

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director 

DATE: June 7, 2016 (CC Meeting of 6/15/2015)

SUBJECT: Consider Amendment to Easement Agreement with MB Plaza West LLC

BACKGROUND/DISCUSSION

On September 1, 2011, the City entered into a Settlement Agreement with Mission Bell Plaza West, LP and other ownership interests of Mission Bell Plaza over unpaid debt to the City. Part of the Settlement Agreement included a provision for Mission Bell West, LP, to provide an assignable easement to the City that would provide access from the undeveloped 4-acre property to the west to the signal at Leta Yancy Road through the Mission Bell Plaza parking lot (Attachment 1). This easement agreement required certain easement improvements to be completed on or before December 31, 2016, or the easement expires.

The 4-acre property that would ultimately benefit from this easement currently has a proposed 66-unit townhouse development under review. Previously, a medical office was approved for this site. The residential project would require a General Plan Amendment and Zone Change, along with a Development Agreement. Staff expects a decision on this project sometime in the 2016-2017 fiscal year. It is possible that the decision would occur after the current easement agreement expires, in which case having access from the project site to Leta Yancy Road could no longer be guaranteed.

Community Development staff has been working with the new owner of the land under the easement in Mission Bell Plaza, MP Plaza West LLC, on an extension to the easement agreement. The City Attorney's Office prepared a draft amendment to the easement agreement, which would provide an additional year by which the easement would need to be effectuated (Attachment 2). This would be sufficient time for the entitlements on the adjacent site to be decided by the City, providing this access as an option for consideration for either commercial or residential development.

FISCAL IMPACT

None.

STAFF RECOMMENDATION

Authorize the City Manager to sign the Amendment to Easement Agreement, subject to final language approval by the City Manager and City Attorney.

Attachments:

1. Easement Agreement
2. Draft Amendment to Easement Agreement

**RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:**

City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021
Attn.: City Clerk

**Exempt recording per Government
Code Sec. 6103**

(Space Above Line For Recorder's Use Only)

EASEMENT AGREEMENT

This Easement Agreement (the "**Agreement**") is entered into as of September 1, 2011, by and between MISSION BELL WEST, LP, a California limited partnership ("**Mission Bell**"), and the CITY OF MOORPARK, a municipal corporation (the "**City**"), who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts and circumstances:

(a) Mission Bell is the owner of certain property located in the City of Moorpark, California, and more particularly described on Exhibit A attached hereto (the "**Mission Bell Property**").

(b) The Mission Bell Property abuts certain property consisting of approximately 4 acres which is located to the west of the Mission Bell Property along Los Angeles Avenue (State Route 118) and which abutting property is more particularly described on Exhibit B attached hereto (the "**Abutting Property**").

(c) The City, the Redevelopment Agency of the City of Moorpark, Mission Bell, and certain other parties have entered into that certain Settlement Agreement and Mutual Release (the "**Settlement Agreement**"), dated as of September 1, 2011, and as a material inducement to and consideration for the entry by the City into the Settlement Agreement, Mission Bell has agreed to grant to the City a non-exclusive easement on, over and across a portion of the Mission Bell Property, and has agreed that the City may assign such easement to the owner of the Abutting Property, all as provided in and subject to the terms and conditions contained in this Agreement.

2. Grant and Terms of Easement. For good and valuable consideration, the receipt and sufficiency of which is acknowledged by Mission Bell, from and after the date the Mission Bell Easement Improvements (as hereinafter defined) are completed by City (or its duly authorized agent pursuant to Section 4 below), Mission Bell grants to the City, for the sole benefit of its assigns (to the extent permitted under this Agreement), an easement (the "**Mission Bell Property Access Easement**") for the sole purpose of pedestrian, bicycle, and vehicular access, ingress and egress to and from Los Angeles Avenue and on, over and across a portion of the Mission Bell Property to and from the Abutting Property (the "**Easement Property**"), which Easement

Property and the Mission Bell Property Access Easement are depicted and generally identified on the Site Plan ("Site Plan") attached hereto as Exhibit C. Only except as reasonably required in connection with the construction of the Mission Bell Easement Improvements (as described in Section 4), the Mission Bell Property Access Easement may not be used for the passage of City's (or its duly authorized agents') or the Abutting Property owner's construction and/or maintenance vehicles. The Mission Bell Property Access Easement granted in this Section 2 is non-exclusive, and Mission Bell reserves the right to make any use of the Easement Property that does not materially interfere with City's free use and enjoyment of the Mission Bell Property Access Easement. Mission Bell agrees that no trees, shrubs or other vegetation, buildings, fences, walls or other structures or similar obstructions of any kind will be installed, constructed, erected, placed, planted or maintained on the Mission Bell Property Access Easement without the prior written consent of City or the owner of the Abutting Property (whichever party then holds the subject easement rights under this Agreement), which shall not be unreasonably withheld, conditioned or delayed. Mission Bell shall at all times, and at its sole expense (except as provided in Section 2(a) below), keep and maintain the Easement Property in good condition and repair, including, without limitation, the making of any necessary (as determined by the owner of the Mission Bell property) pavement repairs, resurfacing or replacements. Unless construction of the Mission Bell Easement Improvements (as described in Section 4) has been completed on or before December 31, 2016, the Mission Bell Property Access Easement shall be null and void and of no force or effect whatsoever.

(a) Notwithstanding the foregoing or any other provision in this Agreement to the contrary, Mission Bell shall have the right to excavate or conduct construction activities upon the Mission Bell Property Access Easement and Easement Property in connection with the installation, operation, maintenance, repair, replacement, relocation and/or removal of any utility or service facilities affecting or impacting the Mission Bell Property, in which event such excavation or construction activities shall be prosecuted diligently to completion; and further provided that Mission Bell shall provide advance notice of such work to City (or its assign). The person causing such excavation or construction activities to be made shall forthwith, upon completion thereof, restore any portion of the Mission Bell Property Access Easement affected thereby to the same condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used. During any such excavation or construction activities, pedestrian, bicycle, and vehicular access, ingress and egress to and from Los Angeles Avenue and the Abutting Property, through a lane at least fourteen (14) feet wide, shall be maintained across the Mission Bell Property whether through the Easement Property or other portions of the Mission Bell Property.

(b) Commencing upon the completion of the Mission Bell Easement Improvements, the City or the owner of the Abutting Property (whichever party then holds the subject easement rights under this Agreement) shall pay to the owner of the Mission Bell Property \$2,400.00 per year as its share (the "Abutting Owner's Share of Maintenance Costs") of the costs for maintaining, repairing and replacing the improvements on the Mission Bell Property Access Easement, which amount shall be paid by such party to the owner of the Mission Bell Property within ten (10) days following the completion of the Mission Bell Easement Improvements, and on or before each anniversary of such date thereafter. The Abutting Owner's Share of Maintenance Costs shall increase by 15% of the amount of such costs then in effect on every 5 year anniversary of the date the Mission Bell Easement Improvements were initially completed.

In the event the City or the owner of the Abutting Property (whichever party then holds the subject easement rights under this Agreement) fails to timely pay the full amount of the Abutting Owner's Share of Maintenance Costs under this Agreement, and such failure continues for more than thirty (30) days following written notice to both the owner of the Abutting Property and the City (even following assignment of the Mission Bell Property Access Easement pursuant to paragraph 3 hereof), then the City or the owner of the Abutting Property (whichever party then holds the subject easement rights under this Agreement) shall be considered to be in default under this Agreement (an "**Abutting Owner Default**"). In such event, the owner of the Mission Bell Property shall have the right, in its sole and absolute discretion, to terminate this Agreement and the easements hereunder upon written notice to City or the owner of the Abutting Property (whichever party then holds the subject easement rights over the Mission Bell Property under this Agreement), in which event, upon such notice, this Agreement and the easements contained herein (including the Abutting Property Access Easement described in Section 3) shall be null and void and of no further force or effect whatsoever.

3. City's Right to Assign Easement. Except as provided in this Section 3, the Mission Bell Property Access Easement may not be assigned or otherwise transferred by the City. The Mission Bell Property Access Easement may be assigned by the City only to the owner of the Abutting Property (whereupon it will become an easement appurtenant to the Abutting Property) and only if the owner of the Abutting Property concurrently grants to Mission Bell a reciprocal, non-exclusive easement (the "Abutting Property Access Easement") for vehicular access, ingress and egress to and from Los Angeles Avenue and on, over and across a portion of the Abutting Property to and from the Mission Bell Property, which easement is appurtenant to the Mission Bell Property. The Abutting Property Access Easement shall be set forth in a recordable agreement reasonably satisfactory to the owner of the Mission Bell Property and containing provisions substantially similar (as they pertain to the use and management of the Abutting Property Access Easement) as are contained in this Agreement, and the Abutting Property Access Easement:

(a) Must be 28 feet wide at the common property line between the Abutting Property and the Mission Bell Property.

(b) Shall be connected to the Mission Bell Property Access Easement at the common property line as depicted on Exhibit D attached hereto.

(c) Shall provide that the owner of the Abutting Property restricts itself from making use of the Abutting Property Access Easement in a manner that materially interferes with Mission Bell's free use and enjoyment of the Abutting Property Access Easement, and also provides that no trees, shrubs or other vegetation, buildings, fences, walls or other structures or similar obstructions of any kind will be installed, constructed, erected, placed, planted or maintained on the Abutting Property Access Easement without the prior written consent of Mission Bell, which consent shall not be unreasonably withheld, conditioned or delayed. Such provisions shall be substantially similar to the provisions applicable to Mission Bell with respect to the Mission Bell Property Access Easement.

(d) Shall provide that the owner of the Abutting Property will keep and maintain the Abutting Property Access Easement in good condition and repair, including, without limitation,

the making of any necessary pavement repairs, resurfacing or replacements (as determined by the owner of the Abutting Property).

(e) Shall provide that the Abutting Property Access Easement not be used for the parking of vehicles.

4. **Easement Improvements.** Subject to the further provisions of this Section 4, the City, or its duly authorized agents, will perform all work necessary to construct and install common area/parking lot improvements to connect the existing improved portions of the Mission Bell Property Access Easement through to the end of the Mission Bell Property Access Easement that currently does not contain such improvements (i.e., to the property line with the Abutting Property), open the wall between the Mission Bell Property and the Abutting Property and to join together the Mission Bell Property Access Easement and the Abutting Property Access Easement in the area marked on the Site Plan as "**Location of Proposed Driveway Extension**", as follows: remove existing improvements in the Location of Proposed Driveway Extension, including, but not limited to, block wall, planters, curbing, irrigation and landscaping, and replace with new curbing, irrigation tie-ins, and asphalt (collectively, the "**Mission Bell Easement Improvements**").

(a) Notwithstanding anything to the contrary contained in this Agreement, the Mission Bell Easement Improvements shall be performed in strict accordance with detailed plans and specifications prepared by the City (or its duly authorized agents) and approved in advance, in writing, by the owner of the Mission Bell Property, which approval shall not be unreasonably withheld, conditioned or delayed. All expenses of constructing the Mission Bell Easement Improvements shall be borne by the City, including, without limitation, landscaping, plan preparation, permit fees, and engineering expenses. Construction of the Mission Bell Easement Improvements within the Mission Bell Property shall be completed in a timely manner (pursuant to a schedule mutually approved by the City and the owner of the Mission Bell Property, which approval shall not be unreasonably withheld, conditioned or delayed), and shall be performed by duly licensed and bonded contractors.

(b) All construction activities within the Mission Bell Property shall be performed in a good and workmanlike manner, using first class materials, and in compliance with all laws, rules, regulations, orders and ordinances of the city, county, state and federal governments, or any department or agency thereof, having jurisdiction over the Mission Bell Property.

(c) All such construction activities shall be performed so as not to unreasonably interfere with any construction work being performed on the remainder of the Mission Bell Property, or any part thereof and so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Mission Bell Property, or any part thereof or the business conducted by any occupant thereof. All staging in connection with the performance of the work for the Mission Bell Easement Improvements shall be on the Abutting Property or, if permitted by the owner of the Mission Bell Property (which permission shall be granted or denied in such owner's sole and absolute discretion) in an area of the Mission Bell Property designated by such owner (in such owner's sole and absolute discretion). Notwithstanding the foregoing, prior to an assignment of the Mission Bell Property Access Easement pursuant to paragraph 3 hereof, any staging in connection with the performance of the work for the Mission Bell Easement

Improvements by the City or its duly authorized agents shall be permitted by the owner of the Mission Bell Property in a reasonably proximate area of the Mission Bell Property designated by such owner and such permission and designation shall not be unreasonably withheld, conditioned or delayed. Any such staging area on the Mission Bell Property shall be available only during such time as the Mission Bell Easement Improvements are being constructed and the owner of the Mission Bell Property so permits.

(d) City shall diligently complete all construction activities and other work related to the Mission Bell Easement Improvements as quickly as reasonably possible (and, in all events, no later than as provided in the mutually-approved construction schedule referenced in Section 4(a) above), shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

(e) City shall indemnify, defend and hold harmless the owner of the Mission Bell Property and all occupants thereof from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by City (or its authorized agents) in connection with the construction of the Mission Bell Easement Improvements, except for claims to the extent caused by the negligence or willful misconduct of the indemnified party.

5. Notices. Any notice, demand, request or other communication required or permitted to be given to another hereunder shall be in writing, signed by the party giving the notice, and shall be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express) or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt, and service by mail will be deemed complete upon the date the return receipt is signed by the addressee.

All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Mission Bell: Mission Bell West, LP
 1850 S. Sepulveda Boulevard
 Los Angeles, California 90025

City: City of Moorpark
 Attn: City Manager
 799 Moorpark Avenue
 Moorpark CA 93021

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effective.

6. No Dedication to Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Mission Bell Property or the Abutting Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed.

7. Attorneys Fees. In the event that, at any time after the date of this Agreement, any party hereunder shall institute any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its reasonable attorneys' fees, and all fees, costs and expenses incurred in connection with such action or proceeding, including, without limitation, any post-judgment fees, costs or expenses incurred on any appeal or in collection of any judgment.

8. Additional Provisions. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and it supersedes all prior or contemporaneous agreements and understandings, whether written or oral, of the parties with respect to its subject matter. This Agreement is to be construed and enforced in accordance with the internal laws of the State of California, without regard to principles of conflicts of law. This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties.

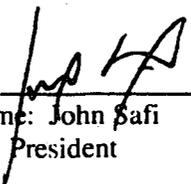
The parties have executed this Agreement as of the date first set forth above.

MISSION BELL WEST, L.P.,
a California limited partnership

THE CITY OF MOORPARK

By: Safco Holding Corporation
a California corporation
its general partner

By: _____
Name: Steven Kueny
Title: City Manager

By: 
Name: John Safi
Its: President

[SIGNATURES MUST BE NOTARIZED]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Easement Agreement, dated as of _____, 2011, by Mission Bell West, LP to the City of Moorpark, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of Moorpark pursuant to authority conferred by Resolution No. _____ of the City of Moorpark, adopted by the City Council of said City on _____, and the grantee consents to the recordation thereof by its duly authorized officer.

Dated: _____, 2011

CITY OF MOORPARK

By: _____
City Clerk

EXHIBIT A

Legal Description of Mission Bell Property

Parcel A:

Parcels 1 to 7 inclusive in Parcel Map No. 4961, in the City of Moorpark, County of Ventura, State of California, as per map filed in Book 55 , pages 55 to 57 inclusive of parcel maps, in the office of the county recorder of said county.

Except therefrom all oil, gas, minerals and other hydrocarbon substances below a depth of five hundred feet (500') under said land, without the right of surface entry.

Parcel B:

All easements, rights and privileges contained in that certain declaration of restrictions and conveyance of easements recorded October 4, 1993 as Document No. 93-184525, and in that certain declaration of restrictions and grant of easements recorded August 17, 1995 as Document No. 95-098489 of official records.

EXHIBIT B

Legal Description of Abutting Property

All that certain real property situated in the County of Ventura, State of California, described as follows:

Part of Lot "P" as the same is designated and delineated upon that certain Map entitled, "Map of a part of Tract "L" of the Rancho Simi, in the City of Moorpark, County of Ventura, State of California, showing the Townsite of Moorpark and lands of Madeleine R. Poindexter and recorded in the Office of the County Recorder of said Ventura County, in Book 5 of Miscellaneous Records (Maps), Page 5 and more particularly described as follows:

Beginning at the intersection of the Southerly prolongation of the most Easterly line of Tract No. 1240; according to the Map thereof recorded in Book 30 Page 56 of Maps with the Centerline of Los Angeles Avenue, 60 feet wide, as said Avenue is shown on last mentioned Map; thence along said Southerly prolongation.

1st: North 0° 04' East 429.99 feet more or less to the Southeasterly corner of said Tract No. 1240, being the Southeasterly corner of Lot 44 of said Tract No. 1240; thence along the Southerly line of said tract,

2nd: North 89° 59' 15" West 470.67 feet to the Northeasterly corner of Lot 51 of said Tract No. 1240; thence along the Easterly line and Southerly prolongation thereof.

3rd: South 0° 04' West 429.99 feet to the said Centerline of Los Angeles Avenue; thence along said Centerline,

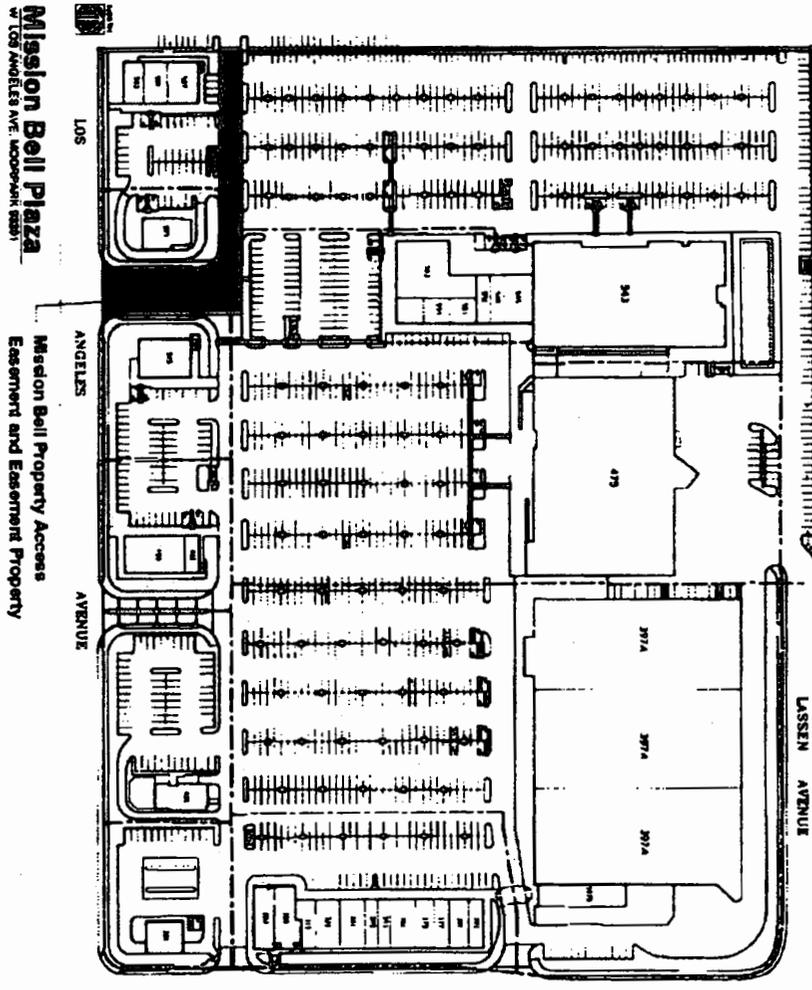
4th: South 89° 59' 15" East 470.67 feet to the point of beginning.

Except therefrom the Interest conveyed to the County of Ventura by deed recorded June 6, 1889 in Book 28 Page 190 of Deeds, and by deed recorded November 8, 1900 in Book 68 Page 316 of Deeds.

Also except therefrom that portion of said land described in a deed to the City of Moorpark, recorded August 12, 1988 as Instrument No. 88-115140 of Official Records.

EXHIBIT C

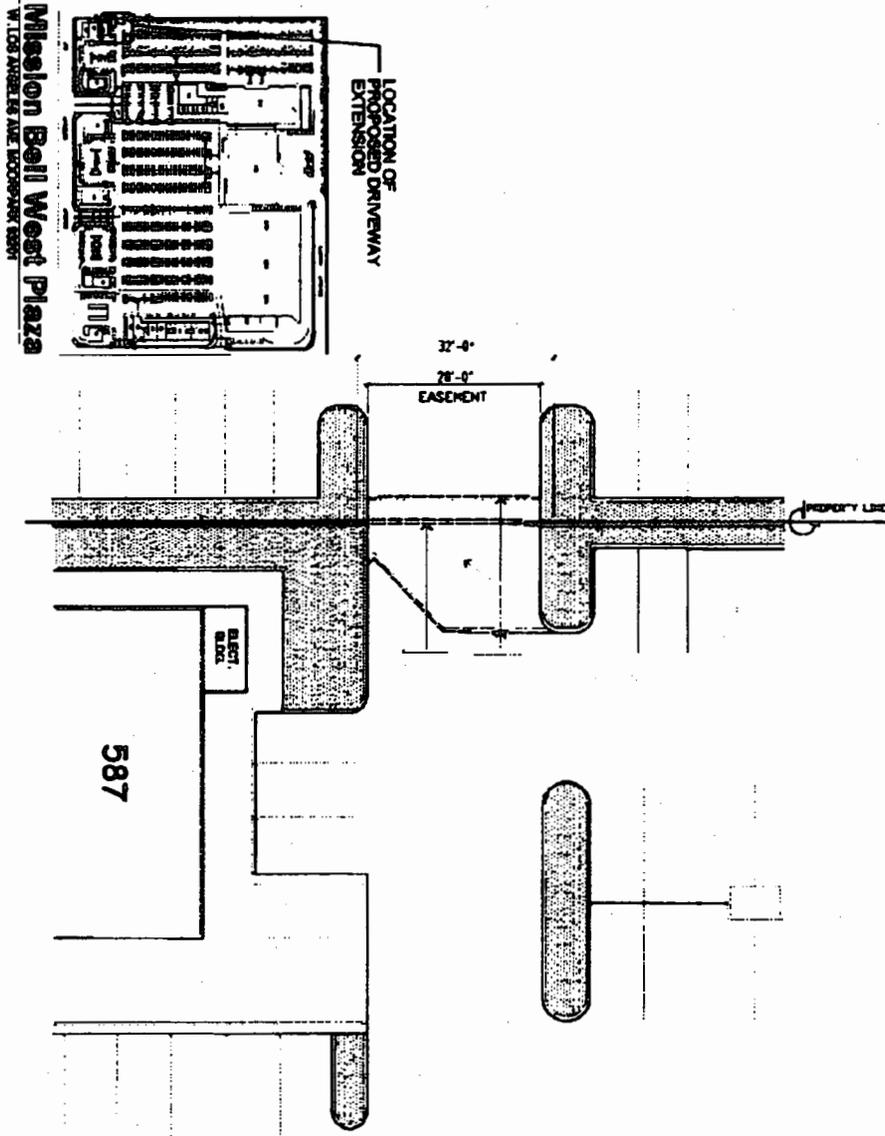
Site Plan



Site Plan

EXHIBIT D

Easement Improvements



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021
Attn: City Clerk

Exempt recording per Government Code
Sec. 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AMENDMENT TO EASEMENT AGREEMENT

This AMENDMENT TO EASEMENT AGREEMENT (the "Agreement") is dated as of June __, 2016, and is entered into by and between MB PLAZA WEST LLC, a Delaware limited liability company ("MB"), and the CITY OF MOORPARK, a municipal corporation (the "City"), who agree as follows:

RECITALS

A. Mission Bell West, LP and the City entered into that certain Easement Agreement dated September 1, 2011 which was recorded on October 13, 2011 in the Official Records of Ventura County as Document 20111013-00152643-0 (the "Easement").

B. Mission Bell West, LP has conveyed to MB all of the property it owned that is affected by the Easement and all of its rights, obligations, title and interest in, under and to the Easement.

C. The Easement included a deadline of December 31, 2016 for the completion of "Mission Bell Easement Improvements" (as defined in Section 4 of the Easement).

D. MB and City desire to extend such deadline.

AGREEMENT

1. Extension of Deadline. The December 31, 2016 deadline in Section 2(a) of the Easement is hereby extended to January 1, 2018.

MB PLAZA WEST LLC,
a Delaware limited liability company

CITY OF MOORPARK

By: _____
Jonathan G. Cheng,
President

By: _____
Steven Kueny
City Manager

Approved as to Form:

Bruce Galloway, of Richards, Watson &
Gershon, Assistant City Attorney

CC ATTACHMENT 2

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Ventura)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Ventura)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)