#### WILLIAMS MULLEN

#### **MEMORANDUM**

TO: Albemarle County Board of Supervisors

FROM: Lori Schweller, Attorney for Virginia Supportive Housing

DATE: January 15, 2021

RE: ZMA 2020-00011 PREMIER CIRCLE ("Application") Private Road Issues

**Applicant: Piedmont Housing Alliance** 

#### Background

During review of this rezoning Application, County staff and the Planning Commission have expressed concern regarding several issues pertaining to Premier Circle, which is a private road. The Applicant has responded with a report to VDOT's request for a turn lane warrant analysis and evaluation of the existing and future operations of the signalized intersection at Route 29 and Branchlands/Premier Circle for accommodation of a potential at-grade pedestrian crossing; and, the Applicant has performed corings to determine the current physical condition of the road. These matters were discussed at the Planning Commission. Several Commissioners indicated that they either did not support a pedestrian crosswalk across Route 29 in this area or considered it a project for future consideration, perhaps with some County funding involved.

This memorandum will summarize the Applicant's response to the outstanding road questions from the Planning Commission and Staff, namely:

- (1) What is the Applicant's plan and funding mechanism for future maintenance, including striping, landscape maintenance, and signage?
- (2) Will Premier Circle be upgraded to VDOT standards and accepted into the secondary highway system?
- (3) Clarify the terms of the existing road maintenance declaration and describe plans to revise the agreement.

The short answers to these questions are as follows:

- (1) Piedmont Housing Alliance and Virginia Supportive Housing will incorporate road maintenance into their operating budgets for the project, and the Applicant is submitting proffers to address striping, landscape maintenance, and signage;
- (2) the legal status of Premier Circle and the recorded road maintenance declaration do not allow the Applicant unilaterally to dedicate the road to public use or even to upgrade the road above its current standard; however, the Applicant will conduct road maintenance permitted

under the declaration and meet with the association of owners that is empowered to maintain the road to propose upgrading the road standard; and

(3) the existing road maintenance declaration entrusts maintenance of Premier Circle to a todate ineffectual association: at its meeting with the association, the Applicant will propose amending and/or restating the road maintenance declaration to resolve these problems.

#### Legal Status of Premier Circle

The subject property (the "Property") comprises Lots 6 and 7 of the seven lots created by recordation of a subdivision plat, dated January 9, 1980 (Exhibit A), which subdivided a 7.8-acre parcel formerly owned by Mary Patricia Marinos Brown. The Property is now owned by Tiota, Ltd., and Piedmont Housing Alliance has entered into a contract to purchase the Property under certain conditions. Premier Circle is a private road identified on the subdivision plat as "Parcel X." Ms. Brown granted an easement over the road for the benefit of all seven lots and conveyed fractional interests in the underlying fee title to the road to some of the lots. By deed dated September 15, 1986, Ms. Brown conveyed Lots 6 and 7 along with a 4/7 interest in the fee of Parcel X to The Charlottesville Motel. When The Charlottesville Motel conveyed Lots 6 and 7 to The Rochester Community Savings Bank in 1989 by deed in lieu of foreclosure, it did not include the 4/7 interest in Parcel X in the conveyance, leaving title to Parcel X clouded. Further, though the vesting deed for Lot 2 (site of Classic Furniture), owned by Kannon, LLC, includes a 1/7 interest in Parcel X, the deeds for Lot 1 (Waffle House), Lot 3 (site of Marks & Harrison), and Lots 4 and 5 (site of the Royal Inn) do not include any fee interest in Parcel X in their legal descriptions. Therefore, though we know that 5/7 of the fee interest in the road intended to vest in Lots 2, 6, and 7, we do not know the status of the other 2/7.

Knowing the current ownership of the fee is essential for any grant of the road to the County or VDOT for public use because the granting deed must be signed by all owners. Further, if the easement rights need to be expanded to, for example, permit a public transit stop in the right-of-way, all <u>owners</u> (not just the easement holders) of Parcel X would need to join in a recorded instrument to grant the additional rights.

Therefore, the Applicant cannot proffer to bring the road up to VDOT standards and request its acceptance into the secondary road system because it does not and will not own 100% fee title in the road. For the same reason, the Applicant also cannot unilaterally undertake work in the road that is beyond the scope of the easement granted to all lot owners in the subdivision. To avoid these problems, the Applicant has proposed to place the proffered transit stop on the Property rather than in the Parcel X right-of-way.

#### Road Maintenance Declaration

Ms. Brown recorded a Declaration, dated November 1, 1983 in the Albemarle County land records to establish a road maintenance agreement ("Declaration") for Premier Circle (<u>Exhibit B</u>). This Declaration establishes an association of the lots owners to maintain the road. The Declaration shares the cost of maintaining the road among the seven lot owners and establishes a requirement for an 80% vote to upgrade the road to a "superior standard." However, the Declaration raises the following concerns:

1. **Standard of Maintenance Unclear**. The Declaration refers to maintaining the road in its condition on the date of completion in accordance with plans approved by the State

Highway Department. The Applicant believes that no road plans for Premier Circle were approved by the State Highway Department since it is not a public road and the road is not constructed to a standard that would be approved by VDOT. Further, the applicant has not been able to locate any submitted or County-approved road plans for Premier Circle in the County Community Development records. A site plan approved in 1985 for the Jerome Corporation (site of the Royal Inn) includes notes requiring 8" aggregate base stone and 2" bituminous concrete. The results of Timmons Group's corings indicate the existing road consists of 2 ½"-4 ½" of asphalt over 3"-6" of stone.

- 2. Lot Owners' Obligations Unclear. Although all seven lots have an easement to use the road and an enforceable obligation to maintain it (to some standard), the Declaration does not provide each lot's share of such obligation. This omission potentially complicates enforcement of the lien for maintenance costs established in the Declaration. Each lot has an equal vote in the association established by the Declaration, so, presumably, the lot owners could agree that maintenance shares would follow voting rights when and if they pass an assessment for road maintenance. To our knowledge, the association has never adopted an assessment.
- 3. **Mechanics for Calling Meetings Unclear**. Based on information from some of the affected owners, the association has never held formal meetings. Owners have, however, informally shared in some road maintenance over the years, such as filling potholes. The absence of basic governance provisions in the Declaration (e.g., who is authorized to call meetings and file/enforce the lien for maintenance costs) may be a factor keeping the owners' association from carrying out its maintenance obligations.

The Applicant agrees that an amendment and/or restatement of the declaration is necessary to correct these deficiencies and will work toward doing so with the assistance of the owner. Calling a meeting of the association to pass a maintenance assessment requires thirty (30) days' written notice (Declaration, Article IV, Section F). Any upgrade in the road standard requires agreement by 80% of the owners; 100% of the lot owners (and potentially all owners of fee title to Parcel X) must join in an agreement to amend and restate the Declaration. The Applicant cannot commit to revise the Declaration unilaterally; however, the Applicant will continue its efforts to bring the lot owners together to agree on a maintenance assessment, upgraded road standard and an amendment or restatement of the Declaration.

#### Physical Condition of the Road

The Applicant will proffer to clear brush impeding vehicular traffic over the road and maintain such clearing, to stripe the road, and to install a stop sign at the southern intersection of Premier Circle and Route 29.

Premier Circle currently has about 2.5"-4.5" of asphalt over 3"-6" of stone. This surface, per visual inspection by Timmons Group, presents no concern from a safety perspective at this time. VDOT standards would require a road surface composed of 4.5" of asphalt over 8" of stone. Such surface replacement and upgrade would cost approximately \$250k-\$300k. However, the geometry, sight distances, and corner clearance requirements are such that the Applicant does not believe the road would be accepted by VDOT even with the surface replacement and upgrade. Pursuant to the terms of the Declaration, at least 80% of the owners must enter into a written agreement in order to upgrade the road to a "superior standard" (Article IV, Section D). The unclear baseline standard for maintenance set in the

Declaration makes it difficult to determine exactly what constitutes an upgrade to a "superior standard." The Applicant is confident that it can proffer to clear brush impeding vehicular traffic over the road, stripe the road and install a stop sign at the road's southern intersection with Route 29 without triggering a requirement for 80% approval under the Declaration. The Applicant cannot commit to upgrading the road to VDOT standards without a written agreement among at least 80% of the association members.

The Applicant will proffer to improve the physical condition of the road to the extent reasonably consistent with the road standard stated in the Declaration, but it cannot proffer to upgrade the road given the constraints of the Declaration.

#### Summary

The Applicant is working with the current owner to call a meeting of lot owners to discuss deferred maintenance, amending and/or restating the Declaration, and upgrading the road. All lot owners must agree to an amendment or restatement (along with all owners of fee title to Parcel X, if the changes increases the scope of the easement), and 80% of lot owners must agree to resurfacing and upgrading the road to VDOT standards. These tasks are dependent on other parties with legal rights in the road and its upkeep and are not within the Applicant's control and, therefore, cannot be proffered by the Applicant.

The Applicant can clear brush impeding vehicular traffic over the road and maintain such clearing, to stripe the road, and install a stop sign at the southern intersection of Premier Circle and Route 29. These tasks are included in the proffers submitted with the Application.

## COUNTY PLANNING COMMISSION BOARD OF SUPERVISORS CHAIRMAN DESIGNATED AGENT 1. Steel STATE OF VIRGINIA A NOTARY PUBLIC FOR THE STATE AFORESAID, DD CERTIFY THAT PROPERTY OF THE WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING BEARING DATE OF 19 HAVE ACKNOWLE EDGED THE SAME BEFORE ME IN MY STATE AFORESAID. GIVEN UNDER MY HAND THIS DAY OF, MY COMMISSION EXPIRES OWNERS APPROVAL THIS SUBDIVISION IS MADE WITH THE CONSENT OF THE UNDER SIGNED OWNERS, PROPRIETORS, AND/OR TRUSTEES ALL ROADS AND STREETS, IF NOT PREVIOUSLY DEDICATED, ARE HEREBY TENDERED FOR DEDICATION TO PUBLIC USE Mary Patricia Marines Esser ary Patricia Marinos Brown SOURCE OF TITLE D B 252 p 205 TM 61 Parcel II9 No Further Division of This Property Without Planning Commission Approval - Denotes Iron Pins All Lots Shall Have Access Only On The Interior Road CURVE DATA R | 90°0000' 30 00 47 12' | 2 60°0704' 164 01' 172.09' | 3 60°0704' 114 01' 119.62' | 4 41°33'34' 20110' 145.87' 30.00 94.92 65.98 76.31 5 41°33'34" 251.10' 181.14' 95.26' 6 78°19'21" 190.00' 259.72' 154.74' 7 78°19'21" 140.00' 191.38' 114.02' LUCATION MAP PARCEL" X" D: 87 18 N23"52"47" 300.00 T.M SIW Parcel 4 SUBDIVISION PLAT LOTS 1-7 & PARCEL "X" A DIVISION OF PARCEL 119 TAX MAP 61 NEAR CHARLOTTESVILLE CHARLOTTESVILLE MAGISTERIAL DISTRICT WEALTH OF ALBEMARLE COUNTY, VIRGINIA Scale:1"=200' January 9,1980 S. ROUDABUSM, JR. REVISED: February 13, 1980 REV. FEB 29, 1990 REV MARCH '1, 1980 CERT. NO. 54-17-3 (a) 655 54-17-3 (b) 78 WILLIAM S. ROUDABUSH, INC. A PROFESSIONAL CORPORATION CERTIFIED LAND SURVEYORS

Charlottesville, Virginia

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THIS DECLARATION made and entered into this 1st day of November, 1983, by and between MARY PATRICIA MARINOS BROWN, hereafter referred to as the Declarant,

### WITNESSETH:

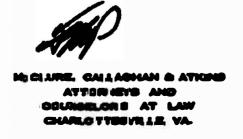
<u>Factual Background.</u> The Declarant is the owner of certain real estate situate in Albemarle County, Virginia, and desires to subject her property as described on the plat attached hereto prepared by William S. Roudabush, Inc., to the covenants hereinafter set forth, each and all of which is for the benefit of said property and the owners thereof.

property shown on the plat attached hereto and known as Lots 1 thru 7, A Division of Parcel 119 Tax Map 61 is and shall be held, transferred, sold, conveyed and occupied subject to the covenancs hereinafter set forth, and to any and all valid amendments hereto. These covenants shall run with the land and shall be binding upon any and all parties who have, or acquire, title to all or any part of the above described lots and shall inure to the benefit of each owner thereof.

## ARTICLE I

## Definitions

- A. <u>Owners' Association</u>. Owners' Association shall consist of all owners as defined herein.
- B. <u>Declaration</u>. The term Declaration as used herein shall mean the covenants and conditions and all other provisions herein set forth in this entire document, as it may from time to time be amended.
- C. <u>Subdivision</u>. The term subdivision as used herein shall mean and refer to only the real property comprising Lots 1 Thru 7, A Division of Parcel 119 Tax Map 61 as described on the plat attached to this Declaration.



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D. Lot. The term Lot as used herein shall mean and refer to any plot of land designated as a Lot upon the most recently recorded subdivision plat and upon which a business unit may be, is being, or has been, built.

- E. Owner. Owner as used herein shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding purchasers who have not yet taken title, and further excluding those holding such interests solely as securities for the performance of an obligation. In the case where a Lot is held by one or more persons for life with remainder to another or others, the term Owner shall mean and refer only to such life tenant or tenants until such time as the remainderman or remaindermen shall come into use, possession, or enjoyment of such lot.
- F. Member. Member as used herein shall mean or refer to a member of the Owners' Association.
- G. <u>Declarant</u>. Declarant as used herein shall mean or refer to Mary Patricia Marinos Brown, or her successors in title.

## ARTICLE II

## PROPERTY SUBJECT TO DECLARATION

A. The Real Property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Charlottesville Magisterial District of Albemarle County, Virginia and is shown and described on the attached plat of William S. Roudabush, Inc., dated January 9, 1980, and captioned "Subdivision Plat of Lots 1 thru 7 of Parcel 119 Tax Map 61 Near Charlottesville, Charlottesville Magisterial District, Albemarle County, Virginia."



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### ARTICLE III

#### MEMBERSHIP AND VOTING

- A. Membership. Each Owner as hereinbefore defined, shall be a member of the Owners' Association. No qualification for membership other than Lot ownership, as defined above, shall be imposed. Membership shall be appurtenant to and may not be separated from any Lot.
- B. <u>Voting Rights</u>. The Owners' Association shall have one class of voting membership; each member being entitled to cast one vote for each lot owned by such member.

Any member otherwise entitled to vote may cast his vote either in person or by proxy provided such proxy is duly approved in writing by an instrument subscribed by such member or his authorized attorney and a copy thereof is delivered to the secretary of the meeting prior to the vote.

C. <u>Joint ownership</u>. In a case where a Lot is jointly owned by two or more persons, the vote for that Lot may be cast either in person or by a proxy by any one of such Owners. If, however, such joint Owners are unable to agree upon the casting of their vote at such a time as said vote is taken, such vote will be disregarded for all purposes except to establish a quorum. A vote, once cast, shall not be subject to impeachment by a co-owner once the voting has been closed.

## ARTICLE IV

## COVENANTS FOR MAINTENANCE ASSESSMENT

A. The road shown on the attached plat is not a public road and will not be maintained by the County of Albemarle, the Commonwealth of Virginia, or any other public agency. This road is hereby declared and reserved as a private, non-exclusive joint right of way for the benefit and use for ingress and egress, of all owners of the lots on said plat,

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for the guests or invitees or such owner. The right to use this road is reserved exclusively to the aforesaid persons, and any additional users created by future approval by the Albemarle County governmental authorities, and general public use of the road is prohibited until such time, if ever, this road should be taken into the State Highway system.

- The Declarant hereby covenants that each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or conveyance, shall be and is hereby deemed to covenant and agree to pay to the Owners' Association: (a) Annual assessments or charges; and (B) Any special assessments for capital improvements, such assessments to be fixed, levied, established and collected from time to time as hereinafter provided. The annual and any special assessments together with interest thereon and costs of collection, if any, shall be a charge on each Lot and shall be a continuing lien on each Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection, if any, shall also be the personal obligation of the person or legal entity who was the Owner of the subject Lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owners or successors in title to the Lot against which such assessment was made unless it is expressly assumed by such successor.
- C. The assessments levied by the Owners' Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the owners of the Lots shown on said plat and in particular for the improvements, management, maintenance and care of the said road and the storm drainage detention facilities.



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- D. The Owners' Association shall maintain and keep up the road shown on the attached plat in the condition in which it exists as of the date of completion of the road in accordance with the standards set forth on the plant which have been approved by the State Highway Department. In addition to the maintenance of said road in the condition as it exists on said date, the Owners' Association may, by written agreement of at least eighty per cent (80%) of all owners, obligate itself to improve and upgrade said road to a superior standard. In no event, however, shall this obligation to upgrade said road exceed an obligation to upgrade the road to Virginia Department of Highways recommended standards unless 100% of the Owners execute a written agreement to that effect.
- E. If by any means, any of the lots shown on the attached plat should be divided, the Owner of such new lot created thereby shall become a member of the Owners' Association and shall be liable for all obligations and entitled to all rights and benefits of this agreement.
- P. Written notice of any meeting called for the purpose of levying a special assessment or fixing the initial annual assessment shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of four members or of proxies entitled to cast four votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.



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G. The Owners' Association shall set the amount of assessment against each Lot at least thirty days prior to the date upon which said assessment becomes due and payable and shall provide written notice of the assessment to every Owner.

H. If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with interest thereon and cost of collection become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. Said lien on the Lot may be enforced and foreclosed by a suit in equity in the same manner as a mortgage. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within the thirty days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of one and one-half per cent per month and the Owners' Association or any Owner may bring an action at law against the Owner personally obligated to pay same or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action. In the event a judgment is obtained such judgment shall include interest on the assessments as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of No Owner may waive or otherwise escape the action. liability of the assessment provided for herein by nonuse or abandonment of his Lot.

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I. The lien of the assessments provided for herein shall be subordinate to the lien of any first deed of trust, now or hereafter placed upon a Lot subject to assessment. However, such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of a Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not release a Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

WITNESS the following signature and seal:

Mary Patricia Marinos Brown

STATE OF VIRGINIA AT LARGE
COUNTY OF ALBEMARLE, to-wit:

The foregoing Declaration was acknowledged before me by MARY PATRICIA MARINOS BROWN this 7 day of November.

1983.

My commission expires:

Notary Public

MICLIME, CALAGRAM & ATKING ATTORNEYS AND COLMORLORS AT LAW CHARACTESVILLE, VA.

COUNTY PLANNING COMMISSION BOARD OF SUPERVISORS STATE OF VIRGINIA OWNERS-APPROVAL The second of th tem second and interest section to the second of the second The state of the s Mary Vairies Marines Beaux. NAME OF THE RESPONDENCE OF THE PARTY OF he to be the time of this frequenty with all the proton a ...เกษษยย เลียงเรษา An Lite geneter einen Argeine fing ihn Thie jateriar hange 12.35 " 4.00" LE MATILIA A AF SUBDIVISION PLAT LUTS :- 7 & PARCEL "X" A DIVISION OF PARCEL 119 TAX MAP 61 NEAR CHARLOTTESVILLE CHARLOTTESVILLE MAGISTERIAL DISTRICT ALBEMARLE COUNTY, VIRGINIA Scale:1"=200' January 9,1980 HEVISED Fabruary '5, 1980 HER FEB 29 (190) 54.17.3 (a) 655 RE. MARCH 1 1980 54-17-3 (b) 78 WILLIAM S. ROUDABUSH, INC. A PROFESSIONAL CORPORATION CERTIFIED LAND SURVEYORS

Charlottesville, Virginia

VIRGINIA:	IN THE CLERK'S OFF	ICE OF THE CIRCUIT COURT OF ALBEMARLE:
THIS DEED WAS PRESENTED, AND WITH CERTIFICATE ANNEXED, ADMITTED		
TO RECORD ON	may 2 19	84 o'CLOCK AH.
STATE TAX LOCAL TAX TRANSFER FEE CLERK'S FEE PLAT GRANTOR'S TAX	14.00 2.00	TESTE: SHELBY J. MARSHALL, CLERK  BY: KONN P DEPUTY CLERK
TOTAL	16-00	