



Capital Program, Procurement and Real Estate Committee

Action Item III-D

April 14, 2016

**Amendment to White Flint Development
Agreement**

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

Action Information

MEAD Number:
201732

Resolution:
 Yes No

TITLE:

Amendment to White Flint development agreement

PRESENTATION SUMMARY:

This is a request for the Board to authorize the General Manager to execute an amendment to the Joint Development Agreement for the White Flint East Metrorail Station site.

PURPOSE:

Request Board action to authorize the General Manager to execute an amendment to the Joint Development Agreement for the White Flint Metrorail Station site, consistent with the terms described below.

DESCRIPTION:

The White Flint Joint Development project is a large multi-phase mixed use development on a 32-acre property owned by Metro to the east of the White Flint Metrorail Station. WMATA entered into a Joint Development Agreement (JDA) with LCOR White Flint, L.L.C. (Developer) in January 2001. This was further amended in February of 2009. To date, approximately 1/3 of the site has been developed, with Metro having received over \$25 million in payments and deposits.

The Developer is seeking short-term extensions and re-instatement of development rights to certain parcels to pursue commercial office opportunities. Additionally, extensions of rights are proposed for residential parcels.

Key Highlights:

- Development rights for certain parcels have expired under the terms of the JDA. The Developer is seeking reinstatement of certain development rights for residential development and short-term extension of other development rights to pursue office tenant opportunities.
- This amendment will position Metro property to be available for significant commercial real estate opportunities, with the potential of \$10 million to \$35 million in capitalized ground lease payments.
- In exchange for reinstating and extending development rights, the Developer has agreed to changes in profit-sharing that will benefit Metro. Additionally, approximately \$597,838 in deposits paid by the Developer for commercial parcels (which would count against future ground rent payments) will be re-characterized

as extension payments to Metro, and will not be credited against future ground rent payments. The Developer has also agreed to commit to the timing of the construction of a road with bus bays.

Background and History:

On January 12, 2001, Metro entered into a Joint Development Agreement (JDA) with LCOR White Flint, L.L.C. (Developer) for the 32-acre White Flint East Metrorail Station Site. The project is known as the North Bethesda Center. A subsequently approved development plan called for 2.7 million square feet of development, including a mix of office, residential and retail uses on the site. The Developer has constructed two 18-story residential towers. One includes a ground-level grocery store. The Developer has also constructed a 365,000 square foot office building for the Nuclear Regulatory Commission after a successful bid. The JDA was amended February of 2009. To date, Metro has received over \$25 million in payments and deposits.

The JDA includes a phased development plan, with a schedule of milestone events. The development rights have lapsed for several of the parcels. Until September of 2015, Metro had not provided notice under the JDA exercising its rights to cause the lapsed rights to be extinguished if the Developer did not act. There are provisions allowing the Developer to extend the development rights by paying a fee equal to 9% of the anticipated capitalized ground rent. A substantial investment in infrastructure would also be necessary to develop the parcels. With regard to the commercially-zoned parcels, the Developer stated that it opted not to exercise those extension options because of the significant costs involved and the limited office market in North Bethesda. (The currently approved site plan allows for only commercial uses, i.e. office, on these parcels.) Large office tenants that would make the commercial parcels financially feasible are rare in the recent market of North Bethesda.

Potential opportunities for large office tenants in the near-term have recently emerged.

Discussion:

The following summarizes the key terms of the amendment to the JDA requiring Board authorization. The amendments are broken down by development parcel (illustrated in the attached power point presentation).

Parcels A, B, C, & D (commercially-zoned)

The proposed amendments would:

- Grant an extension until June 30, 2018, for these parcels. If the site is under consideration for a large commercial tenant, a six-month extension will be available.
- Amend the definition of Net Operating Income (NOI) to improve Metro's position in the cash flow "waterfall" for profit sharing ("Participating Rent"). Metro currently receives Participating Rent equal to 10% of NOI. The JDA currently states that both "return of" and "return on" equity are expenses that can be deducted before any Participating Rent is paid to Metro. The definition will be modified to exclude "return of equity" as a deductible expense. The net impact is that Metro will begin

- earning Participating Rent sooner than it would have under the existing definition.
- Provide a one-time increase in participation in capital events (sale) if the site is selected for a large office tenant, increasing Metro's participation from 10% to 15%.
 - Re-characterize \$597,838 previously paid by the Developer to Metro for commercial parcels (which would count against future ground rent payments) from deposits to extension payments earned by Metro that will not be credited against future ground rent payments.
 - Require that the Developer construct Station Street – with an agreed-upon plan for bus bays -- in the event that Parcels A and/or C are developed.

Parcel G (residential) -- The Developer intends to move forward with a closing on Parcel G and make a \$548,662 extension payment per the current JDA upon execution of the proposed amendment. Under the current JDA, this payment will extend the development rights for this parcel until December 31, 2016.

The proposed amendment -- contingent upon the above extension payment being made -- would:

- Modify the definition of Net Operating Income for Parcel G as indicated in Parcels A, B, C and D above, improving Metro's position in the cash flow waterfall.
- Make the Parcel G daycare payment payable only if a daycare center is included in the plan for Parcel G.
- Provide an extension to June 30, 2017 (6 months beyond current rights, assuming the extension payment is made). After June 30, 2017, the Developer will have six 1-month extension options at \$45,722 per month.

Parcel H (residential) – Development rights have lapsed. The Developer seeks an opportunity to develop the site with its closing and construction timed to follow that of the adjoining Parcel G. The proposed amendment would do the following:

- Allow for a conditional reinstatement of the Developer's rights as set forth in this paragraph. The reinstated rights will expire if WMATA and the Developer do not execute a ground lease for Parcel G (as described above). But, if WMATA and the Developer do execute a ground lease for Parcel G, then the Developer will have two years from the date of that ground lease in which to also ground lease Parcel H. Following that period, LCOR shall have a Right of First Offer (ROFO) for one year to acquire the leasehold interest in the site. During this ROFO period, LCOR will have the right to negotiate a ground lease for Parcel H provided however WMATA will also have the right to market the site to others after providing LCOR an opportunity to negotiate a ground lease for Parcel H.
- Any ground lease of this Parcel H will be at its appraised value – through a 3-appraisal process acceptable to Metro -- with a floor equal to the current pricing in the JDA.
- Re-characterize the existing deposit allocated to Parcel H (\$134,867) as an extension fee which will be nonrefundable and will not be credited against the ground lease payment on Parcel H.

- Modify the definition of Net Operating Income for Parcel H as indicated in Parcel G above.

FUNDING IMPACT:

In accordance with Board policy 15-05, proceeds resulting from this agreement will be directed to Metro's Capital Improvements Program.	
Project Manager:	Andy Scott
Project Department/Office:	Office of Real Estate and Station Planning

TIMELINE:

Previous Actions	<p>January 12, 2001– execution of Joint Development Agreement</p> <p>February 25, 2009 – execution of an amendment to the JDA</p> <p>Execution of three phase Ground Leases for individual development Parcels – May 30, 2006, June 15, 2010 and April 17, 2012</p>
Anticipated actions after presentation	<p>Negotiate and execute a JDA amendment, consistent with the terms outlined above</p> <p>Execute ground leases on any parcels moving forward for development</p> <p>Potentially negotiate an agreement for the construction coordination of a bridge over the Metrorail Station - to be funded by others.</p>

RECOMMENDATION:

Approve the execution of an amendment to the White Flint Joint Development Agreement consistent with the terms outlined above.



Washington Metropolitan Area Transit Authority

Amendment to the White Flint Joint Development Agreement

Capital Program, Planning, and Real Estate Committee

April 14, 2016



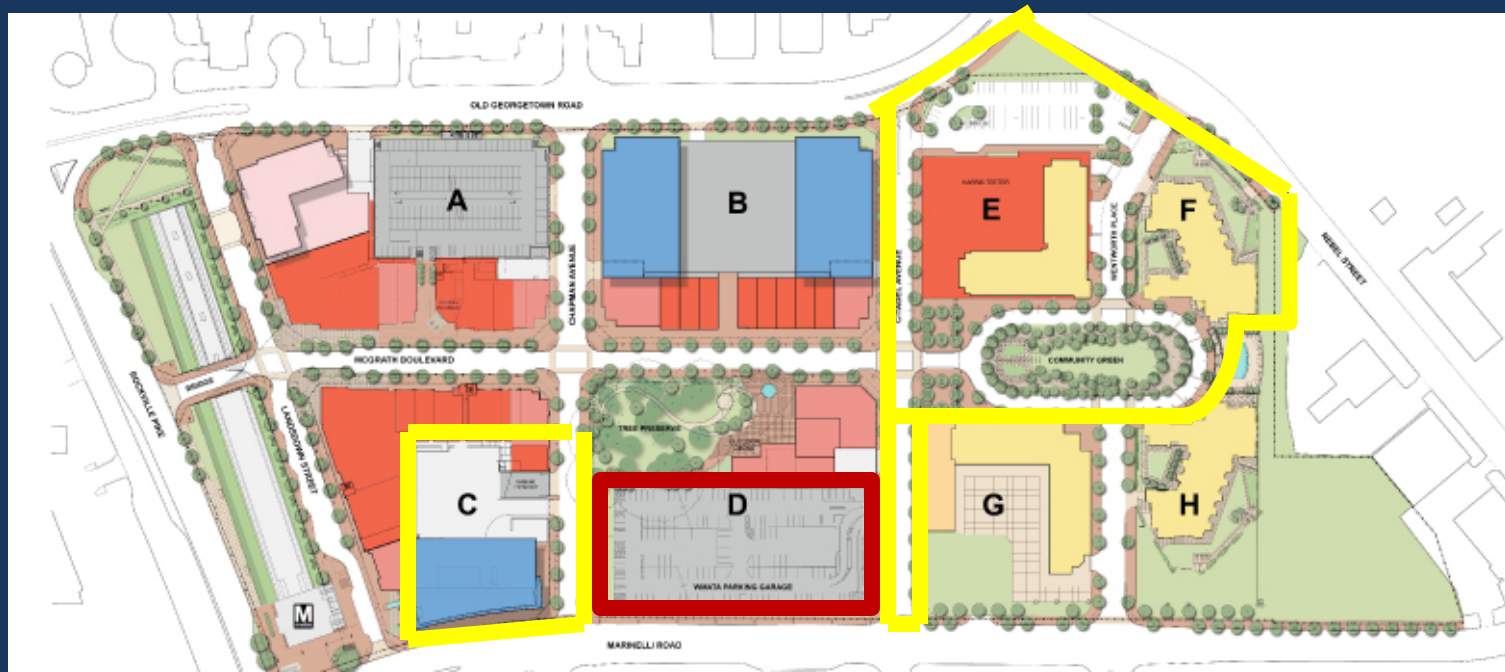
Purpose

- Request Board approval of an amendment to the White Flint Joint Development Agreement



White Flint - Background

- JDA with LCOR White Flint L.L.C. – Jan. 2001
- 32-acre site, plan for 2.7 million SF office, residential, retail
- White Flint market: mixed-use/residential, limited office
- Phased development: lapse of rights to certain parcels



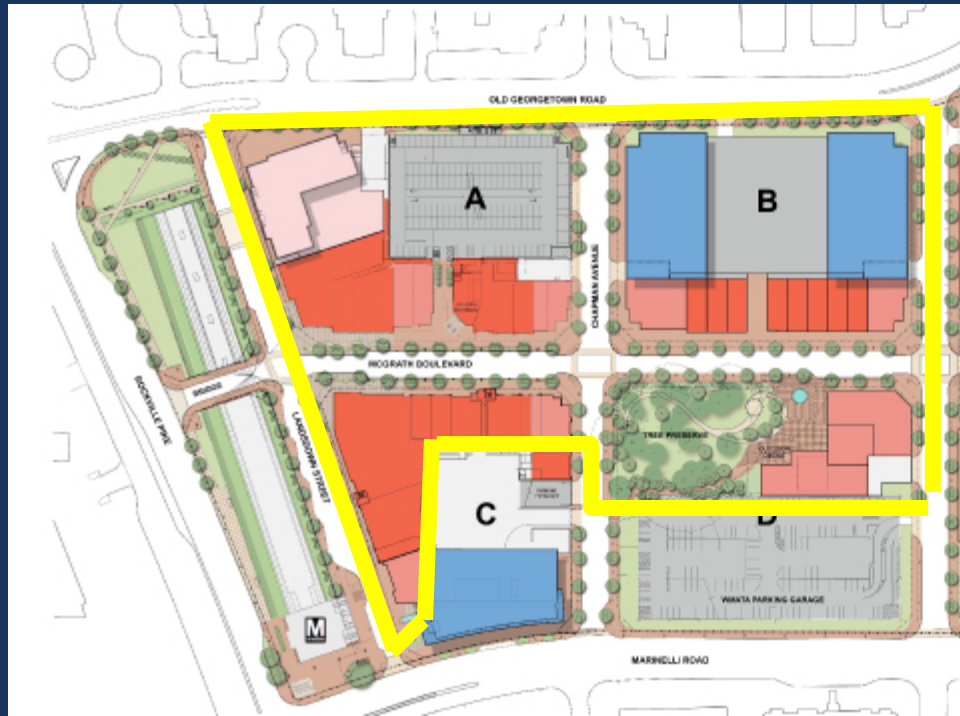
Phases completed by
developer

Metro garage



Amendment – Commercial parcels

- Extension/reinstatement development rights
 - Pursuit of commercial office opportunities
 - June 30, 2018
- Advance Metro's position in Participating Rent
- One-time increase in capital events (from 10% to 15%)
- Deposit – redefined as an extension payment
- Timing of Station Street construction





Amendment – residential parcels

Parcel G: Developer makes extension payment of \$548,662

- Extension to June 17, 1017
- Advance Metro's position in participating rent
- Daycare payment only due if daycare facility included

Parcel H: Right Of First Offer

- Only applicable if Parcel G extension payment made
- Appraised value
- Refine deposit as an extension fee





Recommendation

Recommendation: Board approval of an amendment of the White Flint Joint Development Agreement.



SUBJECT: APPROVAL TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE JOINT DEVELOPMENT AGREEMENT FOR THE WHITE FLINT EAST METRORAIL STATION SITE

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) and LCOR White Flint LLC (LCOR) are parties to a Joint Development Agreement (JDA) for the development of 32-acres of WMATA's property adjacent to the White Flint Metrorail Station as a mixed-use, transit-oriented development project; and

WHEREAS, WMATA and LCOR entered into the JDA in January 12, 2001, and amended the JDA on February 25, 2009; and

WHEREAS, Certain development deadlines have expired in the JDA, resulting in a loss of LCOR's development rights; and

WHEREAS, WMATA and LCOR have negotiated the basic terms of a potential amendment to the JDA to reinstate and extend LCOR's development rights, and to make adjustments to the terms, as expressed in the attachment hereto; and

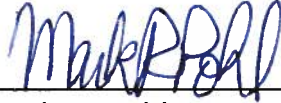
WHEREAS, LCOR, in exchange for WMATA reinstating and extending LCOR's development rights, has agreed to restructure the current profit sharing model in a manner advantageous to WMATA, and has also agreed to WMATA stipulations concerning the timing of the construction of a road with bus bays, and has also agreed to re-characterize deposits previously paid by LCOR to WMATA for commercial parcels as extension payments, not to be credited against future ground rent payments; and

WHEREAS, One of the roles of the Board of Directors in WMATA's Joint Development Policies and Guidelines, is to approve amendments to JDAs; now, therefore be it

RESOLVED, That the Board of Directors hereby authorizes the General Manager/Chief Executive Officer to negotiate and execute an amendment to the JDA conforming with the terms described in the attachment hereto; and be it finally

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with § 8(b) of the WMATA Compact.

Reviewed as to form and legal sufficiency,



Mark R. Pohl
Acting General Counsel

WMATA File Structure No.:
21.9.4. Joint Development Agreements

PROPOSED

**Proposed White Flint East Metrorail Station Site
Joint Development Agreement Modifications**

<p>1. <u>Parcels A-D:</u></p>	<ol style="list-style-type: none"> 1. Extend the Joint Development Agreement (JDA) term for these parcels to June 30, 2018. 2. Provide for one six (6)-month extension (extending the term to December 31, 2018) at no cost if the site is in contention for a large office space development opportunity. 3. Provide for a conversion of \$597,838 of the deposit into an extension fee for Parcels A-D upon execution of the JDA amendment, and clarify that said amount will not be credited against the ground lease payment due for Parcels A-D. 4. Revise the definition of Net Operating Income (Section 28.1.66 of the agreed-upon form ground lease) to exclude the "return of equity." 5. Modify the Premium Rent formula (Section 3.4 of the lease) to, in the event a large office tenant is secured for the White Flint East site, increase WMATA's participation from 10% to 15% for the first sale of the leasehold improvements. 6. Require LCOR to (a) build Station Street, including the four (4) Bus Drop-off/Pick-up locations as shown on the Amended Site Plan for Parcels A, C and Infrastructure dated June 8, 2011, as a condition to taking down Parcel(s) A and/or C-Retail, and (b) include the construction of Station Street in any site plan prepared and/or submitted in connection with the site.
<p>2. <u>Parcel G:</u></p>	<ol style="list-style-type: none"> 1. Extend the JDA term for this parcel to June 30, 2017. 2. Provide for six one-month extensions after June 30, 2017, at a cost of \$45,722 per month. 3. Add a requirement that, upon execution of the JDA amendment and as consideration of the extension of the JDA term to June 30, 2017, LCOR White Flint LLC (LCOR) will pay an extension fee of 9% of the projected Base Rent for this parcel, or \$548,662. 4. Revise the definition of Net Operating Income (Section 28.1.66 of the agreed-upon form ground lease) to exclude the "return of equity." 5. Clarify that (a) the Parcel G Day Care payment will be due only if a day care center is included in the approved site plan for Parcel G, and (b) that, in the event other improvements are proposed in lieu of a day care, the proposed compensation otherwise due to WMATA is increased in accordance therewith.

<p>3. <u>Parcel H:</u></p>	<ol style="list-style-type: none"> 1. Provide for a conditional reinstatement of LCOR’s rights to Parcel H under the JDA, subject to the following conditions: 2. LCOR’s right to negotiate and execute a ground lease agreement related to Parcel H shall not commence unless and until WMATA and LCOR have executed a ground lease for Parcel G. In the event that WMATA and LCOR do not execute a ground lease for Parcel G on or before June 30, 2017 (subject to the extensions described above), LCOR’s rights related to Parcel H shall expire. 3. For a period commencing upon execution of the JDA amendment and expiring on the second anniversary of the execution of the ground lease for Parcel G, LCOR will have the exclusive right to negotiate a ground lease for Parcel H. For a one-year period following that period, LCOR shall have a Right of First Offer (ROFO), to acquire the leasehold interest in Parcel H. During this ROFO period, LCOR will have the right to acquire the leasehold interest for the consideration described below; provided, however, that WMATA will have the right to market the site to others after providing LCOR the opportunity to exclusive right to negotiate a ground lease for Parcel H for the consideration described below. 4. LCOR shall have the right to extend this ROFO period for an additional three (3) years if LCOR has executed a ground lease for 1 or more of Parcels A-D. 5. The consideration due to WMATA for Parcel H shall be based upon an appraisal of its fair market value as determined in accordance with an agreed-upon appraisal methodology, with a floor equal to the current pricing in Exhibit 2.2.2. 6. In the event LCOR executes a ground lease for Parcel H, the definition of Net Operating Income (Section 28.1.66 of the agreed-upon form ground lease) will be revised to exclude the “return of equity.” 7. Provide for a conversion of \$134,867 of the deposit into an extension fee for Parcel H upon execution of the JDA amendment, and clarify that said amount will not be credited against the ground lease payment due for Parcel H.
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