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WATER AND SEWER AGREEMENT

THIS WATER AND SEWER AGREEMENT (hereinafter, the "Agreement") is hereby entered into this 6th day of December, 2013, by and between **BROOKFIELD AUTUMN HILL, L.L.C.**, a Virginia limited liability company ("Brookfield"), and **THE TOWN OF PURCELLVILLE, VIRGINIA**, a municipal corporation (the "Town").

RECITALS

WHEREAS, Brookfield and Brookfield Washington, L.L.C. ("Brookfield Washington") are the owners of real property comprising approximately 75 +/- acres situated along Purcellville Road which is contiguous to the corporate limits of the Town of Purcellville (the "Town") and is particularly described in the attached **Exhibit A** (hereinafter, the "Tracts For Annexation"); and

WHEREAS, Brookfield intends to subdivide and develop a portion of the Tracts For Annexation into a neighborhood of detached single family dwelling units and townhouse units substantially in conformance with an Amended Concept Development Plan for Mayfair prepared by Bowman Consulting Group, Ltd, dated December 6, 2013 ("Amended Concept Development Plan") and those Amended Proffers for Mayfair dated December 6, 2013 ("Amended Proffers"); and

WHEREAS, that portion of the Tracts For Annexation to be developed per the Amended Concept Development Plan and Amended Proffers will be known as "Mayfair" and is referred to herein as the "Mayfair Property;" and

WHEREAS, Brookfield has requested action by the Town Council for the Town and the Loudoun County Board of Supervisors to bring the Tracts For Annexation into the corporate limits of the Town by boundary line adjustment; and

WHEREAS, Brookfield requests the Town to provide water and sewer services to the Mayfair Property if the Mayfair Property should be brought into the Town's corporate limits by a boundary line adjustment; and

WHEREAS, as a condition of the Town Council considering action to bring the Tracts For Annexation into the Town's corporate limits, the Town and Town Council have requested that residential development of the Mayfair Property be limited in scope; and

WHEREAS, in connection with the anticipated annexation and development of the Tracts For Annexation, the parties, the Town Council, and Brookfield Washington have on the same date as this Agreement entered into a Memorandum of Understanding ("Memorandum of Understanding"); and

WHEREAS, the Memorandum of Understanding calls for the execution of this Agreement between the Brookfield, and the Town; and

WHEREAS, Brookfield and the Town desire to memorialize the terms and conditions on which water and sewer services for the Mayfair Property would be provided by the Town.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Maximum Density.** Residential development on the Mayfair Property shall be restricted to not more than 257 single family detached dwelling units and townhouse units.

2. **Date of Annexation.** As used herein, "Date of Annexation" shall refer to the date on which the Tracts For Annexation legally are incorporated into the boundaries of the Town, such as (but not limited to) the date of a court order recognizing a boundary line adjustment agreement for the Tracts For Annexation.

3. **Water Distribution and Wastewater Collection Infrastructure.** All water supply and distribution systems and infrastructure and wastewater system infrastructure for the provision of water and sewer services to and within the Mayfair Property shall be constructed and installed at Brookfield's sole expense. All water and sewer lines also shall be extended from existing Town water mains and sanitary sewer mains to and within the Mayfair Property at Brookfield's sole expense.

4. **Design and Construction Standards.** All water supply and distribution systems and infrastructure and wastewater system infrastructure for the provision of water and sewer services to and within the Mayfair Property shall be designed, constructed and installed according to the Town's requirements. All such installations shall be inspected by the Town for conformity with such requirements and may be rejected for failure to meet any applicable construction standard.

5. **Ownership of Infrastructure.** The water supply and distribution systems and infrastructure and wastewater system infrastructure which are on or service the Mayfair Property, shall be owned and maintained by the Town except that the Town may elect to reject ownership of all or any element or component of the system which does not meet the Town's construction standards, which determination shall be at the sole discretion of the Town.

6. **Rights-of-Way and Easements.** The water supply and distribution systems and infrastructure and wastewater system infrastructure on the Mayfair Property shall be located within public rights-of-way or placed within easements for the benefit of the Town and in a manner which meets the requirements for easements set forth in the Town's Facilities Standards Manual. Such easements shall be conveyed to the Town in a deed or deeds of easement acceptable to the Town Attorney and shall be conveyed promptly after installation of the infrastructure within the easement area. The easements shall be conveyed free and clear of any and all liens and encumbrances at no cost to the Town.

7. Offsite Easements.

(a) With the exception of the easements described in Section 7(b), Brookfield represent and warrants that it has or will obtain sufficient easements and real estate rights beyond the boundaries of the Mayfair Property required to extend water and sewer service to the Mayfair Property. To the extent it does not currently hold required easements, Brookfield shall acquire any easements or real estate rights beyond the boundaries of the Mayfair Property which are required to extend water and sewer service to the Mayfair Property. The water supply and distribution systems and infrastructure and wastewater system infrastructure within any offsite real estate rights or easements acquired by Brookfield to bring water and sewer service to the Mayfair Property also shall be placed within public rights-of-way or easements for the benefit of the Town and in a manner which meet the requirements for easements set forth in the Town's Facilities Standards Manual. Such easements shall be conveyed to the Town in a deed or deeds of easement acceptable to the Town Attorney and shall be conveyed promptly after installation of the infrastructure within the easement area. The easements shall be conveyed free and clear of any and all liens and encumbrances at no cost to the Town.

(b) Upon request, the Town agrees to allow Brookfield access to the Town's water and/or sewer trunk lines located in those utility easements held by the Town across the property identified as PIN 522-29-5928 which is currently owned by the Board of Supervisors for Loudoun County, Virginia, to the extent otherwise permitted by the existing easements or Loudoun County. Such easements may be used by Brookfield only for the purpose of connecting water and sewer lines to or from the Mayfair Property to the Town's trunk lines within the easements.

8. Water and Sewer Flow Modeling. Brookfield shall pay all costs incurred by a consultant of the Town's choice to obtain and complete a water and sewer flow modeling analysis required for the extension and development of the water supply and distribution systems and infrastructure and wastewater system infrastructure for the Mayfair Property. Such model shall include the entirety of the Mayfair Property, including any phasing, as well as neighboring development and system demands as may be necessary to accurately determine and represent system flows and pressures for the Mayfair Property. Payment of the estimated cost for this modeling shall be made by Brookfield to the Town prior to the modeling work being undertaken. In the event the actual costs of the modeling exceed the estimate, Brookfield promptly shall remit payment of any actual costs incurred by the Town for the modeling in excess of the estimated cost. In the event the actual costs of the modeling are less than the estimate, the Town promptly shall reimburse Brookfield the amount of any overpayment.

9. Availability and Metering Fees.

(a) *Rate Determination Date.* Brookfield shall pay a water availability fee, sewer availability fee and meter fee to the Town for all 257 residential units shown on

the Amended Concept Development Plan. The rate for each fee to be paid by Brookfield shall be the Town's rate in effect as of September 1, 2013.

(b) *Processing of Applications For Service.* The Town agrees to process all applications for water and sewer service to residential units on the Mayfair Property in a timely manner to allow for the installation of the residential units on the Property.

(b) *Timing of Payment.* Except for Requirement Payments, the timing of which are set forth below, Brookfield shall pay the water availability fee, sewer availability fee, and meter fee for each residential unit prior to receipt of a zoning permit from the Town for the unit to be provided with water and sewer service.

(c) *Minimum Purchase Requirement.* Brookfield shall purchase and remit payment to the Town of a minimum number of water availability fees, sewer availability fees and meter fees each year on the schedule set forth in Section 8(c)(ii), regardless of the number of residential units for which zoning permits are issued in that year.

(i) For purposes of determining Brookfield's yearly minimum purchase requirement, Year 1 shall be calculated to begin on the Date of Annexation and include the next 364 days thereafter. Each successive year will be calculated as a successive 365 day period consistent with the establishment of Year 1.

(ii) The minimum number of water availability fees, sewer availability fees and meter fees for which Brookfield agrees to remit payment in Year 1 and each of the following five (5) years is as follows:

Year	Minimum Number of Water Availability Fees	Minimum Number of Sewer Availability Fees	Minimum Number of Meter Fees
Year 1	25	25	25
Year 2	25	25	25
Year 3	50	50	50
Year 4	50	50	50
Year 5	50	50	50
Year 6	57	57	57

(iii) If Brookfield has not met the minimum purchase requirement for a yearly period, Brookfield shall remit payment to the Town of all water availability fees, sewer availability fees, and meter fees required to meet the minimum purchase requirement (the "Requirement Payment."). The Requirement Payment shall be paid to the Town by Brookfield on or before the last day of the yearly period for which the minimum requirement has not been met. Under any circumstance if Brookfield makes said Requirement Payment,

Brookfield shall promptly receive the taps and/or be able to utilize the taps for units as they are developed and become available within the Mayfair Property.

(iv) The failure to make a Requirement Payment within five days of the last day of the yearly period for which the minimum requirement has not been met shall be a "Requirement Payment Event of Default" which triggers the obligations of the Guarantor.

(v) The parties agree that the maximum residential density for the Mayfair Property shall be limited to 257 units, and that Brookfield shall pay for the water availability fees, sewer availability fees and meter fees as provided herein. The parties recognize, however, that there are scenarios by which the maximum number of units actually developed on the Mayfair Property may be reduced. The minimum purchase requirements of this Agreement, however, shall be reduced only in the following two instances:

(a) In the event the Town Council unilaterally initiates and carries out an exercise of its legislative zoning power that reduces the maximum density of the Mayfair Property below 257 units, the parties agree that the 257 unit minimum purchase requirement of Section 9(c) shall be reduced to equal the maximum number of units permitted after an exercise of the Town Council's legislative discretion.

(b) The number of developable lots could be reduced if the Virginia Department of Transportation ("VDOT") rejects a request from Brookfield for the waiver of VDOT road design standards for the roads in the Mayfair Property. The parties agree that if VDOT rejects this waiver and if it results in a loss of developable lots, the 257 unit minimum purchase requirement of Section 9(c) shall be reduced by the number of lots lost due to the rejection, but such reduction shall not exceed 8 lots.

No reduction in the minimum purchase requirement shall be granted or allowed for any other reason, such as but not limited to Brookfield's voluntary withdrawal of request(s) for zoning permit(s), Brookfield's inability to engineer the Mayfair Property to accommodate 257 units, or the denial of zoning permits by the Town for lack of compliance with the Town's ordinances and/or Facilities Standards Manual. To the extent the minimum purchase requirement is reduced under this provision, the reduction shall be applied by reducing the minimum purchase requirement for Year 6.

(d) *Guaranty of Minimum Purchase Requirement.* Brookfield's minimum purchase requirement hereunder shall be guaranteed by another entity or individual of sufficient creditworthiness to satisfy the financial requirements hereunder and who is acceptable to the Town (the "Guarantor") and subject to the terms of the Guaranty.

The Guarantor shall absolutely, unconditionally and irrevocably guarantee to the Town the full and prompt payment, performance and completion when due, without offset or deduction, of any sums which are or may become due to the Town under this Agreement. The Guarantor only may be changed with the prior written agreement of the Town and Brookfield.

(e) *Remedies Upon Requirement Payment Event of Default.* Interest shall accrue on all amounts due upon a Requirement Payment Event of Default at a rate of one percent (1%) per month from the date the requirement payment was due until all amounts due and owing are paid in full. The Town shall give Brookfield and Guarantor notice of a Requirement Payment Event of Default and the total amount due and owing to the Town as a result of such Requirement Payment Event of Default (“Notice of Requirement Payment Event of Default”). Brookfield and Guarantor shall be liable for all reasonable costs and expenses, including attorneys’ fees, incurred by the Town to enforce or collect under this Agreement after a Requirement Payment Event of Default as well as all costs, including attorneys’ fees, incurred by the Town to have any stay or injunction against the enforcement or collection of a Requirement Payment lifted by any bankruptcy or other court. The Requirement Payment Event of Default remedy shall be in addition to any other remedies available to the Town at law or in equity to enforce its rights under this Agreement.

10. **Bonding.** Brookfield shall meet all bonding requirements of the Town’s ordinances and Facilities Standards Manual for the water supply and distribution systems and infrastructure and wastewater system infrastructure to be constructed to service the Mayfair Property.

11. **Water Flows.** The Town shall provide, at the usual and customary Town consumption charges, a maximum of 350 gallons per day, calculated on an annual average, of water and sewer for each residential unit on the Mayfair Property.

12. **Service to Mayfair Property Only.** This Agreement addresses water and sewer service for the Mayfair Property only. This Agreement does not cover water and sewer service for Loudoun County PIN 487-47-4375 owned by Brookfield Washington or the balance of Loudoun County PIN 487-36-5498 that is not part of the residential development depicted on the Amended Concept Development Plan. The parties acknowledge that this Agreement does not address the terms and conditions on which additional water and sewer service may be provided by the Town to the balance of the Tracts For Annexation.

13. **Rezoning Application for Residue Property.** If the Tracts For Annexation are annexed into the Town’s corporate limits, Brookfield agrees to initiate a rezoning of the Residue Property from its existing zoning to the Limited Industrial zoning classification of the current Town Zoning Ordinance (the “LI Rezoning”) within one-hundred and twenty (120) days after the Date of Annexation. Brookfield shall submit a concept development plan and zoning proffers with the LI Rezoning application. Brookfield will thereafter diligently cooperate in the process of public review of the LI Rezoning application, providing any supplemental information

reasonably required, through the process established in the Code of Virginia and the Town Zoning Ordinance for conditional rezoning applications. The Town Council, as the governing body, will make a final decision on the LI Rezoning application in accordance with the criteria set forth in the Code of Virginia and the Town Zoning Ordinance.

14. **Representations.** Brookfield represents and warrants that there is no indebtedness on the Mayfair Property at the time of this Agreement and that it has and will maintain the financial capacity to meet its financial obligations under this Agreement.

15. **Separate Suits.** Notwithstanding anything herein to the contrary, separate suits may be brought hereunder against Brookfield by the Town as needed to enforce the Town's rights hereunder and the bringing of a suit upon a cause of action shall not prejudice or bar the bringing of subsequent suits for other breaches, causes of actions or additional sums due hereunder, whether theretofore or thereafter accruing.

16. **Indemnification.** To the fullest extent permitted by law, the parties agree to indemnify and defend each other, and to hold each other harmless from, any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including without limitation, all attorneys' fees, expert fees and disbursements actually incurred), arising directly or indirectly, in whole or in part, out of or in connection with each party's performance of its obligations hereunder, or the performance hereunder of any of the party's officers, directors, agents or employees, subcontractors or anyone for whose acts any of them may be liable, whether within or beyond the scope of any of their respective duties or authority hereunder. The provisions of this Section 16 shall survive termination of the Agreement. These indemnity obligations under this Section 16 also shall specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees) and punitive damages (if any) arising out of, or in connection with, any (a) violation of or failure to comply with any federal or Commonwealth of Virginia government requirements which bear upon the performance of this Agreement, (b) means, methods, procedures, techniques or sequences of execution or performance of this Agreement, (c) failure to secure and pay for permits, fees, approvals, licenses and inspections as required to complete this Agreement; or (d) any violation of any permit or other approval of a public authority required to complete Brookfield's obligations hereunder.

17. **Notices.** If notice is required hereunder, notice shall be sufficient upon receipt of delivery by mail, delivery service or hand delivery to the following persons:

If to Guarantor:

Robert C. Hubbell, President
Richard J. Dengler, Vice-President of Land Development
Brookfield Washington, L.L.C.
8500 Executive Park, Suite 300
Fairfax, VA 22031

With Copy To: Thomas Moore Lawson, Esq.
Lawson & Silek, P.C.
120 Exeter Drive
Suite 200
Winchester, Virginia 22603

If to Town: Rob Lohr
Town Manager
Town of Purcellville
221 South Nursery Avenue
Purcellville, Virginia 20132

With Copy To: Sally Hankins, Esq.
Town Attorney
Town of Purcellville
221 South Nursery Avenue
Purcellville, Virginia 20132

The address at which notices are to be sent may be changed from time to time by providing at least 10 days advance notice to the persons identified above.

18. **Nonwaiver**. No failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same. Waivers and releases hereunder only shall occur through a written document executed by the Town and Brookfield and then only to the extent specifically recited therein. Any waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of any subsequent right, remedy or recourse as to a subsequent event.

19. **Effective Date**. The obligations and requirements of the parties stated herein shall be effective upon the Date of Annexation.

20. **Authority**. Brookfield hereby warrants and represents that the execution and delivery of this Agreement has been duly authorized by all necessary action of its management and members and upon execution by the officer named on the signature page hereto shall be binding upon such entity and enforceable against such entity in accordance with its terms.

21. **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon each party and their successors and assigns.

22. **Descriptive Headings**. The descriptive headings of this Agreement are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

23. **Amendments**. This Agreement shall not be modified or amended except by a writing signed by all parties.

24. **Complete Agreement.** This Agreement, together with the Guaranty and Memorandum of Understanding, constitute the entire, full and complete agreement between the parties hereto, and supersedes all prior agreements.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and entered into as of the date first written above.

THE TOWN OF PURCELLVILLE, VIRGINIA

By: Robert W. Lohr, Jr. [SEAL]
Name: ROBERT W. LOHR, Jr.
Title: Town Manager

Approved As To Form:

Sally Hankins
Town Attorney

Approved As To Terms:

Sally Hankins
Name: Sally Hankins
Title: Town Attorney

By: ~~_____~~
Name: _____
Title: _____

BROOKFIELD AUTUMN HILL, L.L.C.
A Virginia limited liability company

By: Robert C. Hubbell
Name: ROBERT C. HUBBELL
Title: MANAGER

Exhibit A

METES AND BOUNDS DESCRIPTION OF THE TRACTS FOR ANNEXATION

BEGINNING AT A POINT ON THE WESTERN RIGHT-OF-WAY OF PURCELLVILLE ROAD (VA. STATE ROUTE 611, VARIABLE WIDTH RIGHT-OF-WAY), SAID POINT BE A CORNER TO LOT 2, PAUL AMBROSE WARNER, JR. DIVISION (DEED BOOK 410, PG. 668 AND CORRECTED IN D.B. 420, PG. 596). SAID POINT BEING APPROXIMATELY 20' FROM THE CENTERLINE OF THE TRAVEL WAY OF PURCELLVILLE ROAD AND 5.40' FROM AN IRON PIPE FOUND BEING APPROXIMATELY 25' FROM SAID TRAVEL WAY; THENCE DEPARTING SAID PURCELLVILLE ROAD AND CONTINUING WITH LOT 2 THE FOLLOWING TWO (2) COURSES AND DISTANCES

S 86°48'16" W 353.48' TO A POINT; THENCE

S 03°11'44" E 125.00' TO A POINT BEING A COMMON CORNER TO LOT 1 OF AFOREMENTIONED PAUL AMBROSE WARNER, JR. DIVISION; THENCE DEPARTING LOT 2 AND CONTINUING WITH LOT 1 THE FOLLOWING THREE (3) COURSES AND DISTANCES

S 86°48'16" W 111.63' TO A POINT; THENCE

S 03°11'44" E 211.06' TO A POINT; THENCE

N 81°24'46" E 65.54' TO A POINT BEING IN THE LINE OF LOT 3 AND A CORNER TO KELLY M. COCKERILL AND MARILYN JARVIS (D.B. 1539, PG. 393 AND D.B. 1032, PG. 449); THENCE DEPARTING LOT 2 AND CONTINUING WITH COCKERILL AND JARVIS THE FOLLOWING TWO (2) COURSES AND DISTANCES

S 09°36'35" W 452.73' TO A POINT LYING IN A 24" TREE STUMP CUT 4' OFF THE GROUND; THENCE

S 18°54'55" E 334.67' TO A POINT BEING IN THE LINE OF LOT 16FF VALLEY INDUSTRIAL PARK (D.B. 980, PG. 120 AND RE-SUBDIVIDED IN D.B. 1032 PG. 207). SAID POINT IN THE CORPORATE LIMITS OF THE TOWN OF PURCELLVILLE; THENCE DEPARTING COCKERILL AND JARVIS AND CONTINUING WITH VALLEY INDUSTRIAL PARK LOTS 16FF THEN LOT 14FF, LOT 12 FF1, 11F, 10F, 9F AND BEING THE CORPORATE LIMITS OF THE TOWN OF PURCELLVILLE

S 77°36'56" W 1296.00' TO A POINT BEING IN THE LINE OF LOT 9F AND A CORNER TO LOUDOUN COUNTY BOARD OF SUPERVISORS; THENCE DEPARTING VALLEY INDUSTRIAL PARK AND CONTINUING WITH THE BOARD OF SUPERVISORS AND THE TOWN OF PURCELLVILLE CORPORATE LIMITS THE FOLLOWING THREE (3) COURSES AND DISTANCES

N 11°52'26" W 1036.52' TO A POINT; THENCE

N 26°34'56" W 862.55' TO A POINT; THENCE

N 10°36'36" W 470.37' TO A STONE FOUND BEING A POINT IN THE LINE OF LOT 12, CHESTNUT HILLS (INSTR. 20040622-0062965); THENCE DEPARTING THE BOARD OF SUPERVISORS AND THE TOWN OF PURCELLVILLE CORPORATE LIMITS AND CONTINUING WITH CHESTNUT HILLS LOT 12, LOT 13, LOT 15-A, LOT 16-A AND THEN LOT 14-A THE FOLLOWING TWO (2) COURSES AND DISTANCES

S 80°55'47" E 1334.62' TO A POINT; THENCE

N 79°19'12" E 949.72' TO A POINT BEING ON THE WESTERN RIGHT-OF-WAY OF AFOREMENTIONED PURCELLVILLE ROAD; THENCE DEPARTING CHESTNUT HILLS AND CONTINUING WITH THE WESTERN RIGHT-OF-WAY OF PURCELLVILLE ROAD THE FOLLOWING TWO (2) COURSES AND DISTANCES

S 03°35'49" E 370.58' TO A POINT; THENCE
S 03°11'44" E 151.90' TO A POINT BEING A CORNER TO LOT 4 OF AFOREMENTIONED PAUL AMBROSE WARNER, JR. DIVISION; THENCE DEPARTING PURCELLVILLE ROAD AND CONTINUING WITH LOT 4

S 86°48'16" W 353.48' TO A POINT; THENCE CONTINUING WITH LOT 4 AND THEN LOT 3 THE FOLLOWING TWO (2) COURSES AND DISTANCES

S 03°11'44" E 250.00' TO A POINT; THENCE
N 86°48'16" E 353.48' TO A POINT BEING ON THE WESTERN RIGHT-OF-WAY OF AFOREMENTIONED PURCELLVILLE ROAD; THENCE DEPARTING LOT 3 AND CONTINUING WITH THE WESTERN RIGHT-OF-WAY OF PURCELLVILLE ROAD

S 03°11'44" E 50.00' TO THE POINT OF BEGINNING CONTAINING 3,256,728 SQUARE FEET OR 74.76418 ACRES OF LAND MORE OR LESS AND BEING ALL OF LOUDOUN COUNTY TAX PARCELS 487-36-5498 AND 487-47-4375

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