

01.364

BOOK 0820 PAGE 0168

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PROFFERS

THESE PROFFERS are made as of this 18th day of October, 1996, by TMB SERVICE CORP., a Kansas corporation (together with its successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of certain real property (the "Property") in James City County, Virginia more particularly described on Exhibit A attached hereto and made a part hereof.

B. The Property is now zoned B-1 and M-1, with proffers. The existing proffers are set forth in an Agreement dated June 9, 1987 and are recorded in James City County Deed Book 377 at page 722 (the "Existing Proffers").

C. Owner has applied for a rezoning of the Property now zoned B-1 and M-1, with proffers, to PUD-C, Planned Unit Development- Commercial, with proffers, to obtain the greater flexibility in developing and locating uses within the Property provided under the PUD-C provisions of the County Zoning Ordinance and to terminate the Existing Proffers applicable to the Property and to replace the Existing Proffers as they apply to the Property with these Proffers. In accordance with Section 20-484 of the County Zoning Ordinance, Owner has submitted to the County a master plan entitled "Master Plan of a portion of the Warhill Tract to be Zoned PUD-C, Owner: TMB Service Corporation" prepared by AES Consulting Engineers and dated June 1996 and revised July 1996 (the "Master Plan").

D. Owner desires to continue to offer to the County certain conditions on the development of the Property not generally applicable to land zoned PUD-C.

NOW, THEREFORE, for and in consideration of the approval of the requested amendment, Master Plan and rezoning, and pursuant to Section 15.1-491.2:1 of the Code of Virginia, 1950, as amended, and Section 20-18 of the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Amended and Restated Proffers shall be null and void and the Existing Proffers shall remain in full force and effect.

CONDITIONS

1. Archaeological Sites. Owner shall be required to pay up to \$10,000.00 for a Phase I archaeological study acceptable to the County of the portion of the Property generally shown and set out on Exhibit B hereto before any land disturbance in such area. Should all study funds here committed be insufficient to fund an archaeological study on that portion of the Property then Owner shall consult with the County in determining the portions to be excluded. Thereafter, Owner shall give the County written notice of intent to submit a site or subdivision plan in any area not studied, whereupon the County at its expense shall have sixty (60) days from receipt of such notice in which to conduct initial archaeological reconnaissance in the proposed area or areas. If such reconnaissance reveals sites which County wishes to study in

greater detail, then County shall so notify Owner in writing whereupon County shall have sixty (60) days from the date of such notice in which to conduct further studies.

2. Greenbelts. (a) The Owner shall designate a greenbelt buffer of 75 feet in width measured from the right-of-way of Route 199 in all subdivision or site plans for uses adjacent to Route 199 except that adjacent to the ramp from Route 199 to Route 60 the greenbelt buffer shall have a width of 50 feet. In areas, if any, where the greenbelt buffer is not forested, enhanced landscaping approved by the Development Review Committee in the plan approval process shall be provided. The greenbelt buffers shall remain undisturbed, except for entrances, utilities, drainage and stormwater improvements, pedestrian/bicycle trails and signs shown on the approved site plan or approved by the Director of Planning.

3. Architectural. The buildings in the portion of the Property with a Master Plan designation of E shall be of harmonious and/or uniform architectural design and color scheme as determined by the Director of Planning. Owner shall design the buildings within this area of the Property and any other buildings within the Property designated for retail use with varied roof lines, wall articulations, window placements and other features to reduce the mass and unbroken building lines that may occur in certain standard commercial building designs. Owner shall submit to the Director of Planning with each site plan for development within the portion of the Property with a

Master Plan designation of E or for buildings within the Property designated for retail use conceptual architectural plans, including architectural elevations, for the buildings shown on the site plan for the Director of Planning to review and approve for consistency with this Proffer. Final architectural plans shall be consistent with the approved conceptual plans. The goal of this Proffer is to (i) insure the buildings constructed on this portion of the Property or for retail use are of high quality and are compatible with (but not of the same design as) surrounding development and (ii) avoid the mass and unbroken building lines that may occur in certain standard commercial building designs. It is not the intent of this Proffer to require any particular architectural style.

4. Outparcel Design. The design, colors and building materials of all buildings located on shopping center outparcels in the portion of the Property with a Master Plan designation of E shall be consistent with the design, colors and building materials of the adjacent shopping center, as reasonably determined by the Director of Planning prior to final site plan approval.

5. Landscaping. (a) A plan for a unified landscape treatment for any development, including outparcels, located on the portion of the Property with a Master Plan designation of E shall be submitted to and approved by the Director of Planning with the first site plan for development within this portion of the Property. Sufficient information regarding landscaping shall

be submitted with each subsequent site plan to allow the Director of Planning to determine if the site plan conforms to the approved unified landscaping plan. The goal of this Condition is to insure an attractive and unified landscape treatment of this portion of the Property.

(b) Enhanced landscaping (as defined below) shall be provided within the 50' landscape setback along the main entrance road into the Property required by Section 20-501 of the Zoning Ordinance in the areas designated F and G on the Master Plan. The enhanced landscaping shall be shown on site plans for development within this portion of the Property, may be provided in phases as this portion of the Property develops and shall be subject to the approval of the Development Review Committee. As used herein "enhanced landscaping" means landscaping that (i) exceeds the numerical requirements of the Landscaping Ordinance by at least 25%, with credit given for the preservation of existing trees in accordance with the Landscaping Ordinance or (ii) is otherwise approved by the Director of Planning.

6. Entrance Locations. There shall be one entrance into the Property unless otherwise approved by the Director of Planning and such entrance shall be located generally as shown on the Master Plan. The location of the entrance(s) to the portion of the Property with a Master Plan designation of E shall be subject to the approval of the Director of Planning to insure sufficient spacing from a traffic flow and safety perspective between the entrance(s) into the portion of the Property with a

Master Plan designation of E and the Centerville Road entrance into the Property.

7. Pedestrian System. A sidewalk shall be provided along one side of the main entrance road into the Property. The sidewalk shall be shown on site plans for development along the main entrance road and may be constructed in phases as such property develops. A sidewalk or trail shall be provided connecting the development within the portion of the Property with a Master Plan designation of E to the sidewalk along the main entrance road. A crosswalk across Centerville Road shall be provided at the main entrance to the Property subject to the approval of the Virginia Department of Transportation. The exact location of the sidewalks and crosswalk shall be subject to the approval of the Director of Planning in the site plan review process.

8. Road and Intersection Improvements. The following road and intersection improvements shall have been completed or completion bonds in form acceptable to the County posted with the County before the County shall be obligated to approve development plans for uses that generate more than the number of daily trips per day calculated in accordance with paragraph (b) below:

Daily Trips

1,500

Improvement

Add separate northbound left turn lane on Route 614 to serve left turn movements to

	westbound Route 60
2,000	Add a left turn lane to southbound Route 614 at the entrance to the Property
2,500	Widen Route 614 to a four lane divided roadway and add a second left turn lane on westbound Route 60 at Route 614
3,400	Install signal at Route 614 and entrance to the Property, if warrants are met, and add a right turn lane on northbound Route 614 at the entrance to the Property
4,400	Add a second southbound left turn lane on Route 614 and entrance to the Property
13,000	Add a second northbound left turn lane at the southbound Route 199 off-ramp approach to Route 60

(b) The daily trip number shall be calculated based on each 1,000 square feet of commercial uses generating 54 daily trips, each 1,000 square feet of office uses generating 16.58 daily trips and each 1,000 square feet of industrial uses generating 6.97 daily trips. The proffered improvements described above shall include any required modifications to existing traffic signals and shall be constructed in accordance with Virginia Department of Transportation standards.

9. Use Limitations. Development on the Property shall be limited to no more than (i) 150,000 square feet of retail uses, (ii) 60,000 square feet of office uses and (iii) 300,000 square

feet of uses other than retail and office permitted in the PUD-C zoning district.

10. Entrance Signage. The sign at the main entrance to the Property shall be subject to the review and approval of the Director of Planning before a sign permit is issued.

11. Severability. Each Condition, or portion thereof is severable. The invalidity of any particular Condition, or portion thereof, shall not effect the validity of the remaining conditions, or portions thereof.

12. Definitions. All terms used herein and defined in the County Zoning Ordinance shall have the meaning set forth therein unless otherwise specifically defined herein.

13. Termination of Existing Proffers. The Existing Proffers insofar as they apply to the Property are hereby terminated and of no further force or effect. The Existing Proffers shall continue to apply to all property to which they now apply other than the Property.

WITNESS the following signature and seal:

TMB SERVICE CORP.
By: Clay Coburn, Jr.
Title: President

KANSAS
STATE OF ~~VIRGINIA~~

CITY/COUNTY OF Johnson, to-wit:

The foregoing instrument was acknowledged before me this 18th day of October, 199 , by Clay Coburn, Jr.

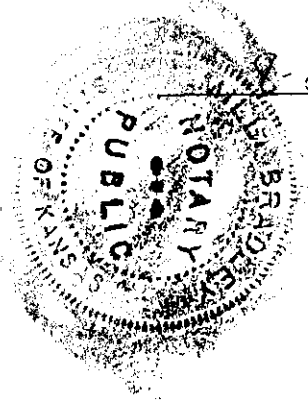
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NOTARY PUBLIC

My commission expires:

8-27-2000



Prepared by:
Vernon M. Geddy, III, Esquire
Geddy, Harris & Geddy
516 South Henry Street
Williamsburg, VA 23185

EXHIBIT A

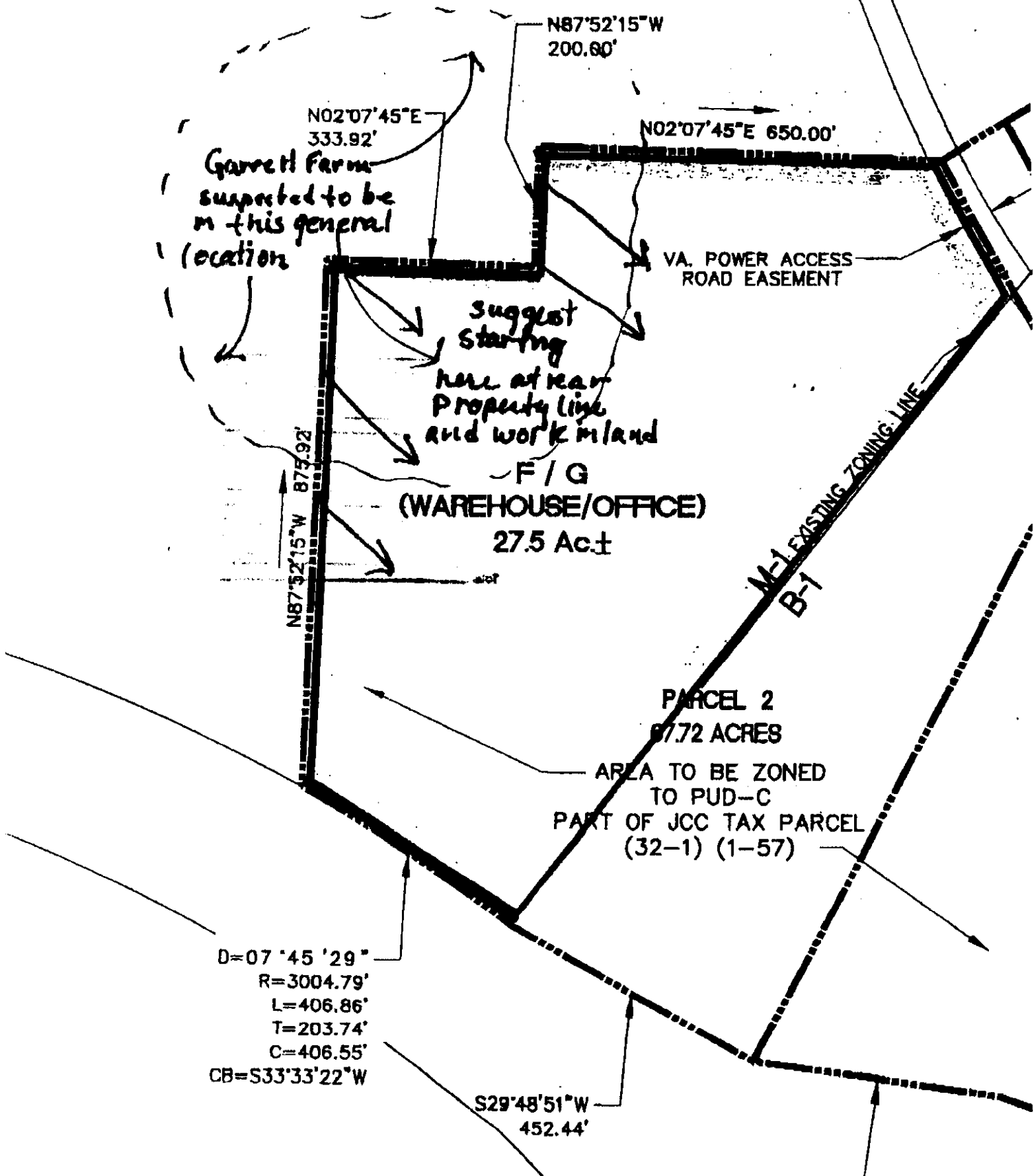
That certain piece or parcel of land located in James City County, Virginia shown and set out as "Parcel 2, 67.7 Ac." on the plat of subdivision entitled "Plat of Subdivision Showing a portion of the Warhill Tract, Owner: TMB Service Corporation" made by AES Consulting Engineers and dated May 1996 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Plat Book 64 at pages 30-32.

VIRGINIA: City of Williamsburg and County of James City, to W.I.
In the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City the
76 day of Dec, 1996 This *Draffen*
_____ was presented with certificate annexed and
admitted to record at 10:51 o'clock
Teste: Helene S. Ward, Clerk
by *Claudia M. Blankholz*
Deputy Clerk

PLAT RECORDED IN
DE 820 PAGE 178

EXHIBIT B BOOK 0820 PAGE 0178

REMAINDER M-1



COMMONWEALTH OF VIRGINIA



Dec. 19 96
Book in the Clerk's Office
James City County

207

207

OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 12/16/96 TIME: 10:51:39 ACCOUNT: 830CLR960017964 RECEIPT: 96000029899
CASHIER: CHB REG: WB04 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT : 960017964 BOOK: PAGE: RECORDED: 12/16/96 AT 10:51
GRANTOR NAME : TMB SERVICE CORP EX: N LOCALITY: CD
GRANTEE NAME : JAMES CITY COUNTY EX: N PERCENT: 100%
AND ADDRESS :
RECEIVED OF : JCCD DATE OF DEED: 10/18/96

NO:
EX

CHECK : \$20.00
DESCRIPTION 1: PARCEL 2 67.7 AC PORTION WARHILL TRACT
2:

CONSIDERATION:	.00	ASSUME/VAL:	.00	MAP:	
CODE DESCRIPTION		PAID	CODE DESCRIPTION		PAID
301 DEEDS		19.00	145 VSLF		1.00

TENDERED : 20.00
AMOUNT PAID: 20.00
CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD