



ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
200 DUKE OF GLOUCESTER STREET
ANNAPOLIS, MARYLAND 21401-2507
PHONE: 410.269.1554
FAX: 410.268.0612
www.fblaw.com

DAVID M. FUNT (MD)
BRYAN D. KOLTON (MD, PA)
REN L. TUNBERGMANN (MD)
CHARLES D. MACLEOD (MD)
LINDSEY A. RAJZER (MD)
DEREK B. YARBIS (MD, DC)
JEFFERSON L. BLOMQUIST (MD)
MICHAEL P. CUNNINGHAM (MD, DC)
JAMES F. TAYLOR (MD)
MARI A. BARONDESS (MD, DC, VA, CA)
CHRISTOPHER W. PAMERMAN (MD, DC, DE, NJ)
DONALD B. DAVIS, JR. (MD)
ELESSA D. LEVAN (MD)

SENIOR COUNSEL
MARY E. McGRATH (MD, DC)
AMY L. STRACCIAN (PA, NJ)

ASSOCIATES
TAMAL A. BANTON (MD)
SHANI DINGOVITZ (MD)
PATRICK W. THOMAS (MD)
JUSTIN S. LANDBRETH (MD, NY)
JENNIFER L. KENT (MD)
MICHELLE R. SAWYER (MD)

OF COUNSEL
KEVIN J. BEST (MD, DC)
STEPHEN P. CARNEY (MD)
GARY C. HARRIGER (MD)
ROBERT H. LEVAN (MD, DC, NY)
DEBORAH R. RIVKIN (MD)
KIMBERLY Y. ROBINSON (MD)
KAREN P. RUFF (MD)
RONALD L. SOUTHERS (PA, DC)
VICTOR K. TERVALA (MD)

MEMORANDUM

TO: Bowie City Council
VIA: David J. Deutsch, City Manager
FROM: Robert H. Levan, City Attorney
DATE: June 30, 2009

SUBJECT: Resolution Approving Letter Agreement for the Melford/Maryland Science and Technology Center Property

Attached is a Resolution which, if adopted, approves a letter agreement resolving the outstanding issues relating to covenant compliance on the Melford property. The agreement includes recognition of a modestly expanded set of uses applicable only to the portions of the Melford property designated as "flex space". Equally important, it establishes a set of procedures for review and approval of future uses on the entire Melford property which the parties agree should avoid disputes and still allow the Owner's leasing activities to move forward expeditiously.

As the City Council is aware, the Staff has for many months been engaged in negotiations with the Owner of the Melford property in an attempt to resolve outstanding litigation involving covenant non-compliance. It was noted that covenant issues appear to have arisen in the so-called "flex space" which comprises a small, but discrete portion of the property within structures approved as part of the planning process without objection from the City. The "flex space" lends itself to certain uses, not all of which were expressly authorized by the covenants, but which by their nature do not appear inconsistent with existing covenant sanctioned uses. By recognizing the special nature of "flex space" structures, the Owner is able to achieve greater flexibility with regard to that limited portion of the property without intruding on the City's goal to bring about high quality employment development for the rest of the property. The expanded list of uses applies only to the "flex space".

It is Staff's view that approval of this agreement will bring to an end a long period of vexing tensions between the City and the Melford property Owner while preserving the City's long-time aspirations for the Property. Accordingly, we recommend adoption of the Resolution.

RESOLUTION
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
TO APPROVE A LETTER AGREEMENT DATED JUNE 26, 2009 BETWEEN
ST. JOHN PROPERTIES AND THE CITY OF BOWIE RELATING TO THE
MELFORD/MARYLAND SCIENCE AND TECHNOLOGY CENTER

WHEREAS, the City of Bowie (“City”) is party to certain Covenants relating to the Melford/Maryland Science and Technology Center property (“Melford”) currently owned by St. John Properties, Inc. (“Owner”) and recorded in the Land Records of Prince George’s County at Liber 6254, folio 142 (the “Covenants”); and

WHEREAS, the City and Owner, collectively the “Parties”, have been in dispute over compliance with the Covenants of certain uses existing on certain portions of the Melford property known as the “Flex Space”; and

WHEREAS, the dispute currently involves pending cases in the Circuit Court of Prince George’s County relating to uses maintained by Coastal Climate Control, Inc. and AT Systems, Inc. (“Garda”) (*City of Bowie v. MIE, Inc., et al.*, Case No. CAE 04-19941); and

WHEREAS, the Parties have had substantial issues involving the process for reviewing proposed land uses at Melford; and

WHEREAS, the Parties have agreed that the portions of the Melford property approved for “Flex Space” do not easily lend themselves to the limited uses for such properties permitted by the Covenants; and

WHEREAS, the City agrees that certain additional uses, permitted under the existing zoning ordinance but not currently permitted by the Covenants, will not adversely affect the character of the Melford development if limited solely to the existing and approved Flex Space; and

WHEREAS, the Parties have agreed to expand the uses permitted under the Covenants to be applied solely to the existing and approved Flex Space which agreement is reflected in a letter between counsel for the Parties dated June 26, 2009 (attached as Exhibit 1) which contains, among other things, a revised table of uses to be permitted under the Covenants in the Flex Space on the Melford property and an agreed-upon set of procedures to be used in considering uses proposed for Melford in the future.

NOW, THEREFORE, BE IT RESOLVED by the Bowie City Council that:

1. The attached letter is hereby approved and ratified by the Bowie City Council.
2. The expanded table of uses are appropriate for the existing and proposed Flex Space and will not be adverse to the future development of Melford as a quality employment center. (“Exhibit A to Exhibit 1”)
3. The procedures for review of future uses for compliance with the Covenants on the Melford property will avoid future disputes between the City and the Owner. (“Exhibit B to Exhibit 1”)
4. The City Attorney is hereby directed to prepare for recordation in the Land Records of Prince George’s County Amendments to the Covenants reflecting the Letter Agreement approved by this Resolution.
5. The City further directs the City Attorney to cause the dismissal of the pending cases in the Prince George’s County Circuit Court upon approval and recordation of the Amendments to the Covenants.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a Regular Meeting of the City Council on July 6, 2009.

WITNESS:

THE CITY OF BOWIE, MARYLAND

Pamela A. Fleming
City Clerk

G. Frederick Robinson, Mayor

**APPROVED AS TO FORM
AND SUFFICIENCY:**

Robert H. Levan, City Attorney

RESOLUTION
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
TO APPROVE A LETTER AGREEMENT DATED JUNE 26, 2009 BETWEEN
ST. JOHN PROPERTIES AND THE CITY OF BOWIE RELATING TO THE
MELFORD/MARYLAND SCIENCE AND TECHNOLOGY CENTER

WHEREAS, the City of Bowie (“City”) is party to certain Covenants relating to the Melford/Maryland Science and Technology Center property (“Melford”) currently owned by St. John Properties, Inc. (“Owner”) and recorded in the Land Records of Prince George’s County at Liber 6254, folio 142 (the “Covenants”); and

WHEREAS, the City and Owner, collectively the “Parties”, have been in dispute over compliance with the Covenants of certain uses existing on certain portions of the Melford property known as the “Flex Space”; and

WHEREAS, the dispute currently involves pending cases in the Circuit Court of Prince George’s County relating to uses maintained by Coastal Climate Control, Inc. and AT Systems, Inc. (“Garda”) (*City of Bowie v. MIE, Inc., et al.*, Case No. CAE 04-19941); and

WHEREAS, the Parties have had substantial issues involving the process for reviewing proposed land uses at Melford; and

WHEREAS, the Parties have agreed that the portions of the Melford property approved for “Flex Space” do not easily lend themselves to the limited uses for such properties permitted by the Covenants; and

WHEREAS, the City agrees that certain additional uses, permitted under the existing zoning ordinance but not currently permitted by the Covenants, will not adversely affect the character of the Melford development if limited solely to the existing and approved Flex Space; and

WHEREAS, the Parties have agreed to expand the uses permitted under the Covenants to be applied solely to the existing and approved Flex Space which agreement is reflected in a letter between counsel for the Parties dated June 26, 2009 (attached as Exhibit 1) which contains, among other things, a revised table of uses to be permitted under the Covenants in the Flex Space on the Melford property and an agreed-upon set of procedures to be used in considering uses proposed for Melford in the future.

NOW, THEREFORE, BE IT RESOLVED by the Bowie City Council that:

1. The attached letter is hereby approved and ratified by the Bowie City Council.
2. The expanded table of uses are appropriate for the existing and proposed Flex Space and will not be adverse to the future development of Melford as a quality employment center. (“Exhibit A to Exhibit 1”)
3. The procedures for review of future uses for compliance with the Covenants on the Melford property will avoid future disputes between the City and the Owner. (“Exhibit B to Exhibit 1”)
4. The City Attorney is hereby directed to prepare for recordation in the Land Records of Prince George’s County Amendments to the Covenants reflecting the Letter Agreement approved by this Resolution.
5. The City further directs the City Attorney to cause the dismissal of the pending cases in the Prince George’s County Circuit Court upon approval and recordation of the Amendments to the Covenants.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a Regular Meeting of the City Council on July 6, 2009.

WITNESS:

THE CITY OF BOWIE, MARYLAND

Pamela A. Fleming
City Clerk

G. Frederick Robinson, Mayor

**APPROVED AS TO FORM
AND SUFFICIENCY:**

Robert H. Levan, City Attorney



A PROFESSIONAL ASSOCIATION
 200 DUKE OF GLOUCESTER STREET
 ANNAPOLIS, MARYLAND 21401-2507
 PHONE: 410.269.1554
 FAX: 410.268.0612
 www.fblaw.com

DAVID M. FUNK (MD)
 BRYAN D. BOLTON (MD, PA)
 REN L. TUNDERMANN (MD)
 CHARLES D. MACLEOD (MD)
 LINDSEY A. RADER (MD)
 DEREK B. YAJUMIS (MD, DC)
 JEFFERSON L. ELOMQUIST (MD)
 MICHAEL P. CUNNINGHAM (MD, DC)
 JAMES F. TAYLOR (MD)
 MARK A. BARONDESS (MD, DC, VA, CA)
 CHRISTOPHER W. POVERMAN (MD, DC, DE, NJ)
 DONALD B. DAVIS, JR. (MD)
 ELISSA D. LEVAN (MD)

SENIOR COUNSEL
 MARY E. MCCRATH (MD, DC)
 AMY L. STRACHAN (PA, NJ)

ASSOCIATES
 TAMAL A. BANTON (MD)
 SHANI DINOVIITZ (MD)
 PATRICK W. THOMAS (MD)
 JUSTIN S. LANDRETH (MD, NY)
 JENNIFER L. KENT (MD)
 MICHELLE R. SAWYER (MD)

OF COUNSEL
 KEVIN J. BEST (MD, DC)
 STEPHEN P. CARNEY (MD)
 GARY C. HARRIGER (MD)
 ROBERT H. LEVAN (MD, DC, NY)
 DEBORAH R. RUVIN (MD)
 KIMBERLY Y. ROBINSON (MD)
 KAREN P. RUFF (MD)
 RONALD L. SOUDERS (PA, DC)
 VICTOR K. TERVALA (MD)

June 26, 2009

Via E-mail and First Class Mail

Charles S. Hirsch, Esq.
 Ballard Spahr Andrews & Ingersoll, LLP
 300 East Lombard Street, 18th Floor
 Baltimore, Maryland 21202

RE: Melford Covenants

Dear Mr. Hirsch:

This will respond to your letter of June 15, 2009, and includes the oral comments in our communication by phone on June 16, 2009. This also incorporates our understanding with regard to the changes in the covenants currently recorded at Liber 6254, folio 142 in the Land Records of Prince George's County to which we have agreed and, except as indicated, includes all terms which will be reduced to a formal amendment of the covenants and recorded in the aforesaid Land Records.

The substantive provisions of the amendment to the covenants will include the following:

1. With the exception of the review provisions (attached hereto as Exhibit B), this change in covenants shall apply only to the properties designated as Flex Space. Exhibit B applies to the entire Melford/Maryland Science and Technology Center project (herein called "Melford").

Currently, Flex Space totaling 242,600 square feet exists at the following locations:

Block 4, Lot 1 - 4801 Telsa Drive; 4831 Telsa Drive
 Block 4, Lot 2 - 4861 Telsa Drive; 4891 Telsa Drive
 Block 4, Lot 3 - 4901 Telsa Drive; 4931 Telsa Drive; 4961 Telsa Drive
 Block 4, Lot 5 - 17201 Melford Boulevard

The following additional Flex Space has been approved by the Prince George's County Planning Board within Pod 6, pursuant to Detailed Site Plan #07031.

Block 6, Lot 2 (7.21 acres) - 81,600 square feet
Block 6, Lot 4 (6.31 acres) - 70,080 square feet
Block 6, Lot 5 (9.05 acres) - 98,500 square feet

The remaining unbuilt Flex Space on these lots totals 249,180 square feet.

2. Flex Space shall be defined as follows:

Flex Space - a combination of permitted uses in the M-X-T zone, located within the same structure, which does not exceed 41,000 square feet in aggregate and which is no greater than one (1) story above grade, typically with a service court in the rear of the space and roll up garage doors.

3. The aforementioned description contains all of the Flex Space to be programmed or designated on the Melford project which is subject to the City covenants currently recorded at Liber 6254, folio 142.

4. A revised list of Flex Space uses permitted in the aforementioned parcels is set forth in Exhibit A which is attached hereto and incorporated herein.

5. Accessory structures and uses as set forth in (4) "Miscellaneous" of Exhibit A is defined as follows:

Accessory Structures and Uses – The use of a building, structure, or land which:

- (A) Is subordinate to, customarily incidental to, and ordinarily found in association with, a principal use, which it serves;
- (B) Is subordinate in purpose, area, floor area, intensity, and extent to, and located on the same lot with, the principal use; and
- (C) Does not change the character of the principal use.

6. The Procedure for Reviewing Proposed Land Uses at the Melford/Maryland Science and Technology Center Subject to City Covenants Recorded at Liber 6256, folio 142 shall be governed by the process set forth in Exhibit B and incorporated herein.

7. The parties agree to the dismissal with prejudice of the existing lawsuits relating to the Coastal Climate Corporation and AT Systems, Inc. ("Garda") (City of Bowie v. MIE, Inc., et al., Case No. CAE 0419941) upon execution and recording of the covenants. The City also agrees that all existing uses within the Flex Space, as of the date of this agreement, comply with the covenants as revised and are approved by the City. These obligations will not be included in the covenants, but will be implemented by the City upon recordation of the revised covenants.



Charles S. Hirsch, Esq.
June 26, 2009
Page 3

8. In all other respects, the covenants relating to the Melford/Maryland Science and Technology Center properties shall, except as modified herein, remain in full force and effect.

If this letter accurately reflects your understanding of the agreement, please sign and return the copy of this letter attached indicating your concurrence. Upon receipt, the City Council will approve the agreement by resolution tentatively scheduled for consideration at its July 6, 2009 meeting.

Very truly yours,



Robert H. Levan

cc: David J. Deutsch, City Manager
Joseph M. Meinert, Director of Planning and Economic Development

AGREED:

Charles S. Hirsch, Esq.



MELFORD FLEX SPACE USES PERMITTED BY CITY-draft

(1) Commercial
All Types of Offices*
Research Facilities*
Banks, savings and loan association, or other savings or lending institution*
Data processing facilities*
Eating and drinking establishments*
Offices (may include a private spa in a medical practitioner's office or medical clinic); Office buildings for science, technology, research and related uses*
Medical practitioner's office; Medical/dental clinic*
Research, development, and testing laboratory (may include testing facilities and equipment), medical or dental laboratory *
Barber or beauty shop*
Blue printing, photostating, or other photocopying establishment*
Commercial outlet for sale or display of items produced on the premises*
Dry cleaning or laundry establishment*
Gas station (with or without service center for minor repairs)*
Studio for artistic practice
Veterinary clinic
(2) Industrial
Laboratory*
Manufacturing, fabrication, assembly or repair of the following, from materials or parts previously produced elsewhere: <ul style="list-style-type: none"> • Artist supplies and equipment; drafting supplies and equipment; jewelry and silverware; musical instruments; optical equipment and supplies; photographic equipment and supplies; scientific and precision instruments, devices and supplies; surgical, medical, and dental instruments, devices and supplies; toys, sporting and athletic equipment (excluding ammunition, firearms, and fireworks); watches, clocks, and similar timing devices; wearing apparel. • Business machines; electrical and electronic equipment and component parts for radio, television, telephone, computer, and similar equipment; small electrical household appliances (including televisions, but excluding refrigerators and the like).
(3) Institutional/Educational
Adult day care facility
Church or similar place of worship, convent or monastery*
Day care center for children
Family day care
Institutional uses of an educational, medical, religious or research nature*
Nursing or Care Home

* = use already permitted by covenants, with limitations

MELFORD FLEX SPACE USES PERMITTED BY CITY-draft

School, private or public, all types (which may include private spas)
(4) Miscellaneous
Accessory structures and uses*
Signs, in accordance with Part 12
(5) Public/Quasi Public
Public building and use, if otherwise not specified
Public and quasi-public uses of an educational nature
(6) Recreational/Entertainment/Social/Cultural
Convention center*
Museum, art gallery, aquarium, cultural center, or similar facility
Private club or service organization
Public or quasi-public recreational use*
Recreational or entertainment establishment
Reducing/exercise salon or health club*
Swimming pool (indoor) commercial or noncommercial
Tennis, basketball, handball, or similar court (indoor or outdoor) commercial or noncommercial
(7) Residential/Lodging
Hotel or motel*
(8) Resource Production/Recovery
Agricultural uses, including floriculture, horticulture or gardening, but not including the raising of animals or fowl for commercial purposes*
(9) Transportation/Parking/Communications/Utilities
Radio or television broadcasting studio
Technological activities oriented to telecommunications products and systems, including satellite communications
Public utility use or structure*
Telegraph or messenger service
Tower, pole, or antenna (electronic, radio, or television, transmitting or receiving), except a public utility structure or a satellite dish antenna, exceeding 150 feet*

* = use already permitted by covenants, with limitations

Procedure for Reviewing Proposed Land Uses
at Melford/Maryland Science and Technology Center
Subject to City Covenants Recorded at Liber 6256, folio 142
June 13, 2007

- I. Prior to the establishment of any land use within the Melford/Maryland Science and Technology Center property, the Owner or Tenant proposing to establish such use, or to allow such use to be established, shall notify the Planning Director in writing of the proposed land use. The notice shall contain:
1. a written description of the proposed land use, including identification of the principal use and any accessory uses with a letter from Owner or Tenant
 2. a written statement identifying the specific use or uses permitted by the Covenants for which the Owner or Tenant believes the proposed land use qualifies.
 3. a space plan or reasonable description of the space, including descriptions for all partitioned areas, and its uses and a description of how the uses are intended to operate on the property.
- II. The Planning Director will acknowledge in writing his receipt of such notice within one (1) business day of receiving notice from the Owner or Tenant.
- III. The Planning Director will normally strive to respond to such notice within three (3) business days of receipt in one of the following ways:
- i. whether the use appears to comply with the Covenants;
 - ii. request additional information for clarification of the use or material previously submitted; or,
 - iii. indicate that additional time is needed to review the request.
- IV. The decision process should be completed within 15 (fifteen) business days and the Planning Director's determination shall be made in writing directed to the Owner or Tenant making the request. If the need for additional review time is indicated, the Planning Director shall indicate how much time will be necessary.

V. In the event the Owner or Tenant disagrees with the determination of the Planning Director, the Owner or Tenant may request review, in writing, by the City Council.