

PROFFERS

TOWERS CRESCENT

RZ 1998-PR-058

February 22, 1999

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, Tycon Tower I Investment Limited Partnership, Tycon Tower II Investment Corporation and Tycon Tower III Investment Corporation (hereinafter collectively referred to as the "Applicant"), for themselves, their successors and assigns, in RZ 1998-PR-058 (the "Application"), filed for property identified as Tax Map 39-2 ((29))- 1A1, 1B1, 1C1 and B (hereinafter referred to as the "Application Property") agrees to the following proffers, provided that the Board of Supervisors approves the Application. In the event that the Application is approved by the Board of Supervisors, any previous proffers for the Application Property shall be deemed null and void for the Application Property and shall have no effect on the Application Property.

1. Development Plan. Development of the Application Property shall be in substantial conformance with the Generalized Development Plan prepared by VIKA, Incorporated, dated April 8, 1998 and revised through January 4, 1999, consisting of 10 sheets (the "GDP").
2. Minor Modifications. Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, minor modifications to the GDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the GDP without requiring approval of an amended GDP provided such changes are in substantial conformance with the GDP as determined by the Zoning Administrator, agents or assigns and neither increase the total gross floor area nor decrease the amount of open space or the amount of parking.
3. Allocation of Approved GFA. The Applicant reserves the right to reallocate up to 30,000 square feet of the total approved gross floor area (GFA) among the five (5) proposed office buildings so long as the total approved GFA for the Application Property is not exceeded. The floor area ratio (FAR) of the project may be but shall not exceed 1.65 calculated in accordance with Fairfax zoning ordinance provisions in effect on the date the Application is approved by the Board of Supervisors.
4. Building Heights. The office buildings will be constructed to the heights shown on the GDP, exclusive of penthouses, mechanical equipment and/or architectural fixtures (which shall not exceed thirty (30) feet). Proposed office buildings C and E may each be constructed to a height that is up to fifteen (15) feet higher than the respective heights shown on the GDP for those buildings.

5. **Building Orientation.** The buildings on the site are oriented to provide the least visual impact from the Pimmit Hills subdivision.
6. **Transportation Programs.** The Applicant will fully cooperate with and participate in the Tysons Transportation Association programs for local Tysons Corner inter-parcel transportation. In addition, the Applicant agrees to seek agreement for and fully cooperate with the Washington Metropolitan Area Transit Authority in establishing bus stops and commuter loading zones for shuttle buses to and from future subway stations.
7. **Transportation Demand Management Plan (TDM).**
 - A. **Employee Transportation Coordinator (ETC).** The Applicant will designate an ETC from its management staff to coordinate the TDM program for the development.
 - B. **Employee Survey.** The applicant will conduct periodic surveys to identify which travel demand strategies will be most effective.
 - C. **Information Dissemination.** The Applicant agrees to promote ridesharing by displaying information material in high-profile areas.
 - D. **Guaranteed Ride Home.** The Applicant will encourage tenants and their employees to participate in the WashCOG guaranteed ride home program.
 - E. **Preferential Parking for Car and Vanpools.** Parking spaces located near elevators and entry/exit points will be reserved for car and vanpools and will be clearly marked with signs.
 - F. **Single Occupant Vehicle Parking Rate.** Single occupant vehicles will be charged local market rates for parking.
 - G. **Lease Agreements with Parking Garage Operators.** A set number of parking spaces will be reserved for each tenant, but a lease agreement with a parking garage operator will reflect true market parking rates.
 - H. **Parking Rates for Carpools.** Subsidies to carpools (three or more members) to promote ridesharing will be at one-half the single occupant vehicle monthly parking rate.
 - I. **Shuttle Bus to Metro.** Prior to the issuance of a non-residential use permit for the first new office building to be constructed, the Applicant shall contract with a third party to operate and maintain a shuttle bus service for use by the tenants of the proposed office buildings to provide access to and from the Dunn-Loring Metro Station. Such service shall be available during the morning peak (6:30 a.m. to 8:30 a.m.) and the

evening peak (5:00 p.m. to 6:30 p.m. (excluding Saturdays, Sundays, and national holidays). Seating capacity of such shuttle bus(es), the frequency of trips and number of such bus(es) shall be coordinated to reasonably meet employee demand as determined by the results of the Employee Survey (See Proffer 7.B.). The shuttle bus program shall be periodically updated as employee demand is reassessed, and the program shall be coordinated with the Fairfax County Department of Transportation.

The Applicant shall not be required to establish the shuttle bus service as provided herein (and shall be permitted to discontinue such service if established) in the event that public transportation service is provided by WMATA or other provider from the Dunn-Loring Metro Station to a location adjacent to the Application Property.

8. **Bus Shelter.** The Applicant shall construct and maintain (including the regular removal of trash and litter) one (1) bus shelter, to be designed by the Applicant, with a trash receptacle, along the Application Property's Towers Crescent Drive frontage, concurrent with the development of Phase 2. The final location of the bus shelter shall be coordinated with the Fairfax County Department of Transportation prior to site plan approval for Phase II and shall not require individual bus turn-outs or special lanes.
9. **Signage.** Signage for the development shall be provided pursuant to Article 12 of the Zoning Ordinance. Freestanding signs provided on the Application Property shall be monument style (no freestanding, pole-mounted signs shall be permitted). Furthermore, the Applicant agrees that the freestanding signs provided on the Application Property shall be coordinated in terms of sign materials, scale and lighting.
10. **Landscaping.** Landscaping shall be provided in substantial conformance with the landscaping shown on the GDP as approved by DPWES. The size, location and design of tree boxes to be provided on the surface of the parking structure(s) shall be reviewed and approved by the Urban Forester.
11. **Plazas/Open Space.** The Applicant shall provide pedestrian plazas, open space and amenities throughout the Application Property as shown on the GDP. Open space for the project, as defined by the Fairfax County Zoning Ordinance, shall not be less than 42% of the Application Property upon full build-out.
12. **Pedestrian Connections to Mall.** The Applicant shall provide pedestrian connections to the Tysons Corner Mall (the "Mall") as shown on the GDP and subject to the phasing of the development as provided herein (See Proffer # 23). As shown on the GDP, such connections shall include a stairway (the pedestrian landings of which shall match with each of the garage levels adjacent thereto), an elevator, and a commitment to a future pedestrian bridge connection to the Mall (See Proffer #24). In addition, the Applicant shall provide for pedestrian access to the parking structures of office buildings D and F, as shown on the GDP. The Applicant shall provide clearly identifiable pedestrian entrances to these parking

structures. The elevator shall have sufficient capacity for at least 6 individuals and shall be constructed with glass panels

13. **Lighting/Security.** The Applicant shall provide a security lighting plan for (1) the plaza and open space areas addressed in Proffer #11; and (2) the pedestrian connections addressed in Proffer #12. Such plan shall be reviewed and approved by DPWES at the time of site plan approval. In addition, the Applicant shall provide for security monitoring of such areas in conjunction with security operations for the office buildings.
14. **On-Site Crosswalks.** Crosswalks shall be provided as shown on the GDP. Crosswalks that are provided internal to the site shall have a treatment which is distinguishable from the internal drive aisles and other internal surface treatments. In addition to those crosswalks shown on the GDP, the Applicant shall provide a crosswalk across the East Access Road near its intersection with Towers Crescent Drive concurrent with construction of Phase II. The final location of such crosswalk shall be coordinated with the Fairfax County Department of Transportation at the time of site plan approval.
15. **Off-Site Crosswalks/Pedestrian Signal.** The Applicant shall provide a temporary crosswalk across the Ring Road in the general location of the pedestrian bridge (see Proffer # 24), and a temporary pedestrian activated traffic signal at that location, concurrent with construction of Phase II (See Proffer # 23). The requirement for the provision of such crosswalk and signal shall be subject to the grant of necessary easements, at no cost to the Applicant, by the Mall owners, and to the contribution by the Mall owners to the Applicant of 50% of the cost of such improvements. The final location of such crosswalks shall be coordinated with the Fairfax County Office of Transportation at the time of site plan approval for Phase II.
16. **Surface Parking.** There shall be no permanent surface parking on the site except for that required for handicapped parking and short-term visitor parking. Temporary surface parking may be provided to ensure compliance with the parking required for individual phases of the development (See Proffer #23).
17. **Commercial Uses.** The Applicant reserves the right to establish commercial uses within the proposed office buildings. Such commercial uses shall be limited to no more than fifteen percent (15%) of the total gross floor area approved for the Application Property and shall be limited to those uses allowed in the C-4 Zoning District at the time such use is established (special permit or special exception uses may be established without the necessity of a proffered condition amendment).
18. **Stormwater Management.** The required stormwater management and BMP volumes shall be provided in the existing dry pond facility, as shown on the GDP, as approved by DPWES, or as otherwise approved by DPWES subject to the phasing of development (See Proffer #23). In addition, in response to a request from the Mall owners, the Applicant agrees to redesign and reconstruct the existing pond in order to reduce the necessity for the use of retaining

walls around the existing pond that would be required in conjunction with a possible future widening of the Ring Road by the Mall owners. Such redesign and reconstruction of the existing pond shall be subject to the grant of necessary easements by the Mall owners (to be provided at no cost to the Applicant), to allow such modifications and as otherwise necessary to enable the pond to meet BMP requirements. In the event such easements are forthcoming, the Applicant shall present plans for such redesign of the existing pond to the Mall owners for their review prior to submission of the plans to DPWES. The Applicant shall provide below grade sand filter(s) if necessary to comply with Chesapeake Bay Ordinance requirements, unless waived or modified by DPWES.

19. **Noise.** In order to achieve a maximum interior noise level of 45 dBA Ldn within that area impacted by highway noise from Interstate 495 having levels between 70 dBA Ldn and 75 dBA Ldn noise contours, which is within 468 feet of the existing centerline of Interstate 495, the Applicant shall provide the following acoustical attributes:
 - a. Exterior walls shall have a laboratory STC of at least 39;
 - b. Doors and windows shall have a laboratory STC of at least 28. If windows constitute more than 20 percent of any facade, they should have the STC specified for exterior walls.
 - c. Adequate measure to seal and caulk between surfaces.

As an alternative, the Applicant may, at its sole discretion, have a refined acoustical analysis performed to determine which areas may have sufficient shielding to permit a reduction in the mitigation measures prescribed herein, subject to approval by DPWES.

20. **Offsite Landscaping Improvements.** The Applicant shall provide off-site landscaping improvements as generally shown on the GDP subject to the grant(s) of necessary permission to accommodate the improvements (and assuming such permission is provided at no cost to the Applicant). In the event such permission is withheld, the commitment to provide such off-site landscaping shall be null and void. The Applicant will make reasonable effort to obtain such consent and will provide documentation to the County demonstrating such efforts in the event such consent is withheld.
21. **Building Design.** The development of the proposed office buildings on the Application Property shall incorporate compatible landscaping, architectural design, scale, mass and building materials in order to create a "Visually Unified Development." A "Visually Unified Development" shall include, but not be limited to, the use of design features such as: consistent landscaped design features, coordinated lighting and freestanding signage, landscaped plazas, and/or other similar unifying treatments. Building materials shall include either masonry, stone, precast concrete, metal and glass, or any combination thereof. Colors of building materials of the proposed buildings shall complement the existing Tycon Tower

office building, as reasonably determined by DPZ. The Applicant shall submit the final architectural design of the buildings to the Providence District Supervisor for review prior to the issuance of building permits.

The architectural design of buildings B and C, as shown on the GDP, shall be in substantial conformance with those buildings conceptually illustrated on Exhibits A and B attached hereto. Modifications to the architectural design of buildings B and C as shown on Exhibits A and B attached hereto may be provided so long as a "Visually Unified Development" is maintained. The architectural design of buildings D, E and F shall be compatible with the architectural scale, mass and materials of buildings B and C as reasonably determined by DPZ.

22. **Garage Design.** The architectural treatment of the northern facade of the existing parking structure shall be continued along the northern facade of the proposed garage associated with proposed building F. Specifically, the proposed facade shall include the provision of cantilevered planters and shall include building materials compatible to the facade of the existing parking structure. The architectural treatment of the western facade of the proposed parking garage(s) associated with proposed buildings D and E shall complement (in design and building materials) the northern facade of the proposed garage associated with proposed building F and/or buildings D and/or E.

23. **Phasing.** As shown on Sheet 10 of the GDP, development of the Application Property shall occur in various phases. Phase I consists of the existing building A and is complete. Phase II will include the following: (1) construction of buildings B and/or C; and (2) construction of the infrastructure and public improvements and amenities shown within the phase lines for Phase II on the GDP.

Phases III, IV and V may occur separately or concurrently and shall include the construction of at least one of the remaining office buildings (buildings D, E and/or F) and the parking, landscaping, and other improvements to be located adjacent to each respective building as shown on the GDP. The plaza area located between proposed buildings D and F (the "Bridge Plaza") shall be constructed concurrent with the construction of building D and/or F.

Parking shall be provided for each phase of development in accordance with Zoning Ordinance requirements for the final design of the respective phase. If necessary to meet the parking requirement for a given phase of development, the Applicant reserves the right to provide surface parking on land area identified as building or parking area for a subsequent phase. Vehicular and pedestrian access into the Application Property shall be provided for each phase of development as approved by the Department of Transportation. Stormwater management for each phase of development shall be provided as approved by DPWES.

Any of the respective phases may be the subject of a partial and separate Proffered Condition Amendment ("PCA"), without joinder and/or consent of the other phases, if such PCA does

not affect any of the other phases. Previously approved proffered conditions applicable to the phase(s) which is not the subject of such a PCA shall otherwise remain in full force and effect.

24. **Future Bridge Connection to Mall.** The GDP shows a "potential pedestrian bridge connection to Mall" which would provide an above-grade pedestrian connection between the Application Property and the Mall. The provision of such a bridge connection will be required only if the proposed bridge receives necessary approvals from Fairfax County on the Mall property. The bridge shall be located on the Application Property in the area shown on the GDP as "area reserved for potential bridge connection" and shall connect the Bridge Plaza and an appropriate location adjacent to the Nordstrom's parking garage on the Mall property.

The Applicant shall cooperate with the Mall owner to coordinate the design and final location of such a bridge connection prior to submission of plans to the County. The final design of the Bridge Plaza shall provide for the bridge connection, and the Applicant agrees to provide necessary construction easements to accommodate the construction of the bridge connection.

The Applicant shall design and construct the bridge connection to the Mall concurrent with the construction of the Bridge Plaza, provided the Applicant is granted necessary easements to allow the construction (such easements to be provided at no cost to the Applicant) and provided funds have been contributed by the Mall owner and such funds are available to the Applicant to pay for the cost of constructing the bridge from the centerline of the Ring Road to its terminus on the Mall property.

In the event such funds and/or easements are not contributed by the Mall owner upon approval and bonding of a site plan for the phase of development of the Application Property which includes the Bridge Plaza, the Applicant shall not be required to design and/or construct the bridge connection. In such event, however, the Applicant shall remain obligated to contribute funds sufficient to pay for the cost of constructing the bridge connection from the centerline of Ring Road to the Bridge Plaza (or in such amount as otherwise agreed by the parties) as well as necessary easements to allow the construction of the bridge connection, to any party ready, willing and able to complete the construction of the bridge connection. Such contributions shall be subject to the Applicant receiving six (6) months written notice to provide such contributions by such party.

The Applicant reserves the right to provide for such a bridge connection by separate agreement with the the Mall owner (or other appropriate party) without requiring the approval of a Proffered Condition Amendment. Such agreement shall be subject to the review and approval of the Zoning Administrator.

25. **New Entrance from Ring Road.** The Applicant shall construct a new entrance to the Application Property from the Ring Road as shown on the GDP concurrent with construction of the parking structure associated with office building D subject to the grant of necessary easements by the Mall owners at no cost to the Applicant. In such event, the Applicant shall

also construct improvements on the Ring Road to widen the Ring Road by approximately 12 feet along its frontage between the relocated western entrance (see Proffer #26) and the new entrance and extending 150 feet with a 100 foot taper toward Route 7 as shown on the GDP. In addition, the Applicant agrees to escrow \$40,000.00 to be utilized for further widening improvements to the Ring Road to be made by the Mall owners between such new entrance and Leesburg Pike. Such escrow shall be required only in the event of and within sixty (60) days of the Applicant's receipt of written notice from the Mall owners that permitting and bonding has been obtained for such further widening improvements. The escrowed funds shall be released to the Mall owners upon completion of the bonded improvements (such completion to occur no more than three years after the date of permitting and bonding). In the event the new entrance is not permitted by the Mall, the construction of such entrance and the Ring Road improvements and contributions provided herein shall not be required.

26. **Relocation of Existing Entrance.** The Applicant shall relocate the existing western entrance to the Application Property from the Ring Road to align with the Nordstrom's access road as shown on the GDP, subject to the grant of necessary easements by the Mall owners at no cost to the Applicant. In the event that the Mall does not so approve the relocation of the existing entrance, the Applicant shall provide the entrance at its current location. In the event that the Mall approves the relocation of the existing entrance, the Applicant shall, with the construction of the relocated entrance, construct a 12 foot right turn lane to the relocated entrance of 150 feet with a 100 foot taper. If the third entrance is approved, the right turn lane will be continuous from the new third entrance to the relocated entrance when the third entrance is constructed. Construction of the turn lane is contingent upon necessary easements being provided by the Mall at no expense to the Applicant. In no event shall the Applicant be required to widen the Ring Road by any more than 12 feet.
27. **Parking Garage Stacking Space.** The Applicant shall design the new parking structures to provide at least eighty (80) feet of stacking space between the existing curb line of Ring Road extended to the entry gates serving those respective parking structures. In addition, the Applicant shall provide state-of-the-art "proximity" card readers and shall design the new garage entrances so that three of the four card readers shall be available for inbound traffic during the a.m. peak hour and during the noon peak (from 12:00 noon to 1:30 p.m.). In the event the use of three such lanes during the noon peak is deemed unnecessary by a transportation analysis, the Zoning Administrator shall have the authority to reduce the number of inbound lanes required at the noon peak.
28. **Outdoor Seating.** Outdoor seating provided in conjunction with the proposed eating establishments shall be permitted if the Zoning Ordinance is amended to allow it.
29. **Additional Parking.** In accordance with the nature and extent of the transportation improvements previously constructed, the Applicant reserves the right to construct up to 4,600 structured parking spaces on the Application Property (either above or below grade) within the envelope of the parking structures shown on the GDP.

30. **Density Credit.** Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein or as may be reasonably required by Fairfax County or VDOT at time of subdivision and/or site plan approval. In addition, in accordance with the provisions of the Fairfax County Zoning Ordinance (See e.g. Section 2-308), any grant by the Applicant of an easement(s) to accommodate the widening of the Ring Road as provided herein shall not affect the approved density for the Application Property.
31. **Counterparts.** These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one and the same instrument.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

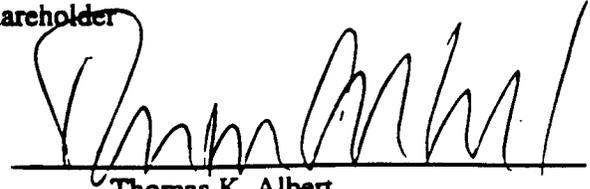
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TYCON TOWER I INVESTMENT LIMITED PARTNERSHIP

By: Tycon Tower I Investment Corporation
Its: General Partner

By: General Motors Investment Management Corporation
(on behalf of the Hourly Employees Pension Plan)
Its: Sole Shareholder

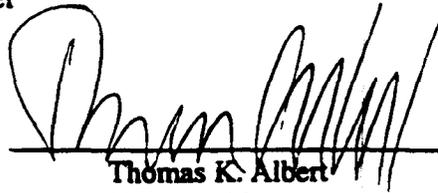
By:

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Thomas K. Albert
Vice President

TYCON TOWER II INVESTMENT CORPORATION

**By: General Motors Investment Management Corporation
(on behalf of the Hourly Employees Pension Plan)**
Its: Sole Shareholder

By: 

Thomas K. Albert
Vice President

TYCON TOWER III INVESTMENT CORPORATION

By: General Motors Investment Management Corporation
(on behalf of the Hourly Employees Pension Plan)

Its: Sole Shareholder

By:

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Thomas K. Albert
Vice President