

**IN THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY, MARYLAND**

**VILLAGE OF FRIENDSHIP HEIGHTS, :**

Plaintiff, :

v. :

**Civil Action No.: C-15-CV-26-002907**

**MONTGOMERY COUNTY PLANNING :  
BOARD, et al., :**

Defendants. :

**AFFIDAVIT  
OF FRANCINE KERNER KLEIN**

1. I, Francine Kerner Klein, am over eighteen years of age and competent to testify as to the matters set forth below.

2. I am a New York and District of Columbia licensed attorney in good standing in both jurisdictions, having graduated from New York University School of Law in 1974. In my first years of law practice, I prosecuted major crimes as an Assistant District Attorney in Brooklyn, New York, then entered the Federal Civil Service in 1979, retiring in 2025, following 23 years as Chief Counsel for the Transportation Security Administration.

3. My husband and I became homeowners in Montgomery County in 1985, and in that capacity, as well as in leadership positions in community civic affairs associations, I have kept abreast of development issues affecting my community and the County ever since.

4. My husband and I moved to Friendship Heights in 2013, and in 2015 became condominium owners at The Elizabeth, 4601 North Park Avenue. I served on the Condominium Board for several years, including one as President. I was elected to the Village Council of Friendship Heights in 2025, where I continue to serve, currently as Vice-Chairman of the Council and Chair of the Village's Advisory Committee on Development.

5. Given my professional background and experience, as well as my interest in civic matters affecting my community, I have become aware in depth of the history of development in Friendship Heights over the past 30 years, through extensive conversations with residents who pre-dated my arrival; through study of relevant planning and zoning documents, including the 1998 Friendship Heights Sector Plan, the 1998 rezoning of the GEICO property (the "Property") and the approval by the Montgomery County Planning Board in 1999 of the GEICO Preliminary Plan for redevelopment of the Property; discussions with community residents about what should be addressed in the current process of updating the 1998 Sector Plan; analyzing the 2025 GEICO plans submitted to and approved by the Board for amending the 1999 Preliminary Plan; participating in the Board hearing on behalf of the Village leading to that 2025 approval; and reviewing all documents relating to the 2026 applications of Friendship Common Partnership LLC ("FCP") submitted to the Board in 2026.

6. This Affidavit is made upon personal knowledge. To the extent the facts set forth below pre-date my years of residency in Friendship Heights, or do not involve my direct personal involvement, they are based on the knowledge derived from reading and analyzing official records and other sources I deem both reliable and not in dispute as

set forth above, while fulfilling the responsibilities of office to the Village. Except as noted for Exhibit 4, the Exhibits attached to my affidavit are true and correct copies of documents available from the public record.

**The 1998 Update of the Friendship Heights Sector Plan**

7. I have studied in detail the currently operative version of the Friendship Heights Sector Plan, promulgated in 1998 (the “Sector Plan”), which was an update of the June 1974 Friendship Heights Sector Plan. It makes clear that in the years before 1998, the Property was zoned R-60 or R-60/TDR, which is a residential zone. As of the start of 1998, however, and still true today, the sole yet legally proper use of the Property has been for a non-residential use--the GEICO headquarters.

8. In January 1998, the District Council approved the Sector Plan. It was officially published after Board adoption in March 1998. The required public engagement process leading to completion of the Sector Plan occurred earlier, before the Board sent its Final Draft to the Council for review in March 1997. I learned from persons who were Village residents then (and now) who participated in this update process that it was a matter of great interest to the Village and others in the vicinity of the Property and involved much citizen participation in its evolution. A major reason for that was due to the scope and possible impact of GEICO’s anticipated redevelopment of the Property, to include replacing its existing headquarters with new office space on the Property closer to Friendship Boulevard and adding much residential development to the Property.

9. The longest and most detailed Chapter of the Sector Plan is Chapter 2, entitled “Land Use, Zoning and Urban Design Plan.” This Chapter devotes most of its

discussion to additional development on three “Major Parcels,” the only ones in Friendship Heights recommended for zoning changes. The Property is one of the three Major Parcels, and recommendations relating to its future development constitute the lengthiest part of Chapter 2, i.e., pages 61- 73. **Exhibit 1.**

10. The Sector Plan discussion of the Property includes three rezoning recommendations: (1) that approximately 9 acres of the Property be rezoned to the TS-M zone; (2) that the rest of the Property be rezoned for R-60/TDR redevelopment for single-family residential use at a density of 11 units per acre; and (3) that the TS-M rezoning include demolition of the GEICO headquarters in order to construct the relocated GEICO offices, with a maximum of 810,000 square feet of commercial space. **Exhibit 1** at 63, 65 (Sector Plan pagination).

11. The Sector Plan’s Design Guidelines spell out in greater detail how this redevelopment of the Property should occur. They include, among others, (1) locating the new GEICO headquarters along Friendship Boulevard in three buildings with a height transition from nine stories near Willard Avenue to no more than five stories near Western Avenue; (2) locating multi-family structures primarily along Willard Avenue, where building heights should not exceed four stories; (3) providing a greenway along the southwestern boundary of the Property; and (4) providing two new open spaces, in addition to Brookdale Park, as part of the greenway, one north of Brookdale Park, and the other along Western Avenue. **Exhibit 1** at 65-71.

**The G-760 Rezoning by the District Council**

12. Given the recommendations and guidelines established in the Sector Plan, GEICO thereafter sought District Council approval for the recommended rezoning

of part of the Property to the TS-M zone, by filing Local Map Amendment (“LMA”) G-760 in 1998.

13. The process leading to an LMA approval was then, and remains today, first obtaining a Hearing Examiner report and recommendation on the application. That is a contested case hearing, where the Hearing Examiner takes testimony under oath and subject to cross-examination in a public hearing, for the purpose of making a record and the Hearing Examiner’s preparation of a report and recommendation to the District Council.

14. On October 13, 1998, following receipt of the Hearing Examiner’s Report, the District Council approved LMA G-760. The approval took the form of a written resolution, denominated Resolution 13-1461 (October 13, 1998), **Exhibit 2**, and an approved Development Plan, **Exhibit 3 (in reduced form)**. The full-size Development Plan (approximately 30” x 42”) is not readily available. Much of the key wording on the Development Plan, denominated “Applicable Binding Elements,” is, on account of the still available reductions to legal- or letter-sized paper, illegible. Counsel for FCP has provided the Village what appears to be a reliable and legible transcription of the Binding Elements for the G-760 Development Plan. **Exhibit 4**. The Preamble to the G-760 Binding Elements reads as follows:

The Binding Elements shown on this Development Plan apply to the Applicant GEICO and all successors in interest or assigns (hereinafter referred to as the “Property Owner”) and apply to any and all parts of the Applicant’s 26.5-acre tract known as Part of Parcel A, GEICO subdivision, Parcels 1 and 2, Brookdale Neighborhood Park; and Lot 1, Block 4, Orchardale subdivision generally located southeast of Willard Avenue, southwest of Friendship Boulevard, and west of Western Avenue (hereinafter “the site”). These Binding Elements will remain in full force and effect in perpetuity unless the 26.5-acre Site is rezoned or this Development Plan is modified by means of a development plan amendment approved by the District Council. In addition to the Binding Elements shown

elsewhere on this Development Plan and which address density, design specifications, building configuration, and green area, open space, public use and recreation space, the following additional Binding Elements apply to the Property Owner.

**Exhibit 4 at 1.**

15. The Preamble limitations on the G-760 LMA approval were consistent with the then applicable Rules of Procedure for LMA's, which provided that if an amendment to the LMA is filed at any time after the Hearing Examiner's Report is issued, it "must be referred to the Hearing Examiner and approved by the District Council after receiving a recommendation from the Hearing Examiner." Rule 1.3.

**Subsequent History of the Unredeveloped Property**

16. With the District Council's October 13, 1998, LMA rezoning of the Property in hand, GEICO promptly (November 16, 1998) took the next step in pursuit of its redevelopment plans for the Property, filing for review and approval Preliminary Plan 1-99039 with the Board. This Plan, generally supported by the surrounding community, including the Village, was approved by the Board in an Opinion dated May 13, 1999.

17. The 1999 Plan approval was followed by a remarkably long (26 year) hiatus in activity relating to development of the Property. Uncertain of how or when it would implement its headquarters relocation plans for much of that time, GEICO obtained multiple extensions of its 1999 Plan rather than make the additional filings with the Board necessary to commence redevelopment of the Property.

**Rewrite of the Zoning Ordinance – 2012-14**

18. During the period 2012-2014, the District Council, with the assistance of Board staff, conducted a major rewrite of the County Zoning Ordinance, with the primary goal of achieving greater clarity and simplicity without any major substantive changes. In

the process, many zoning classifications were eliminated, including the TS-M zone, then applicable to nearly 10 acres of the Property and a number of other properties. As shown on **Exhibit 5**, a Council staff prepared “Zone Translation Table,” properties in that classification were given a new classification, the CR zone. In the translation process, the allowed height and density in the eliminated zone became the basis for height and density limits in the replacement zone, with no other property-specific changes considered. **Exhibit 6** is an excerpt from a staff report containing some of the property-specific instances of this translation process, in this case showing what became the final decision on the height and density details to be applied to the TS-M portion of the Property. The result of this process was that the Property’s zoning classification changed from TS-M to CR 3.0, C 2.0, R.1.0, H-100T, effective October 30, 2014.

**The GEICO 2025 Preliminary Plan Amendment**

19. Eventually, more than a decade after the Zoning Ordinance Rewrite, GEICO sought a Preliminary Plan amendment in June 2025, in which GEICO made clear to the Board that it had finally decided that it was not going to use the commercial space approved in the 1999 Plan along Friendship Boulevard for relocation of its headquarters. In its filings with the Board, GEICO intentionally did not specify a new intended use for this commercially designated area of the Plan.

20. In its filings with the Board, GEICO intentionally did not specify a new intended use for this commercially designated area of the Property. The Village objected to this omission and otherwise opposed the amendment for a number of reasons. The Board nevertheless approved the 2025 Plan Amendment on November 24, 2025. In that review process, GEICO never asserted that the Binding Elements from LMA G-760

were, either in whole or in part, invalid, negated or otherwise inapplicable to the Property. Similarly, the Board at no point stated, suggested or implied that the Binding Elements were, in whole or in part, inapplicable to the 2025 Plan Amendment. Accordingly, Condition 21 of the Board's approval resolution, MCPB No. 25-112, states that "The Applicant must comply with the binding elements of County Council Resolution No. 13-1461 approving Local Map Amendment G-760." **Exhibit 7** at 3.

### **The Current FCP Plans**

21. On March 4, 2026, FCP filed a new Preliminary Plan for the Property, denominated Preliminary Plan 120260140. The required Statement of Justification ("SOJ"), filed April 1, 2026, as amended on May 5, 2026, states that this 2026 "Plan Application is intended to replace [the Board's] prior approvals in their entirety." **Exhibit 8**, excerpt from the SOJ at 3. The SOJ addresses the G-760 Binding Elements and asserts that the zoning classification changes incident to the Zoning Rewrite process of 2014, [mistakenly referred to as a "Sectional Map Amendment"], "negated the continuing application of the Binding Elements to the Property. *Id.*, SOJ at 2.

22. The authority cited for this claim is the statement in the Preamble to the Binding Elements set forth in paragraph 14 above. In addition, the SOJ asserts (at 3 n.1) that "a number of the Binding Elements relate to future improvements on the remainder of the Property zoned R-50/TDR-11 [sic. R-60]," and "those areas were not legally subject to Binding Elements as they were beyond the scope of the rezoning application."

23.. On April 1, 2026, amended on May 5, 2026, FCP also filed at the Board Sketch Plan and Site Plan applications (Nos. 320260030 and 820260120, respectively) based on the new Preliminary Plan and SOJ's for each. In both, the argument in the

Preliminary Plan SOJ for negating or invalidating the Binding Elements was repeated in the additional SOJ's. Sketch Plan SOJ at 3; Site Plan SOJ at 3.

24. At no time from submission of the 2025 Preliminary Plan Amendments until the SOJ submissions of April 1, 2026, did GEICO or its contract purchaser, FCP, ever assert or claim in any submission to either the District Council or the Board, that the G-760 Binding Elements, in whole or in part, were invalid or had been negated by any action of the District Council or the Board.

**Village Concern About the Claimed Negation  
Or Invalidation of the Binding Elements**

25. Through legal counsel, the Village has demanded that the Board suspend review and evaluation of FCP's Plans and advise FCP that the suspension will continue until either (a) the Plans are revised to comply with the Binding Elements; or (b) FCP obtains final approval to modify the Binding Elements to remove any such inconsistency. As of this writing, the Village has received no response from the Board or staff to this demand. Nevertheless, I was informed in an April 23, 2026, email from one of the leaders of the Brookdale Citizens Association about Board staff's response to Brookdale's parallel concern about ensuring compliance with the Binding Elements. The Brookdale email to me was in reference to a phone call that morning Brookdale had with Elza Hisel-McCoy, Project Team Leader, Atara Margolies, Team Leader on the update of the 1998 Sector Plan, and other staff. The Brookdale report to me was that Mr. McCoy stated in that call that the Binding Elements do not apply to the new FCP applications because a new Preliminary Plan is sought, not a continuation of the Preliminary Plan approved by the Board in November 2025 (**Exhibit 7**). Asked by Brookdale representatives to provide written confirmation of the authority on which Mr. McCoy

based his statements, he said he would do so, but has not, to this date, done so. Subsequently, in an April 28, 2026, meeting with Ms. Margolies and staff that I attended, Ms. Margolies expressed her understanding that the Binding Elements (deemed binding by the Board in MCPB No. 25-112, **Exhibit 7** at 3), are no longer applicable to the revised plans.

26. The Village is alarmed and concerned about the possibility that in the review of the FCP Plans, the Board may accept FCP's assertions that the Binding Elements have been negated or invalidated or the staff's rationale for concluding that the Binding Elements no longer apply. The Village and its residents will suffer significant injury if the form of lost light, air and open space should the Board ultimately give credence to FCP's or staff's claims that the Binding Elements may be disregarded.

27. FCP's Preliminary Plan, Sketch Plan and Site Plan application materials all unequivocally propose development in clear conflict with the Binding Elements. The Binding Elements were developed in a collaborative process involving the Village and others residing in the residential area adjacent to the Property and positively assessed by the Board and the District Council as appropriate measures to minimize the incompatibility of new development on the Property with existing, long-standing surrounding residential uses. But if the Board were to accept FCP's claim or staff's claim of the Binding Elements "negation" or inapplicability, the damage to compatibility of the project with the Village would be severe. Just two of many examples make the point. First, the approved development standards included in the Binding Elements specify that the multi-family buildings in the TS-M zoned portion of the Property will be at a height of four stories. **Exhibit 4** at 9. But the multi-family buildings along Willard

Avenue for which FCP seeks Board approval are six and seven stories high, not four stories. Second, the Binding Elements require implementation of open space for recreation to “be located north of and adjacent to Brookdale Park and will be approximately an acre in size as depicted in the Development Plan.” **Exhibit 4** at 3. This location and use are also shown in the drawing of the anticipated redevelopment of the Property, found in the Sector Plan. **Exhibit 1** at 64 (Item 4a). But under FCP’s plans this acre of recreation space north of Brookdale Park will be replaced with a multitude of townhouses and associated private streets and alleys. Finally, the Village is severely prejudiced if this controversy is not resolved through this declaratory judgment action, because its advocacy of concerns about the project, intermingled with or apart from concern about compliance with the Binding Elements, will then be needlessly complicated and obscured by the uncertainty of the outcome of this dispute.

I DECLARE under the penalties of perjury and the laws of Maryland that the foregoing is true and correct. Executed on May 15, 2026.

  
Francine Kerner Klein