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October 2, 2014

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Mr. Felix Wong  
Director of Development and Planning  
City of Mansfield  
1200 E. Broad Street  
Mansfield, TX 76063

[clayton.chandler@mansfieldtexas.gov](mailto:clayton.chandler@mansfieldtexas.gov)

Mr. Clayton Chandler  
City Manager  
City of Mansfield  
1200 E. Broad Street  
Mansfield, TX 76063

Re: Request for Variance to City of Mansfield Resolution No. 14-1023 (the  
"Resolution")

Dear Messrs. Wong and Chandler:

Our firm represents Valley Bell Enterprises, LLC and Metroplex Multifoods, Inc., a Taco Bell franchisee ("Taco Bell") in connection with the purchase of property near the intersection of Broad Street and Holland in Mansfield, Texas (the "Property"). An aerial photo of the Property is attached hereto (Exhibit "A").

On September 2, 2014, the Mansfield City Council approved the Resolution, which provides for a 120 day moratorium restricting the City of Mansfield from issuing a building permit or receiving a site plan submittal for drive-through restaurants like Taco Bell. Section 3 of the Resolution permits a business to submit a letter requesting a variance if it is being unreasonably impacted by the moratorium and presents evidence demonstrating that its proposed business activities will not constitute a threat to the public health, safety, and welfare. Given certain developments in Taco Bell's circumstances, combined with its continued belief that it deserves, and is in-fact entitled to, a variance under Section 3 of the Resolution, Taco Bell submits this request for a variance to the Resolution.

### **Legal Questions regarding Validity of the Resolution**

A review of the Resolution's procedural history raises legal questions as to whether the moratorium is valid under Texas law. Specifically, Subchapter E, Chapter 212 of the Local Government Code (the "Code") sets forth certain procedural and notice requirements prior to enactment. Tex. Loc. Gov't Code § 212.133. The statute requires the City Council to issue written findings prior to adopting a moratorium like the one provided in the Resolution. *Id.* Based on the available record, the City has failed to comply with much of the Local Government Code throughout the adoption of the Resolution, including (i) Section 212.134(b), requiring four days' notice of any public hearing at which a moratorium on property development is to be considered; (ii) Section 212.134(d), requiring that a properly noticed public hearing be held before the planning and zoning commission; (iii) Section 212.134(f), requiring that any proposed moratorium be given at least two readings separated by four days prior to adoption; and (iv) Sections 212.1351-52, requiring the City to issue written findings justifying the moratorium based on a significant need for public facilities or for the sake of the public health, safety and welfare.

### **Application of the Resolution to Taco Bell Infringes on its Vested Rights**

Under Chapter 245 of the Code, only those ordinances and regulations in effect at the time a plat application is filed may apply to the subsequent development of those tracts. Tex. Loc. Gov't Code § 245.002 (2013). Taco Bell filed its final plat application on September 2, 2014, before the City Council adopted the Resolution. As a result, State law does not permit the Resolution to be applied to Taco Bell because the Resolution was adopted subsequent to the filing of Taco Bell's final plat application. *See id.*

Moreover, the Texas Supreme Court recently issued an opinion on a case with facts resembling those presented here. *See City of Lorena v. BMTP Holdings, L.P.*, 409 S.W. 3d 634 (Tex. 2013). In *BMTP*, the Court held that a moratorium on the issuance of sewer taps could not apply to a developer who had submitted and obtained approval of a subdivision plat prior to the adoption of the moratorium. 409 S.W.3d at 637. The Court reasoned that because the city had approved the developer's plat prior to the institution of the moratorium, the moratorium could not validly apply against those lots contained on the approved plat. *Id.* at 644. The facts here are analogous: Taco Bell filed its final plat application prior to the adoption of the Resolution. Therefore, under *BMTP*, the city may not apply the Resolution to Taco Bell project. *See id.* Taco Bell does not waive any of its legal rights by submitting this application.

### **The Moratorium Unreasonably Impacts Taco Bell**

On April 26, 2014, Taco Bell executed a purchase agreement with Hwy. 360 Matlock Rd.-Broad St Partnership ("Seller") to purchase the Property. During the course of its due diligence period, Taco Bell retained a civil engineering firm, an architect, a surveyor, and an MEP engineering firm. Taco Bell recently completed and filed a final plat application with the

City of Mansfield. Taco Bell also submitted a complete set of building plans with the City on September 9, 2014.

Prior to passage of the Resolution, it was Taco Bell's intention to close on the Property by the end of September, begin construction in early October, and open to the public before the New Year. To date, Taco Bell has expended upwards of \$45,000.00 in conjunction with this development. After passage of the Resolution, Taco Bell requested an extension of the previously agreed upon closing date from Seller. On September 26, 2014, Seller denied Taco Bell's request. Seller's letter denying Taco Bell's request is attached hereto (Exhibit "B").

If Taco Bell is not granted a variance under the Resolution, it will not be able to obtain the building permits necessary to begin construction and consummate its transaction with Seller. In making said expenditures, Taco Bell relied, in good faith, on the ordinances and regulations in effect since April 2014 in the City of Mansfield. As a result, Taco Bell respectfully requests a waiver to the Resolution to avoid this hardship.

#### **The Proposed Taco Bell Does Not Threaten the Health, Safety, and Welfare of the Public**

The proposed Taco Bell has been professionally engineered to promote safe ingress and egress of both vehicles and pedestrians. The proposed site plan also provides more than adequate parking, visibility, and lighting. The Resolution cites seven characteristics of drive through restaurants that have the potential to negatively impact adjoining land uses. Provided below is Taco Bell's response illustrating how its proposed site does not negatively impact adjoining land uses or threaten public safety:

1. Entry and Exit Points. Attached as Exhibit "C" is a site plan for the proposed Taco Bell. The driveway spacing and median opening intervals are determined by roadway type, design speed, and the City of Mansfield Street and Access Control Guidelines. David Boski, the Transportation Engineer for the City of Mansfield, has reviewed the site layout and determined the allowable driveway locations. In addition, the primary entry and exit point to the proposed Taco Bell is not located within a private access easement and not along a public roadway. As a result, said entry/exit point will not result in any curb cut access that would create potential traffic hazards in the public roadway. All other access to the Taco Bell is also through adjacent access easements.

2. Drive Through Stacking. The current Taco Bell drive through provides an eight (8) car stack, which is customary and acceptable for restaurants of this type—even during peak operating hours. In the unlikely event additional stacking occurs, the design of the site allows up to thirteen (13) vehicles to stack in the Taco Bell driveway and up to eighteen (18) vehicles before impacting the public right-of-way.

3. Driver Distraction to Confirm Order Accuracy. The attached site plan also illustrates that customers exiting the Taco Bell drive through do not immediately enter a public roadway. In the event a customer wants to check an order for accuracy, the site design encourages such a customer to pull into a parking space prior to exiting into a public roadway.

4. Pedestrian Access. The proposed Taco Bell drive through and pedestrian access do not "mix." Pedestrian access to the site is located on the western boundary of the Property, while the drive through is located on the eastern boundary. Vehicles exiting the drive through must travel no less than 120 feet before a typical pedestrian-vehicle "mix" would occur.

5. Holding Areas. Taco Bell does not allow vehicles to be "pulled around" or moved to a "holding area." This is a direct violation of Taco Bell policy, is not allowed at any Taco Bell location, and will not be allowed at the proposed location.

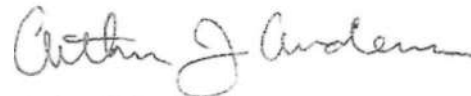
6. Drive Through Signage. Taco Bell is not proposing any directional signage on the Property in the right-of-way. Also, the Property does not have a direct connection to the public right-of-way.

7. Increased Trash Volume. The City of Mansfield currently enforces Ordinance Number 92.04 prohibiting nuisances by allowing trash to accumulate or remain on any piece of property. Taco Bell will fully comply with this Ordinance by cleaning and maintaining the Property and the public right-of-way.

In addition to the legal issues raised above, the evidence establishes that imposing the moratorium on Taco Bell results in an unreasonable impact and hardship to its business and the project does not threaten the public health, safety, or welfare. Considering the foregoing, Taco Bell respectfully requests a variance to the application of the Resolution.

It is our understanding that this request will be addressed at the October 13, 2014, meeting of the City Council. Should you have any questions or wish to discuss these matters further, please let me know.

Sincerely,

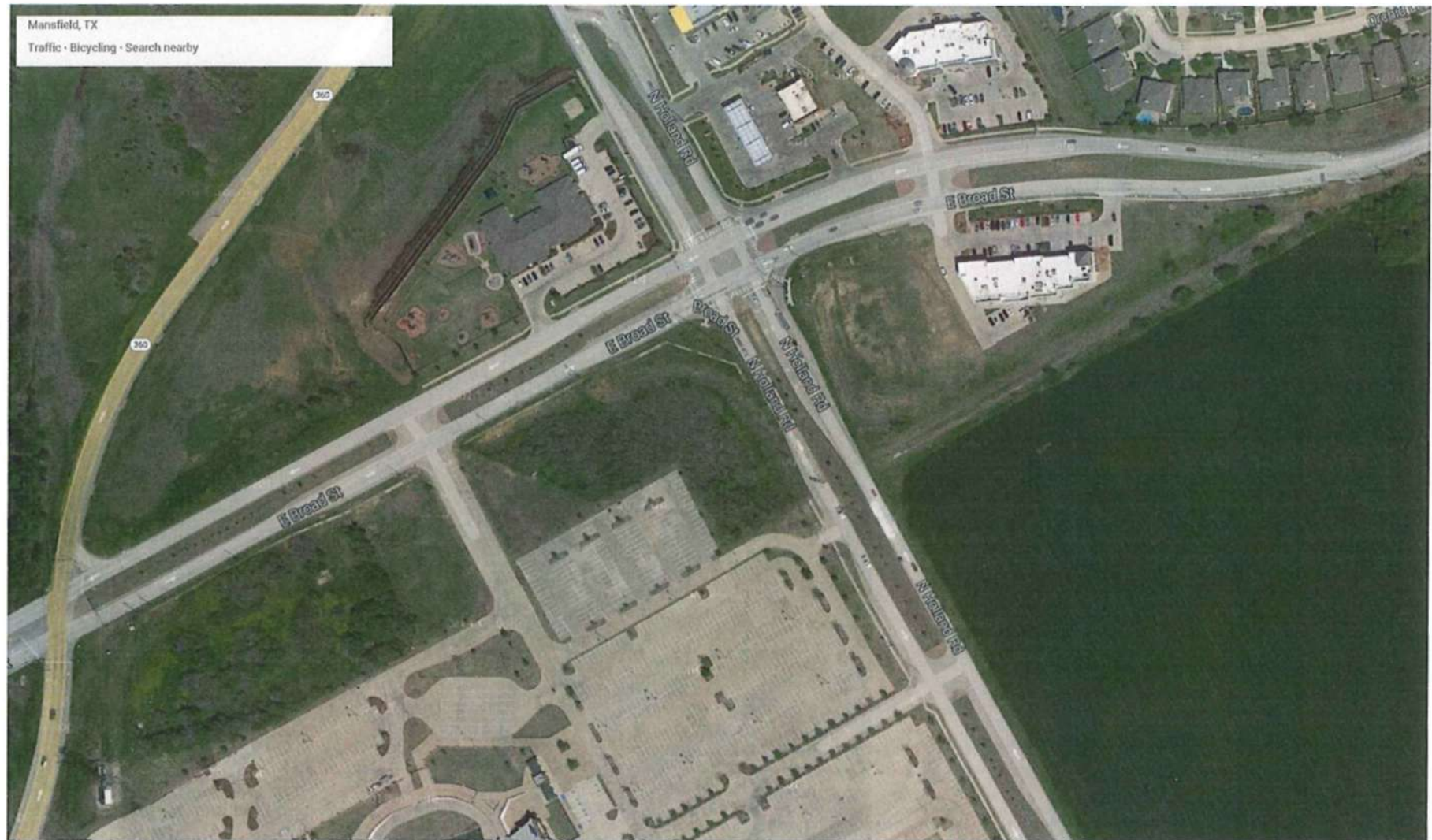


Arthur J. Anderson

Enclosures

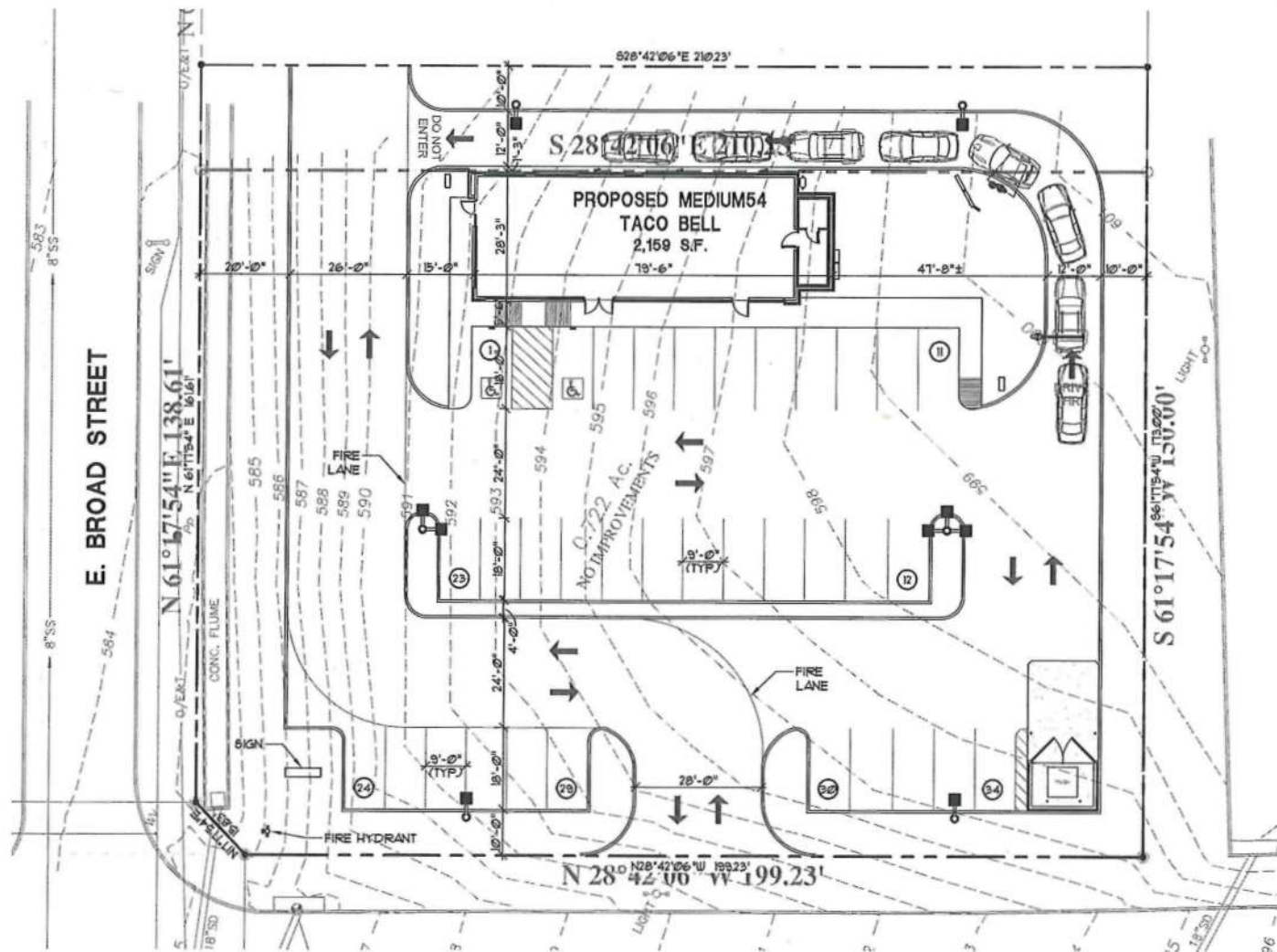
cc: Allen Taylor, Esq. ([ataylor@toase.com](mailto:ataylor@toase.com))  
Steven Wood, Esq. ([swood@toase.com](mailto:swood@toase.com))

## Exhibit A



Imagery ©2014 DigitalGlobe, Texas Orthoimagery Program, U.S. Geological Survey, Map data ©2014 Google 100 ft

## Exhibit B



## Exhibit C

**Hwy. 360 Matlock Rd-Broad St Partnership**

4101 W. Green Oaks #305

Arlington, Texas 76016

September 26, 2014

**VIA E-MAIL: mstansberry@smi-tex.com**

Valley Bell Enterprises, LLC  
Attn: Mike Stansberry, General Counsel  
101 E. Cherokee Street  
Jacksonville, Texas 75766

Re: Denial of Extension of Closing Date

Dear Mike,

Jim Jamerson of the John T. Evans Company has passed on your request for an extension of the closing date under the Contract for Purchase and Sale of Property entered into by and between Valley Bell Enterprises, LLC and Hwy. 360 Matlock Rd-Broad St Partnership in April of this year. To confirm your discussions with Mr. Jamerson, the seller is not willing to grant your request.

Yours very truly,

By:   
D. Jerrell Farr, Managing Partner

DJF

**VIA EMAIL: jim@jtevans.com**  
cc: John T. Evans Company  
Attn: Jim Jamerson  
8350 N Central Expy. Suite 1300  
Dallas, Texas 75206