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The Honorable Andrew Friedson, President
And Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

**Re: Development Impact Tax Amendment – Bill No. 16-24
Adjustment to Infill Impact Area Boundaries in Germantown and Definition of
“High-rise unit”**

Dear President Friedson and Members of the County Council:

Our firm represents Lerner Enterprises, the long-time owner and master developer of the project commonly known as “Black Hill,” in Germantown, Maryland. The overall Black Hill development is comprised of approximately 107 acres of land located along Crystal Rock Drive and Century Boulevard (surrounding the intersection of the two streets), just west of I-270 and approximately 1.5 miles north of the Germantown Center (the “Property”). The Property is zoned Commercial/Residential CR 0.75, C-0.5, R-0.5, H-145T and also located in the Germantown Transit Mixed Use Overlay zone. The Black Hill development is a multi-phased, mixed-use development which is currently approved for up to 3,284,000 square feet of total development (the “Project”). Several phases of the Project have been built to-date, including approximately 97,000 square feet of office use, 140 Assisted Living beds, approximately 6,400 square feet of retail use, and 355 multi-family dwelling units, along with a significant amount of open space and amenities. There are an additional 292 multi-family dwelling units that are approved and “building permit” ready, pending favorable economic conditions.

We are requesting that the County Council (1) reject the change proposed to the definition of “high-rise units” in Bill 16-24 and (2) adjust the proposed School Impact Area designation for the Property. These requested changes will better align with current County policy and facilitate the construction of additional, much-needed housing on this Property and others.

I. Definition of High-Rise Units in Proposed Impact Tax Legislation

Currently, Chapter 52 of the County Code defines high-rise units to include “any dwelling unit located in a multifamily residential or mixed-use building that is taller than 4 stories, and any 1-bedroom garden apartment.” (*Emphasis added*). Bill 16-24, as currently proposed, eliminates

one-bedroom garden apartments from this definition. This would have significant negative impacts on currently planned projects. It is also a matter of fairness, as many developers have relied on this definition, which has been unchanged since 2003 (*see* Bill 31-03), in preparing development budgets and feasibility for projects. This change would have a drastic, negative economic impact on those garden apartment projects that have relied on this calculation. The Black Hill development is a prime example. Lerner Enterprises has obtained Site Plan and building permit approval for the next phase of the multi-family development in Black Hill, comprised of six multi-family residential buildings and 292 dwelling units. However, due to the challenges presented by high construction costs and persistently high interest rates, although the building permits have been “approved,” Lerner has not pulled the building permits. As a result, these buildings have sat “building permit ready” since August 2022. This proposed change would only further setback the next phase, and this desirable, additional residential development. This change alone, with all else remaining equal, would add \$1,084,314 in additional development impact taxes to the 292 units planned in the next phase of the project. We ask that the Council reject this proposed modification or, if the Council is not so inclined, at least provide grandfathering for those projects that are already well into the entitlement process, and proceeding in reliance on this long-standing definition.

II. School Impact and Transportation Policy Area Designations

We applaud the Planning Board for recommending that Germantown be reclassified in the Orange Policy Area, which is appropriate for “[c]orridor cities, town centers, and emerging transit-oriented development (TOD) areas where premium transit service (*e.g.*, Corridor Connectors and bus rapid transit) is planned.” (Planning Board Draft, 2024-2028 Growth and Infrastructure Policy, Page 6). Germantown is planned to have numerous Corridor Connector and Bus Rapid Transit routes. The Property sits at the terminus of the Manekin West Connector. In fact, Lerner Enterprises has funded the design of the future Dorsey Mill Road Bridge, which would provide for a direct connection between the Manekin West Connector and the Milestone/COMSAT East Clarksburg Connector, if constructed. As such, the Property certainly fits within the definition ascribed to Orange Policy Areas. This reclassification is reflected in Bill 16-24 and we support this change.

However, the Property is proposed to be located in a Turnover Impact Area, which is not reflective of the existing and planned development. As such we are requesting that the County Council expand the Infill Impact Area to also include the Property. Infill Impact Areas are intended to include those areas with “[h]igh housing growth predominately in the form of multi-family units that generate relatively fewer students on a per-unit basis.” (Planning Board Draft, 2024-2028 Growth and Infrastructure Policy, Page 4) (*emphasis added*) (as opposed to Turnover Impact Areas that are intended for areas with “[l]ow housing growth where enrollment trends are largely dependent on the turnover of existing single-family units.” *See Id. Emphasis added.*). This Property is certainly aligned with an Infill Impact Area classification, given the largely multi-

family residential development that is approved and/or planned for the residential component of the Black Hill development.

This change is fair as it would treat the Property similarly to other multi-family developments in the County. And from a practical perspective, it would have a positive impact on increasing housing production, which the County desperately needs. As discussed herein, Lerner Enterprises is trying to get the next phase of the Black Hill development, which includes 292 multi-family dwelling units, off the ground. Lerner Enterprises has obtained all necessary approvals for the next phase but has not moved forward with construction due to economic factors. This modification would provide a meaningful economic change to help get this next phase out of the ground.

We appreciate your time and consideration of our requests.

Sincerely,


Elizabeth Rogers