUSTEE
Title Owner of Parcel 55-4-((1))-15B

LINDA L. WOLFSON
Co-Owner of Parcels 55-4-((1))-16, 16A

BY: _____
Dayna Nickel, Agent and Attorney-in-Fact

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Title Owner of Parcel 55-4-((1))-15B

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Co-Owner of Parcels 55-4-((1))-16, 16A

Linda L. Wolfson
BY: *Dayna Nickel, her Agent and*
Dayna Nickel, Agent and Attorney-in-Fact Attorney-in-fa

Dayna Nickel
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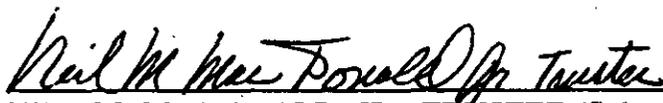
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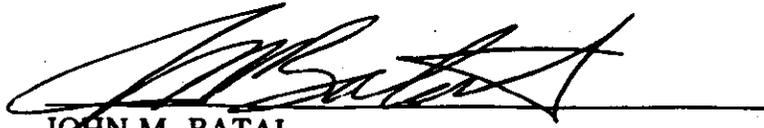
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RALPH G. LOUK, TRUSTEE
Co-Owner of Parcel 55-4-((1))-17



JOHN M. BATAL

Contract Purchaser of Parcels 55-4-((1))-16, 16A

**BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA**

*Owner of an approximately 1.36-acre portion of
Summit Drive, to be vacated/abandoned*

BY: _____

NAME: Anthony H. Griffin

TITLE: County Executive

JOHN M. BATAL

Contract Purchaser of Parcels 55-4-((1))-16, 16A

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