

Prepared By:
Sally Hankins, Esq., Town Attorney
Town of Purcellville
221 South Nursery Avenue
Purcellville, Virginia 20132
Tax PINs 487-36-5498 and 487-47-4375


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Gary M. Clemens, Clerk

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Agreement") is made as of the 6th day of December, 2013 between and among **BROOKFIELD AUTUMN HILL, L.L.C.**, a Virginia limited liability company ("Brookfield"), **BROOKFIELD WASHINGTON, L.L.C.**, a Delaware limited liability company ("Brookfield Washington"), **THE TOWN OF PURCELLVILLE, VIRGINIA**, a Virginia municipal corporation (the "Town"), and **THE TOWN COUNCIL OF THE TOWN OF PURCELLVILLE, VIRGINIA**, a body politic and corporate (the "Town Council") (individually, a "Party" and collectively, "the Parties").

RECITALS

WHEREAS, Brookfield owns approximately 70.8+/- acres of land identified in the Loudoun County Assessment Records as PIN 487-36-5498 and Brookfield Washington owns approximately 3.9+/- acres of land identified in the Loudoun County Assessment Records as PIN 487-47-4375, together both parcels are more fully described in **Exhibit A** to this Agreement (together, the "Tracts For Annexation"); and

WHEREAS, the Tracts For Annexation are located north of, and contiguous to, the Town's current corporate limits; and

WHEREAS, Brookfield now intends to subdivide and develop a portion of the Tracts For Annexation into a neighborhood of single family residential 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, the remaining portion of PIN 487-36-5498 which does not include the Mayfair Property is planned for future limited industrial development and at times separately is referred to herein as the "Residue Property;" and

WHEREAS, the Brookfield Washington parcel (PIN 487-47-4375) of the Tracts For Annexation may be rezoned in the future and at times separately is referred to herein as the "Brookfield Washington Parcel;" and

WHEREAS, Brookfield and Brookfield Washington intend to waive any rights that relate or attach to the Mayfair Property by virtue of those proffers previously accepted by Loudoun County as Autumn Hill Proffers, ZMAP 1990-0019 ("County ZMAP 1990-0019")

in favor of development of the Mayfair Property in substantial conformance with the Amended Concept Development Plan and Amended Proffers; and

WHEREAS, Brookfield and Brookfield Washington have requested action by the Town Council and the Loudoun County Board of Supervisors to bring the Tracts For Annexation into the corporate limits of the Town 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 Council has requested that residential development of the Mayfair Property be limited in scope; and

WHEREAS, Brookfield requests the Town to provide water and sewer services to the Mayfair Property if the Tracts For Annexation should be brought into the Town's corporate limits; and

WHEREAS, some or all of the Parties have entered into several additional related agreements in connection with the requested annexation and future development of the Mayfair Property; namely, a Water and Sewer Agreement, Guaranty, Declaration of Restrictive Covenants, and Escrow Agreement (collectively the "Related Agreements"), all as referred to herein; and

WHEREAS, the Parties wish to set forth the understandings and process by which the Tracts For Annexation will be developed and the Mayfair Property provided with public water and sewer service should the Tracts For Annexation be annexed into the Town's corporate limits.

NOW THEREFORE, in consideration of the covenants and promises contained herein, and other good and valuable consideration, the sufficiency of which hereby are acknowledged, the Parties agree as follows:

AGREEMENT

1. **Recitals**. The recitals set forth above are incorporated by reference as matters of contract and not mere recitals.
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. **Residential Density Restriction**. In connection with the transaction set forth in this Agreement and the Related Agreements, Brookfield agrees to restrict and limit residential development on the Mayfair Property in the following manner:
 - a. Brookfield covenants and agrees that residential development on the Mayfair Property shall be limited to 257 single family detached dwelling units or townhouses, as those terms are defined in the Town Zoning

Ordinance, and that not more than 151 of these 257 units will be townhouses (the "Residential Density Restriction").

- b. The Parties agree that the Residential Density Restriction and the Related Agreements are fundamental components of the consideration given between and among the Parties to the Related Agreements and as part of the conveyances of estates in the Mayfair Property from Brookfield to the Town for public infrastructure, roads, rights-of-way and easements as required by the Related Agreements, the Amended Proffers, and the Amended Concept Development Plan.
- c. The Parties intend and agree that the Residential Density Restriction is and will be a covenant running with the land and that it touches and concerns the land and that it is declared as part of an overall transaction that includes the dedication to the Town by Brookfield of public improvements, infrastructure, easements and rights-of-way on the Mayfair Property.
- d. The Residential Density Restriction shall be stated in a Declaration of Restrictive Covenants from Brookfield, as declarant, and for the benefit of the Town and future owners of lots created from the Mayfair Property, in the form of the Declaration of Restrictive Covenants attached as **Exhibit B** and incorporated herein, which Declaration shall be placed in escrow until such time as it may be recorded per the terms of the Escrow Agreement attached as **Exhibit C** and incorporated herein;
- e. The Residential Density Restriction shall be restated in the deeds and easements conveying or dedicating easements, rights-of-way and infrastructure from Brookfield to the Town in connection with the development of the Mayfair Property and shall be included on the face of the subdivision plat(s) submitted by Brookfield to the Town for the Mayfair Property.

4. **Town Zoning Upon An Annexation.** If annexed, the Parties agree that the Town Zoning Ordinance provides that property mapped as PDH6 in the County, such as the Mayfair Property, will enter the Town under the Town's PDH8 zoning classification and that property mapped JLMA3 in the County, such as the Residue Property and Brookfield Washington Parcel, will enter the Town under the Transition X zoning classification. The parties further agree that, upon an annexation, the Tracts for Annexation must be developed in accordance with all Town ordinances and regulations for the zoning classification which attaches per the Town's Zoning Ordinance.

5. **Development of Mayfair.** The Amended Concept Development Plan is **Exhibit D** to this Agreement and incorporated herein and the Amended Proffers are **Exhibit E** to this Agreement and incorporated herein. If the Tracts For Annexation are annexed into the Town's corporate limits, Brookfield agrees that residential development on the Mayfair Property will substantially conform to the Amended Concept Development Plan and Amended Proffers as well

as all requirements of the Town's ordinances and Facilities Standards Manual. Brookfield acknowledges that development of the Mayfair Property may require additional review and approvals from State and Town agencies and approving authorities, such as the Planning Commission, Board for Architectural Review, Town staff, Virginia Department of Transportation, etc., per the procedures set forth in the Town's ordinances. It is intent of the Parties to support the development of the community that is depicted by the Amended Concept Development Plan, Amended Proffers and Related Agreements, so that it can and will replace and supersede development of a community as shown on County ZMAP 1990-0019.

6. **Water and Sewer Service.**

- a. Upon an annexation of the Tracts For Annexation, the Parties agree that water and sewer service to the Mayfair Property shall be provided consistent with the terms of the Water and Sewer Agreement attached as **Exhibit F** and incorporated herein.
- b. Brookfield shall provide the Town with copies of all water studies for the Tracts For Annexation undertaken by or on its behalf within the past five (5) years. Such studies shall be provided to the Town at or before submission of the first site plan to the Town for the Mayfair Property.
- c. Brookfield and Brookfield Washington agree and acknowledge that the Water and Sewer Agreement attached as Exhibit F addresses only water and sewer service for the Mayfair Property and that future agreements will need to be made with the Town for public water and sewer service to the Brookfield Washington Parcel and Residue Property.

7. **Waiver of Prior Proffers and Vested Rights.** Upon annexation of Tracts For Annexation and if the Amended Concept Development Plan and Amended Proffers are approved by Town Council, Brookfield waives, relinquishes and surrenders any rights, vested or otherwise, for the Mayfair Property that do or could arise from County ZMAP 1990-0019 or under any provision of the Code of Virginia (1950), as amended.

8. **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.

9. **Rezoning Application for Brookfield Washington Parcel.** If the Tracts For Annexation are annexed into the Town's corporate limits, Brookfield Washington agrees to

initiate a rezoning of the Brookfield Washington Parcel from its existing zoning to the PDH8 zoning classification of the current Town Zoning Ordinance (the "PDH Rezoning") within one-hundred and twenty (120) days after the Date of Annexation. Brookfield Washington shall submit a concept development plan and zoning proffers with the PDH Rezoning application. Brookfield Washington will thereafter diligently cooperate in the process of public review of the PDH 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 PDH Rezoning application in accordance with the criteria set forth in the Code of Virginia and the Town Zoning Ordinance.

10. **Extension of Time Limits.** Time is of the essence of this Agreement. No time period stated herein may be extended except upon the mutual written agreement of the Parties.

11. **Cross-Default.** The Parties agree, ratify, and confirm that a default by a Party under any provision of one of the Related Agreements also shall be a default under each of the other Related Agreements.

12. **Binding Agreement.** The Parties have acknowledged that annexations and approvals of concept development plans, proffers and rezonings are discretionary legislative acts and the Town Council cannot legally bind itself in the exercise of its legislative discretion. With respect to all other terms and conditions of this Agreement, the Parties are legally bound and those terms and conditions may be specifically enforced.

13. **Waiver of Challenge.** The Parties, their successors and assigns, agree that no party to the Related Agreements and no individual or entity affiliated with or with an interest in a party to the Related Agreements, or employed by a party to the Related Agreements, shall challenge or file litigation asserting that any of the Related Agreements, the Amended Proffers or the Amended Concept Development Plan, or any part thereof, is *ultra vires* or non-binding.

14. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon each party and their successors and assigns.

15. **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.

16. **Construction of Agreement.** This Agreement resulted from negotiations between the Parties. All Parties drafted this Agreement, and no one Party shall be deemed to be the drafter of this Agreement. In the event that any ambiguity exists in this Agreement, such ambiguity will not be construed against any Party.

17. **Integration.** The Related Agreements constitute the sole, complete and entire agreement of understanding by or among the Parties hereto concerning the subject matter hereof.

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

19. **No Waiver.** Any waiver by a Party of any breach of this Agreement by another Party shall not operate as or be construed to be a waiver by that Party of any subsequent breach by the other Party.

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. **Multiple Counterparts.** This Agreement shall be completed and accepted upon the signature of all Parties and may be executed simultaneously in four or more counterparts, each of which shall be deemed an original and each of which, compiled together, shall constitute one instrument such that each party can retain one fully executed original Agreement.

22. **Recordation.** The Parties agree that this Agreement promptly shall be recorded among the land records of the Clerk's Office for the Circuit Court of Loudoun County, Virginia.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their authorized representatives, as follows:

Signatures follow on next four pages.

Remainder of this page intentionally left blank.

THE TOWN COUNCIL OF THE TOWN OF
PURCELLVILLE, VIRGINIA

By: [Signature] [SEAL]
Name: Robert W. Lazaro Jr.
Title: Mayor

Approved As To Form:

[Signature]
Town Attorney

Approved As To Terms:

[Signature]
Name: Sally Hankins
Title: Town Attorney

By: [Signature]
Name:
Title:

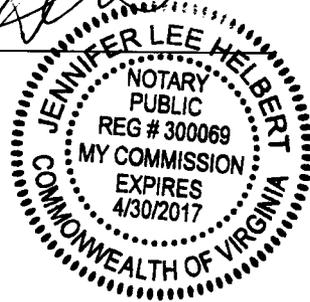
COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF Loudoun

The foregoing instrument was acknowledged before me this 10th day of December, 2013, Robert Lazaro, the Mayor of the Town of Purcellville, Virginia, on behalf of the Town Council.

[Signature]
Notary Public

My commission expires: 4/30/17



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: X
Name:
Title:

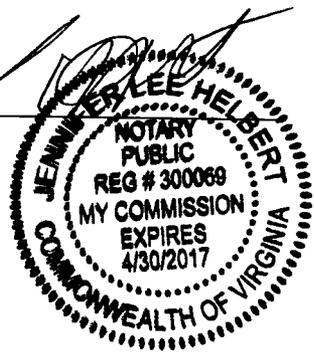
COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF Loudoun

The foregoing instrument was acknowledged before me this 10th day of December, 2013, by Robert Lohr, the Town Manager of The Town of Purcellville, Virginia, on behalf of the Town.

[Signature]
Notary Public

My commission expires: 4/30/17



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

By: [Signature] [SEAL]
Name: ROBERT C HUBBELL
Title: MANAGER

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF Fairfax

The foregoing instrument was acknowledged before me this 9 day of December, 2013, by Robert C. Hubbell, the Manager of Brookfield Autumn Hill, L.L.C., a Virginia limited liability corporation, on behalf of the company.

[Signature]
Notary Public

My commission expires: Sept. 30, 2015



BROOKFIELD WASHINGTON, L.L.C
a Delaware limited liability company

By: [Signature] [SEAL]
Name: ROBERT C HUBBELL
Title: PRESIDENT

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF Fairfax

The foregoing instrument was acknowledged before me this 9 day of December, 2013, by Robert C. Hubbell, the President of Brookfield Washington, L.L.C., a Delaware limited liability corporation, on behalf of the company.

[Signature]
Notary Public

My commission expires: Sept. 30, 2015

