

12-998

Project Name and No.: I-580/Foothill Road Improvement Project
Grantor: Pleasant Canyon Hotel, Inc.
APN No.: Portion of 941-1710-003-15
Caltrans Parcel No.: 62639-1

**RIGHT OF WAY AGREEMENT BETWEEN CITY OF PLEASANTON,
A MUNICIPAL CORPORATION AND PLEASANT CANYON HOTEL, INC., A
CALIFORNIA CORPORATION
[Acquisition of Permanent Footing Easement]**

This Right of Way Agreement (AGREEMENT) is between the City of Pleasanton (CITY) and Pleasant Canyon Hotel, Inc., (GRANTOR).

The parties hereby agree as follows:

1. PROPERTY INTERESTS ACQUIRED

For use by CITY on the I-580/Foothill Road Improvement Project (the PROJECT), GRANTOR agrees to convey to CITY, and CITY agrees to acquire from GRANTOR, on the terms and conditions set forth in this AGREEMENT, the following real property interests: a **permanent footing easement** over **1,978** square feet of real property, more particularly described in the attached Exhibit "A" and in the GRANT OF FOOTING EASEMENT, together with such other property interests as may be specified herein (the PROPERTY). CITY may take possession of and utilize the PROPERTY on or after the effective date of this AGREEMENT.

2. ACQUISITION PRICE

The acquisition price for the property interests acquired for the permanent footing easement shall be **Thirty-One Thousand One Hundred and Fifty-Three dollars (\$31,153)**.

3. DELIVERY OF DOCUMENTS

An escrow has been opened to consummate the transfer of the PROPERTY according to the terms of this AGREEMENT at the office of North American Title Company, with escrow number 54606-1135234-12. Written escrow instructions in accordance with the terms of this AGREEMENT shall be prepared jointly, and the instructions shall be signed by the parties and delivered to the escrow holder within 15 days of the execution of this AGREEMENT. Such instructions shall require as a condition of closing that CITY deliver to escrow the Acquisition Price in either a cashier's check payable to GRANTOR or wire funds to escrow, a full size survey showing the EASEMENT area, a fully-executed original of this Right of Way Agreement, and such instructions shall require the title company to provide GRANTOR a conformed copy of the recorded GRANT OF FOOTING EASEMENT. CITY and GRANTOR shall also deposit with the escrow holder all instruments, documents, and other items identified in the escrow instructions or

reasonably required by the escrow holder to close the transaction on the closing date specified below.

The escrow shall be closed on the date the deed is recorded. The escrow must be in a condition to close no later than 120 days unless the closing date is extended pursuant to the terms of this AGREEMENT. If an extension is required to close the escrow, GRANTOR shall grant such extension as requested by CITY in writing. All title and escrow costs, as well as the cost of recording any and all documents except documents required to clear GRANTOR's title shall be paid by the CITY. CITY shall advise the escrow holder prior to close of escrow the manner in which title shall vest.

GRANTOR shall, prior to the close of escrow, deposit in the escrow account designated above, a Deed suitable for recordation and conveying from GRANTOR to CITY permanent footing easement title to the PROPERTY, as well as any other documentation requested or required.

4. LEASE WARRANTY

GRANTOR warrants that there are no oral or written leases on any portion of the PROPERTY exceeding a period of one month. GRANTOR agrees to indemnify, defend and hold harmless CITY from any costs, losses, obligations, damages or claims incurred by CITY in connection with this transaction arising out of or relating in any way to any leaseholds or tenancies not disclosed by GRANTOR.

5. NOTICE TO BUYER

GRANTOR agrees to notify in writing any purchaser of the PROPERTY, or GRANTOR's retained property, of this AGREEMENT prior to said purchaser acquiring title to GRANTOR's PROPERTY or retained property. GRANTOR agrees to indemnify, defend and hold harmless CITY from any costs, losses, obligations, damages or claims arising out of or relating in any way to GRANTOR's failure to make the required disclosure.

6. IMPROVEMENTS

Except as may be otherwise provided herein, the acquisition price for the PROPERTY includes compensation for any and all improvements thereon.

7. CONFORMANCE

To the extent that any work performed by the City disrupts or damages surface improvements on the Property, the City will complete all necessary work to restore the effected area in conformance with the immediately adjoining areas. Said reconstruction shall be provided by CITY at no expense to GRANTOR. Permission is hereby granted to CITY and its authorized agents and contractors, at no additional expense or cost to CITY, to enter upon GRANTOR's property, where necessary, after the termination of construction and/or the PROJECT, for the purpose of such work.

8. INTENTIONALLY DELETED

9. SEVERABILITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

10. GOVERNING LAW

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California.

11. PUBLIC PURPOSE

CITY requires the PROPERTY, which is not now appropriated to a public use, for the PROJECT, and CITY can acquire the PROPERTY through the exercise of the power of eminent domain.

Both GRANTOR and CITY recognize the expense, time, effort and risk to both GRANTOR and CITY in resolving a potential dispute over compensation for the PROPERTY by eminent domain litigation; and, the compensation set forth herein is in compromise and settlement, in lieu of such litigation.

12. RELEASE OF CLAIMS

- a. GRANTOR, for themselves, their agents, assigns, successors-in-interest, and any related or affiliated entities, hereby fully releases and discharges CITY, its agents, employees, officers, directors, attorneys, accountants, insurers and other representatives, and any and all related or affiliated private or public agencies or entities, from all rights, claims, demands, actions or causes of actions which GRANTOR now has against CITY arising out of or pertaining to any occurrence, event, circumstance or matter of any kind or nature arising out of, directly or indirectly, the PROJECT and the acquisition of the PROPERTY, including, but not limited to, any claims for further compensation, inverse condemnation, severance damages, relocation benefits, reestablishment benefits, the cost or value of any equipment or fixtures, related expenses, attorneys' fees and costs, loss of damages, including lost goodwill. This release does not include any rights, claims, demands, actions or causes of action which have not yet arisen, including, but not limited to, rights, claims, demands, actions or causes of action arising out of CITY'S access to, and work on, the PROPERTY for completion of the PROJECT.
- b. GRANTOR acknowledges that they may hereafter discover facts or law different from, or in addition to that which they now believe to be true with respect to this release of claims as set forth in this AGREEMENT, and understand that by executing this AGREEMENT they are waiving any rights of claims for any other benefits or damages to which they might be entitled which are not specifically

exempted herein. In giving this release, GRANTOR expressly waives the protection of Civil Code Section 1542, which statute provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

13. AUTHORITY AND EXECUTION

Each person executing this AGREEMENT on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this AGREEMENT and perform all of its obligations hereunder. GRANTOR further warrants that it is the owner in fee simple of the PROPERTY affected by this agreement and that it has the exclusive right to convey these interests.

14. ATTORNEYS' FEES

The prevailing party in any action to enforce this AGREEMENT, or any provision thereof, shall be entitled to reasonable attorneys' fees and costs.

15. ENTIRE AGREEMENT

This AGREEMENT, along with the GRANT OF PERMANENT FOOTING EASEMENT, represent the full and complete understanding of the parties with respect to the PROPERTY and the PROJECT. Any prior or contemporaneous oral or written agreements by and between the parties or their agents and representatives with respect to the PROPERTY or the PROJECT are revoked and extinguished by this AGREEMENT and the GRANT OF PERMANENT FOOTING EASEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as follows:

APPROVED:

CITY OF PLEASANTON:



Nelson Fiahlo, City Manager

09-18-12
Effective Date

GRANTOR:

Pleasant Canyon Hotel, Inc.
A California Corporation

Date: _____

APPROVED AS TO FORM:



Larissa Seto, Assistant City Attorney

ATTEST TO:



Karen Diaz, City Clerk

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as follows:

APPROVED:

CITY OF PLEASANTON:

Nelson Fiahlo, City Manager

Effective Date

GRANTOR:

Pleasant Canyon Hotel, Inc.
A California Corporation



By: James E. M. Evans
Its: Chief Financial Officer

Date: 9/17/2012

APPROVED AS TO FORM:

Larissa Seto, Assistant City Attorney

ATTEST TO:

Karen Diaz, City Clerk