

ORDINANCE NO. 1261

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY APPROVING DEVELOPMENT AGREEMENT AMENDMENT DA-04-01 AMD#2, AFFORDABLE HOUSING AGREEMENT/SENIOR HOUSING AGREEMENT AMENDMENT AH-O-47 AMD#2, AND REUSE OF THE CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT AND ADDENDUM FOR THE RUNKLE CANYON (WOODLANDS) PROJECT

WHEREAS, pursuant to the provisions California Government Code Section 65868 and the 2004 Simi Valley Municipal Code, the applicant, Runkle Canyon, LLC, has requested approval of Amendments to the Development Agreement DA-04-01 to increase the Public Facility Fee and Affordable Housing Agreement AH-O-47 to allow a fee in-lieu of providing 62 affordable units within the senior condominium development of the approximately 1,595-acre Runkle Canyon (Woodlands) project, located at the south terminus of Sequoia and Talbert Avenues; and

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA), the City Council of the City of Simi Valley adopted Resolution No. 2004-41 on April 26, 2004, certifying the Runkle Canyon Final Environmental Impact Report (FEIR) for the Runkle Canyon project; and

WHEREAS, an Addendum to the Runkle Canyon FEIR was prepared pursuant to Section 15164(a) of the CEQA Guidelines, and, on August 13, 2012, the City Council approved the Addendum; and,

WHEREAS, on July 27, 2016, the Planning Commission of the City of Simi Valley held a public hearing and recommended approval of the Development Agreement Amendment DA-04-01 AMD#2 and reuse of the Final Environmental Impact Report and Addendum for the Runkle Canyon (Woodlands) project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. The findings for reuse of the Final EIR and Addendum for the Runkle Canyon project for DA-04-01 AMD#2 and AH-O-47 AMD#2, contained in Planning Commission staff report dated July 27, 2016, and incorporated herein by reference, are hereby approved.

SECTION 2. The findings, for approval, for DA-04-01 AMD#2, contained in the Planning Commission staff report dated July 27, 2016, and incorporated herein by reference, are hereby approved.

SECTION 3. Pursuant to the State Density Bonus Law (Government Code Section 65915) (“DBL”), a senior housing project may be entitled to a density bonus. As the senior portion of the project includes 138 units, a density bonus of 20% is required under the DBL, and, notwithstanding any prior ordinance of the City of Simi Valley, the City hereby grants an additional density bonus of 12.9%, for a total density bonus of 32.9%, consistent with Sections 65915(b)(1)(C), (f)(3) and (n) of the California Government Code.

SECTION 4. Development Agreement Amendment DA-04-01 AMD#2, as specified in Exhibit A, attached hereto, is hereby approved.

SECTION 5. Affordable Housing Agreement/Senior Housing Agreement Amendment AH-O-47 AMD#2, as specified and attached hereto as Exhibit H of DA-04-01 AMD#2, is hereby approved.

SECTION 6. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

SECTION 7. This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED and ADOPTED this 29th day of August 2016.

Attest:

/s/
Ky Spangler, Deputy Director/City Clerk

/s/
Robert O. Huber, Mayor of the City of
Simi Valley, California

Approved as to Form:

Approved as to Content:

/s/
Lonnie J. Eldridge, City Attorney

/s/
Eric J. Levitt, City Manager

/s/
Peter Lyons, Director
Department of Environmental Services

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

City of Simi Valley
Attn. City Clerk
2929 Tapo Canyon Road
Simi Valley, CA 93063

[Space above for recorder's use.]

This document is recorded for the benefit of the City of Simi Valley and therefore is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT (DA-04-01 AMD#2) BETWEEN THE CITY OF SIMI VALLEY AND RUNKLE CANYON, LLC

This Second Amended and Restated Development Agreement (“Agreement” or “DA-04-01 AMD#2”) is entered into by and between the CITY OF SIMI VALLEY, a municipal corporation (“City”), and RUNKLE CANYON, LLC, a Delaware Limited Liability Company and any successors or assigns (“Developer”), each a “Party,” and collectively “Parties,” on August 29, 2016 (the “DA-04-01 AMD#2 Effective Date”), pursuant to the authority of California Government Code Sections 65864 *et seq.*

RECITALS

A. The Legislature of the State of California adopted the Development Agreement Legislation (Government Code Sections 65864 *et seq.*) which authorizes City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: encourage and provide for the development of public facilities in order to support development projects; provide certainty in the approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and provide assurance to the applicants of development projects that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to the conditions of approval of such projects and provisions of such development agreements.

B. Pursuant to City’s police powers, City is authorized to enter into binding agreements with person having legal or equitable interests in real property.

C. Developer is the owner in fee or has valid options to acquire, certain real property situated in or adjacent to the City of Simi Valley, County of Ventura (hereinafter “County”), State of California, consisting of approximately 1,596 acres (“Property”) described in Exhibit “A” and depicted on the Site Map Exhibit “B” attached hereto and incorporated herein by this reference.

D. Developer desires to develop the Property as residential development and as open space and recreational uses as described in the Specific Plan.

E. In preparing and adopting the City of Simi Valley General Plan (“General Plan”), which allows a maximum of 700 units for the Property, City considered the health, safety and general welfare of the City’s and region’s residents and prepared a Final Environmental Impact Report for the Project. Without limiting the generality of the foregoing, in preparing and adopting the Specific Plan and in granting the Development Approvals, the City Council carefully considered and determined the existing and projected needs of the City for water service, sewer service, storm drains, flood control, electrical facilities, traffic/circulation improvements, police and fire services, and similar improvements, facilities and services. The General Plan defined in this paragraph is the plan in effect at the time of the Operative Date of Development Agreement No. DA-04-01.

F. The City Council, in furtherance of the development of the Project has approved the Specific Plan and the Development Approvals.

G. The proposed Agreement is consistent with the objectives, policies and programs specified in the General Plan of the City;

H. The proposed Agreement is compatible with the uses authorized in, and the regulations prescribed for the zone in which the real property is located;

I. The proposed Agreement will not be detrimental to the health, safety and general welfare of the general public; and

J. The proposed Agreement will promote the orderly development of property and the preservation of property values in accordance with good land use practices.

K. In accordance with Government Code Sections 65864 et seq., City has adopted Chapter 9 of Title 9 of the Simi Valley Municipal Code, incorporated herein by reference, establishing rules, regulations, procedures and requirements, for consideration of development agreements.

L. The Planning Commission of City, after a duly noticed public hearing on April 7, 2004, considered and recommended approval of Development Agreement No. DA-04-01, in conjunction with the Development Approvals.

M. The City Council of City, after a duly noticed public hearing on April 26, 2004, considered and introduced for first reading Ordinance No. 1058 approving Development Agreement No. DA-04-01 in conjunction with the Development Approvals. On May 10, 2004, the City Council passed and adopted Ordinance No. 1058 approving DA-04-01. DA-04-01 was recorded on May 26, 2004, as Document No. 20040526-0147236 in the Official Records of the Office of the Recorder of the County of Ventura.

N. Pursuant to Section 4 of the Agreement, an Assignment and Assumption of Development Agreement No. DA-04-01 by Assignor Developer GreenPark Runkle Canyon, LLC, to Assignee Runkle Canyon, LLC, a Delaware limited liability company, dated August 4, 2005, was recorded on November 8, 2005, as Instrument No.

20051108-0274668 in the Official Records of the Office of the Recorder of the County of Ventura County, and consented to by the City per the Consent of the City, dated August 15, 2005. This Assignment to Runkle Canyon, LLC, is incorporated herein.

O. Pursuant to Section 20 of the Agreement, the City Manager of City and the Developer mutually agreed on December 4, 2005, to 1) amend Section 7 of the Agreement to require that no grading take place until the City Council approved staff issuance of the grading permit and 2) amend Section 24 to require the expiration date of the project's Planned Development Permits be extended to the end of the Agreement's Term. The City Manager and the Developer also mutually agreed on June 6, 2011 to amend Exhibit C, Part II(A)(1) in its entirety to require that approval of all Modifications to the Planned Development Permit be obtained for the project by the end of the Agreement's Term. These amendments to the Agreement are incorporated herein.

P. The City Council of City, after a duly noticed public hearing on July 16, 2012, considered and introduced Ordinance No. 1197 for first reading, and, on August 13, 2012, adopted Ordinance No. 1197 approving DA-04-01 Amendment No. 1 to amend Section 3 of the Agreement to extend the Term for five years. This amendment to the Agreement is incorporated herein.

Q. This Second Amended and Restated Development Agreement (DA-04-1 AMD#2) incorporates changes to allow the Developer to provide additional contributions to the City for specified purposes. This Agreement also includes a Second Amended and Restated Affordable Housing Agreement/Senior Housing Agreement which is attached hereto and incorporated by reference as Exhibit "H", which sets forth a payment by Developer in-lieu of providing 62 affordable dwellings for low income senior households pursuant to Resolution No. 2003-70. The Second Amended and Restated Affordable Housing Agreement/Senior Housing Agreement further includes an additional density bonus provided to Developer due to a qualifying senior housing project.

R. City hereby finds and determines that this Agreement, as approved by the City Council, is consistent with the General Plan and the Specific Plan and that this Agreement, is consistent with the Development Approvals.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other considerations, the value and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS. The parties agree the foregoing Recitals are true and correct and incorporated into this Agreement.

1.1 DEVELOPMENT APPROVALS AND PROPERTY SUBJECT TO THIS AGREEMENT. All of the Development Approvals and the Subject Property shall be subject to this Agreement. The permitted uses, the density and intensity of use, the location of uses, the maximum height and size of proposed buildings, and other standards of project design applicable to the Property shall be those set forth in the Existing Development Regulations and Development Approvals. The City hereby agrees that the land uses set forth in this Agreement are approved or will be approved pursuant to the terms of this Agreement. The EIR was prepared for the Project and was certified by the City Council. The Project site is to be developed in phases pursuant to the Specific Plan.

2. DEFINITIONS. The following words and phrases are used as defined terms throughout this Agreement, and each defined term shall have the meaning set forth below.

2.1 “Annexation Date” shall mean the date that the Property annexation receives final approval from the Ventura County LAFCO board.

2.2 “Applicable Rules” shall mean those rules, regulations, and standards in effect upon the Approval Date.

2.3 “Approval Date” shall mean a date thirty (30) days after the approval of original agreement DA-04-01 by the City Council per Ordinance No. 1058.

2.4 “Development Approvals” shall mean all other approvals which were authorized, accepted or certified by the City in conjunction with the Agreement, including, but not limited to the Tentative Tract Map, Planned Development Permit and Modifications thereto, and Conditional Use Permit as listed in Exhibit G.

2.5 “Planned Development” or “PD” shall mean a Planned Development Permit.

2.6 “Operative Date” shall mean pursuant to Government Code Section 65865(b) that the Agreement shall not become operative unless annexation proceedings annexing the property into the City are completed within two (2) years after approval of the project. The Operative Date, as used in this Agreement, is December 6, 2004, when the annexation of the Property to the City became effective.

2.7 “Project” shall mean all the Development Approvals and uses of Property subject to the terms and public benefit of the Agreement.

2.8 “Property” shall mean that certain real property described in Exhibit “A” and depicted on Exhibit “B” to this Agreement.

2.9 “RBPAS” shall mean the City’s Residential Building Permit Allocation System.

2.10 “SOAR” shall mean the Save Open-Space and Agricultural Resources City Urban Restriction Boundary initiative measure adopted by the voters on November 3, 1998.

3. TERM. The Term of this Agreement shall commence on the Approval Date and shall extend for a period of eight (8) years following the date of the issuance of the first building permit for the project. Notwithstanding the above, the maximum term of this Agreement shall be ten (10) years from the Approval Date and further extended an additional five (5) years by Development Agreement Amendment DA-04-01 Amendment #1 per City Council Ordinance No. 1197. The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property and obtain the public benefits of the Project and the Agreement. City finds that a term of such duration is reasonably necessary to assure City of the

realization of the public benefits from the Project. In establishing and agreeing to such term, City has determined that this Agreement incorporates sufficient provisions to permit City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the Project.

This Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order, after exhaustion of any appeals, directed against City as a result of a lawsuit filed against City to set aside, withdraw or abrogate the approval by the City Council of City of this Agreement.

4. ASSIGNMENT. The rights of Runkle Canyon, LLC, a Delaware general partnership under this Agreement may not be transferred or assigned unless the written consent of the City is first obtained. Such consent shall not be unreasonably withheld.

Following an approved assignment or transfer of any of the rights and interests of Developer set forth in this Agreement, the assignee's exercise, use, and enjoyment of the Property shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Developer.

Upon the written consent of City to the partial or complete assignment of this Agreement and the express written assumption of such assigned obligations of Developer, under this Agreement by the assignee, Developer shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement, except to the extent Developer is in default hereunder prior to said transfer.

5. EFFECT OF AGREEMENT ON LAND USE REGULATIONS. The parties hereby agree that, for the term of this Agreement, the rules, regulations and official policies governing the design, improvement and construction standards and specifications applicable to development of the Property shall be those rules, regulations and official policies in force at the time of the Operative Date, except Developer shall be subject to the uniform codes procedural regulations, construction specifications, City processing fees and development fees which are in effect at the time of payment of the fees and other exceptions specified in this Agreement.

The City may apply, in subsequent actions concerning the Property, new rules, regulations and policies with respect to the Property provided that they do not in any way conflict with or modify the existing rules, regulations and official policy applicable to the Property.

This Agreement shall not prevent the City from denying or conditionally approving any subsequent development project application submitted for other real property, which is not the subject of this Agreement, on the basis of existing or new rules, regulations and policies.

In the event that any subsequent change in the laws or regulations of a federal or state agency prevents or precludes compliance with one or more provisions of this Agreement, such provision shall be modified or suspended only to the extent necessary to comply with such new federal or state law or regulation.

6. EXHIBITS. Exhibits to this Agreement are as follows:

- Exhibit "A" Legal Description of Property.
- Exhibit "B" Site Plan of Property.
- Exhibit "C" Consideration and Development Schedule.
- Exhibit "D" Prioritization Criteria.
- Exhibit "E" Grant of Conservation Easement.
- Exhibit "F" Runkle Ranch Open Space/Management Plan.
- Exhibit "G" List of Property's Development Approvals
- Exhibit "H" Second Amended and Restated Affordable Housing Agreement ("Senior Housing Agreement") (AH-O-47 AMD#2)

7. TIMING OF DEVELOPMENT. The timing of development shall be in accordance with the Development Schedule shown in Exhibit "C" and attached hereto, provided that no grading shall take place on the site until the City Council approves staff's issuance of a grading permit.

8. ALLOCATION GRANTS. RBPAS and SOAR. The Property's Development Approvals shall provide additional public benefits that advance the purposes of the RBPAS and SOAR as follows:

a. Senior Affordable Housing. In compliance with the requirements of the RBPAS, and the Prioritization Criteria identified in Exhibit D (Resolution No. 2003-70), for placement in the Development Agreement Queue, Developer shall pay an in-lieu fee for ninety-two (92) income eligible senior households in accordance with the Second Amended and Restated Affordable Housing Agreement/Senior Housing Agreement (AH-O-47 AMD#2) between the Developer and City identified in Exhibit H.

b. Air Quality. Developer shall undertake all the possible Air Quality mitigation measures identified in Exhibit D, the Prioritization Criteria, in order to maximize all possible point scores.

c. Hillside Protection. Developer shall grant and convey a Conservation Easement, as described in Exhibit "E", 1150 acres of Public Open Space, as described in Exhibit C and undertake the Hillside Protection mitigation measures specified in the Development Approvals.

9. PROJECT DEVELOPMENT STANDARDS. Pursuant to Section 65865.2 of the California Government Code, the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings and provisions for reservation and dedication of land for public purposes shall be as contained in the Development Approvals and the applicable rules incorporated herein by reference.

10. POLICE POWER. In all respects not provided for in this Agreement, City shall retain full rights to exercise its police power to regulate the development of the Property. Any uses or developments requiring additional Tentative Tract Maps, Special Use Permits (including Conditional Use Permits), Variance, or other discretionary permits or approvals in accordance with the Specific Plan or City's zoning or other land use regulations, shall require a permit or approval pursuant to this Agreement, and,

notwithstanding any other provision set forth herein, this Agreement is not intended to vest Developer's right to the issuance of such permit or approval nor to restrict City's exercise of discretion with respect thereto. Not by way of limitation of the foregoing, it is specifically understood that City reserves the right to amend, pursuant to procedures provided by law and this Agreement, the Specific Plan and other City laws, rules, regulations, and policies applicable to the Property as to which Developer's rights are not expressly vested and such amendment or amendments shall be binding on the Property except to the extent that the same conflict with the express provisions of this Agreement.

11. PUBLIC BENEFITS. The parties acknowledge and agree that Project will result in substantial public needs which will not be fully met by the Development Approvals and further acknowledge and agree that this Agreement confers substantial private benefits on Developer which should be balanced by commensurate public benefits. Accordingly, this Agreement provides consideration to the public in order to balance the private benefits conferred on Developer.

Under this Second Amended and Restated Development Agreement the Developer will provide a new public benefit consisting of a contribution of three million nine hundred thousand dollars (\$3,900,000) to the City for public improvements, public services, and community amenities as set forth in Exhibit C, Part 1.A(2), pursuant to Government Code Sections 65865(e) and 66006.

12. COVENANTS RUN WITH THE LAND. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Subject Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Subject Property hereunder, or with respect to any City owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

13. CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

14. CONSIDERATION AND DEVELOPMENT SCHEDULES. The parties hereby agree to the Consideration and Development Schedules set forth in Exhibit "C" hereto.

15. COOPERATION. The mutual undertakings and assurances described in this Agreement are for the benefit of City and Developer and promote comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infrastructure and facilities supporting development. City and Developer agree that they will not take any actions which are intended to circumvent this Agreement.

16. DEFAULT OF DEVELOPER. Developer shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a material warranty, representation or statement was made or furnished by Developer to the City with respect to this Agreement which was known to be false in any material respect when it was made.

(b) A finding and determination by the City Council, made following a periodic review under the procedures provided under Government Code Section 65865.1, that upon the basis of substantial evidence Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

(c) City may at its discretion, refuse to issue a building permit for any structure within the geographical confines of the Property if Developer has failed and refuses to complete any requirement enumerated therefore in accordance with the terms of this Agreement. No building permit shall be issued or building permit application accepted for the building shell of any structure on Property if the permit applicant owns or controls any property subject to this Agreement, and if such applicant or any entity or person controlling such applicant is in default of the terms and conditions of this Agreement.

17. DEFAULT OF CITY. The City shall be in default under this Agreement if it imposes upon Developer rules, regulations or official policies governing the permitted uses, density, maximum height and size of proposed structures, and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not substantially the same as those rules, regulations and official policies in effect at the time of the Agreement Date, except as otherwise expressly permitted herein.

The City shall not be in breach of this Agreement by reason of any subsequent changes of laws or regulations by the electorate or by another local agency not created or controlled by the City which prevents or precludes compliance by the City/Developer, with this Agreement.

18. OTHER DEFAULT PROVISIONS. The City shall not be deemed to have waived any claim of default by Developer if, upon periodic review, the City fails to modify or terminate this Agreement based upon such purported default.

Non-performance shall not be excused because of an act or omission of any person not a party to this Agreement.

The adoption of a law or other governmental activity, which is consistent with this Agreement, making performance by Developer unprofitable or more difficult or more expensive shall not excuse the performance of Developer herein.

19. DAMAGES UPON DEFAULT; SPECIFIC PERFORMANCE. The only damage available to Developer in the event of default by City is that of Specific Performance.

All of the terms of this Agreement shall be specifically enforceable by either party hereto.

20. AMENDMENT OF THIS AGREEMENT. Except as otherwise permitted herein, this Agreement may be amended only by the mutual consent of the parties or their successors-in-interest, in the manner set forth in California Government Code Section 65865.1, 65867.5, and 65868. No change, modification, revision or alteration may be made in the Planned Development Permit without review and approval by those agencies of the City which approval is presently required under the existing rules or procedures of the City. A change, modification, revision or alteration in the Planned Development Permit shall not be effective until the parties hereto amend this Agreement to specifically incorporate it. However, any amendment which does not relate to the term, permitted uses, density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, or monetary contribution by Developer shall not require notice of or a public hearing and can be approved by the City Manager.

If the Developer requests to have later enacted rules or policies, rather than existing policies, rules or regulations applied to the Project, this may require an amendment to the Agreement, unless the change is insignificant.

21. HOLD HARMLESS. Developer hereby agrees to, and shall, defend, indemnify, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, actions, costs, and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer or Developer's contractors', subcontractors', agents', or employees' operations under this Agreement. However, City shall select the Attorney to represent the City and shall control the lawsuit or other legal action. The terms in this Section shall survive any termination of this Agreement.

22. OPERATING MEMORANDA. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City

Attorney shall be authorized to make the determination as to whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 20. Upon such a finding, the City Manager may execute any operating memoranda hereunder without City Council action.

23. IMPOSITION OF COVENANT OF EASEMENT BY ORDINANCE.

Nothing herein shall preclude the City from acting pursuant to Government Code Sections 65870 et seq. in furtherance of implementing this Agreement.

24. TENTATIVE TRACT MAP EXTENSION. Pursuant to Government Code Section 66452.6(a), the term of any tentative map for any subdivision shall automatically be extended for the term of this Agreement. The term for any previously approved Planned Development Permit (PD), Conditional Use Permit (CUP), or Modification thereto, or the time limits for when future PD's, CUP's, or Modification's must be approved by the City, may be extended by the City Manager, for any period of time up to and including the term of this Agreement.

25. TIMING OF DEVELOPMENT. The Parties acknowledge that Developer cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held, in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, including with respect to single-family and senior housing units to be developed as part of the project. The timing or phasing requirements set forth in the Development Approvals with respect to the senior housing units, specifically Conditions of Approval A-16 and A-17, are superseded by this Section 25. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the property, shall be deemed to conflict with the Development and/or this Agreement, and therefore shall not be applicable to the development of the Property.

26. MISCELLANEOUS PROVISIONS.

(a) City and Developer intend that this Agreement, approved and executed as an exercise of the City's police power and pursuant to the authority of the Development Agreement Legislation, shall become operative, and be in full force and effect on the Operative Date and govern the intent and obligations of the parties hereto with respect to the Property's development in the City.

(b) It is specifically understood and agreed by and between the parties hereto that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement.

(c) The captions of this Agreement are for convenience and reference only and shall in no way define, explain, modify, construe, limit, amplify or aid in the interpretation, or meaning of any of the provisions of this Agreement.

(d) This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions, and agreements between the Parties with respect to all or part of the subject matter hereof. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

(e) This Agreement is not intended to alter the obligations of the parties under any other contracts existing between them, whether signed before, after, or in conjunction with this Agreement.

(f) This Agreement, including, without limitation, its existence, validity, construction and operation, and the rights of each of the parties shall be determined in accordance with the laws of the State of California.

(g) This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in any person who is not a party, unless expressly otherwise provided.

(h) Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

(i) If any provision of this Agreement shall be held to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless the court shall specifically find that the invalid part is so fundamental and essential to the understanding of the parties that the entire Agreement shall be invalidated.

(j) The time limits set forth in this Agreement may be extended or shortened by mutual written consent of the parties.

(k) Pursuant to Government Code Section 65867.5, any tentative map prepared for any subdivisions of Project shall comply with the provisions of Government Code Section 66473.7 relating to the availability of water supply.

27. AUTHORITY TO EXECUTE. Developer warrants and represents that (i) Developer is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement, (iv) Developer's entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other Agreement to which Developer is bound, and (v) there is no existing or threatened litigation or legal proceeding of which Developer is aware which could prevent Developer from entering into or performing its obligations set forth in this Agreement.

28. NOTICE. All notices, demands, requests, elections, approvals, disapprovals, consents or other correspondence and communications between City and Developer under this Agreement shall be in writing and shall be given by personal delivery, certified mail or telegram. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for which it is intended at the address set forth below.

To City: CITY OF SIMI VALLEY
2929 Tapo Canyon Road
Simi Valley, California 93063

To Property Developer: Runkle Canyon, LLC
Glen Longarini and Ron Mertz
25152 Springfield Court, Suite 180
Valencia, CA 91355

and a copy by mail to:
KB Home, Attn: Legal Department,
10990 Wilshire Blvd., Seventh Floor, Los
Angeles, California, 90024

And by e-mail to: pdarrow@kbhome.com

Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addresses as either party may from time to time designate by notice given in accordance with this Section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

Attest:

City of Simi Valley, A Municipal Corporation

/s/
Ky Spangler
Deputy Director/City Clerk

By: /s/
Robert O. Huber, Mayor of the
City of Simi Valley, California

Approved as to Form:

**Runkle Canyon, LLC
A Delaware Limited Liability Company**

/s/
Lonnie J. Eldridge, City Attorney

By: /s/
Glen Longarini, Authorized Agent

Approved as to Content:

/s/
Eric J. Levitt, City Manager

/s/
Jody Kershberg
Director of Administrative Services

/s/
Peter Lyons, Director
Department of Environmental Services

EXHIBIT "A"

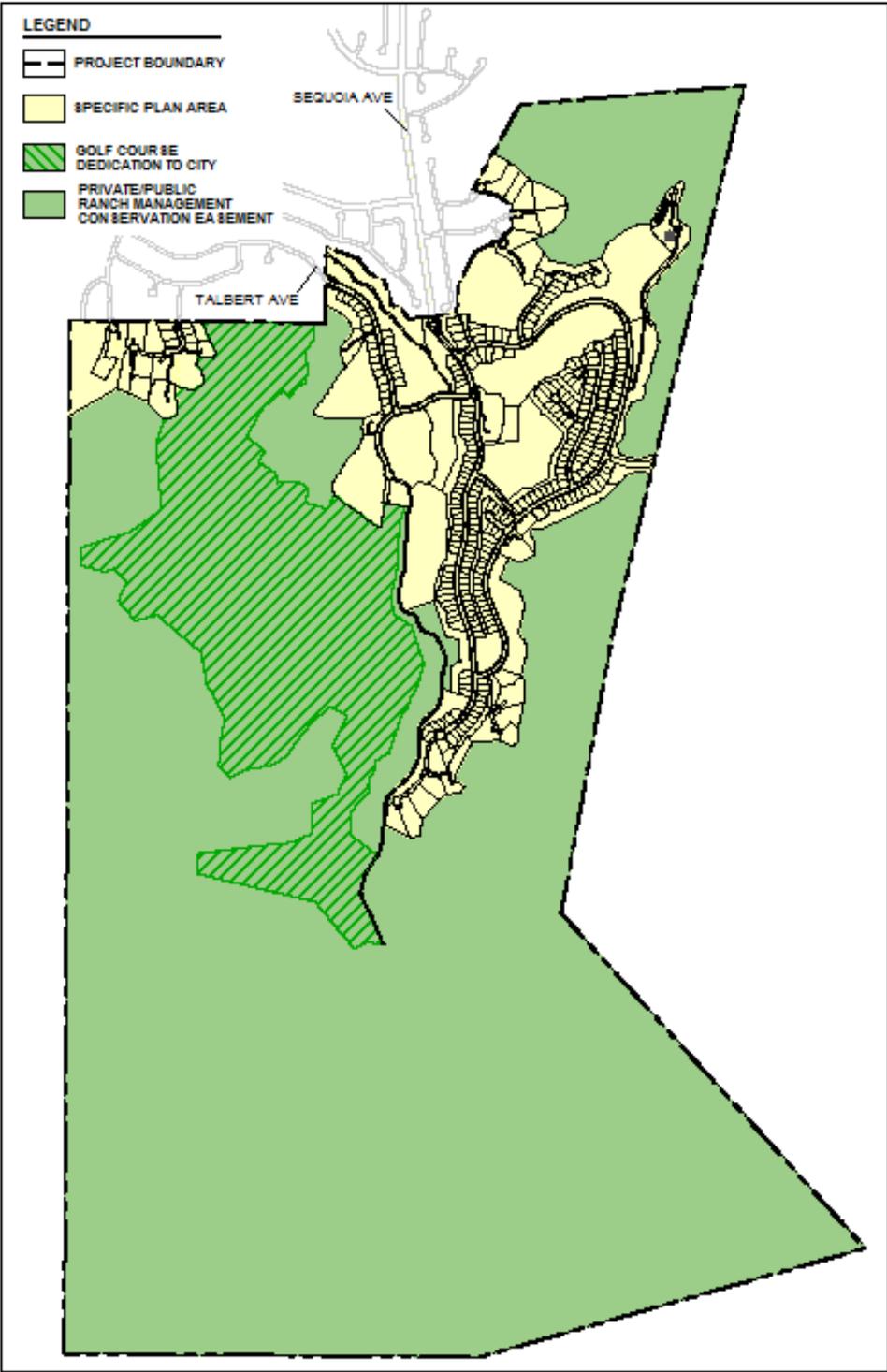
LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Simi Valley, County of Ventura, State of California, described as follows:

All of the subdivision within the City of Simi Valley, County of Ventura, State of California being a subdivision of Tract 5364-1 through 3, as recorded in Book 162, Pages 31 to 89, and Tract 5364-4 as recorded in Book 163, Pages 6 to 30, inclusive, of Maps in the Office of the County Recorder of said County.

EXHIBIT "B"

SITE PLAN OF PROPERTY



SITE PLAN
Runkle Canyon Specific Plan
FORM 100

Runkle Canyon, LLC

Runkle Canyon

EXHIBIT "C"**CONSIDERATION AND DEVELOPMENT SCHEDULE****Part I: Consideration Schedule**

Developer shall deliver to City the following consideration under this Agreement:

A(1). Public Facility Contribution. Developer shall pay City an amount equal to four million two hundred eighty nine thousand two hundred fifty dollars (\$4,289,250) (\$10,750 per unit), subject to adjustment as provided below, for the three hundred and ninety-nine (399) market rate building permits for the Project applied for by Developer. The Public Facility Contribution shall be adjusted upward once every twelve months from the Development Agreement Date by an amount equal to the percent increase of the Consumer Price Index (CPI) in the Los Angeles – Long Beach CPI from the Development Agreement Date to the most recently published period with a minimum annual increase of two percent (2%) of the fee due for each building permit. Except for the Advance Payment described in Section C below, the Public Facility Contribution shall be paid at the time of Zoning Clearance approval by the Department of Environmental Services for each of the additional 353 market rate units [461 – 62 affordable units – 46 units in Advance Payment = 353 additional market rate units].

A(2). Public Improvements, Public Services, and Community Amenities Contribution. Developer shall also pay City an amount equal to three million nine hundred thousand dollars (\$3,900,000), which shall be deposited in a trust fund used by the City for public facilities, including public road improvements; public services and improvements for senior center facilities and activities; transit expenses, fees and community amenities, such as bus shelters; and the maintenance, repair, operation, programming, salaries and services related to all of the foregoing, whether one-time or recurring; and other related public facilities. The contribution shall be based upon the

following schedule: first payment of nine hundred seventy-five thousand dollars (\$975,000) upon the building permit issued for the seventy-fifth (75th) unit on the Property; second payment of nine hundred seventy-five thousand dollars (\$975,000) for the building permit of the one hundred fiftieth (150th) unit on the Property; third payment of nine hundred seventy-five thousand dollars (\$975,000) upon the building permit issued for the two hundred and twenty-fifth (225th) unit on the Property; fourth payment of nine hundred seventy-five thousand dollars (\$975,000) upon the building permit issued for the two hundred and seventy-fifth (275th) unit on the Property; or all payments shall be made no later than five (5) years following the DA-04-01 AMD#2 Effective Date, whichever occurs first. The City shall not issue building permits for more than seventy-four 74 units on the Property prior to the Developer's first payment of the \$3,900,000 Public Facility Fee.

B. Sequoia Avenue Improvements. In addition to, but concurrent with the payment of the Public Facility Contribution, Developer shall pay to City one hundred thousand dollars (\$100,000) to be deposited in a trust fund for the future improvements to Sequoia Avenue, Talbert Avenue, Corto Street, Fitzgerald Road, and other streets connecting to Sequoia Avenue south of Royal Avenue, that may be required to address traffic impacts resulting from the Project. The payment for these improvements shall be made at the same time, and in the same proportion, as the Public Facility, at the rate of one thousand dollars (\$1,000) per unit, provided, however, that the total amount due under this paragraph shall have been paid in full at the time of approval of the Zoning Clearance for the 100th unit.

C. Advance Payment of Public Facility Contribution. Developer shall advance payment to City, 180 days after the Annexation Date, or issuance of the first Zoning Clearance, whichever comes first, in the amount of four hundred ninety four

thousand five hundred dollars (\$494,500) of the total Public Facility Contribution for the first 46 market rate units (collectively referred to as the "Advance Payment"). The Advance Payment shall be adjusted upward once every 12 months from the Development Agreement Date to the most recently published period by an amount equal to the percent increase of the CPI, with a minimum annual increase of two percent (2%). The Advance Payment shall be credited towards the Public Facility Contribution due on each of the first forty six (46) building permits issued by City for the Project, as follows: $\$10,750 \times 46 = \$494,500$.

D. Guaranteed Annual Payment of Public Facility Contribution. City has expressed concern that if Developer's development of the Project does not proceed at a reasonably deliberate pace, City's receipt of the total Public Facility Contribution might be unduly delayed. Developer hereby agrees that, commencing one year following the date of the Advance Payment as provided in Section I.C, Developer will pay City an amount per year equal to the Public Facility Contribution for sixty eight (68) building permits, less the number of building permits for which the Public Facility Contribution is paid prior to the date the Guaranteed Annual Payment becomes due (the "Guaranteed Annual Payment"). The Guaranteed Annual Payment shall be in addition to the Advance Payment described in Section C above. The Guaranteed Annual Payments together with the Advance Payment, subject to the CPI Index adjustment, shall constitute the Public Facility Contribution for three hundred and ninety-nine (399) building permits.

E. Residential Building Permit Allocation System. To satisfy the requirements of the RBPAS and the Prioritization Criteria to allow placement of the Project in the Development Agreement Queue, Developer agrees to make the following contributions:

1(a). Affordable Housing Requirements. In full satisfaction of all affordable housing obligations with respect to the development of the Property, Developer shall pay in-lieu fees for 30 affordable units in the amount of nine hundred thousand dollars (\$900,000), (\$30,000 per unit) and Developer shall pay for 62 affordable units, the amount of three million one hundred thousand dollars (\$3,100,000) (\$50,000 per unit) in accordance with the requirements of this Agreement and the Second Amended and Restated Affordable Housing Agreement (AH-O-47 AMD#2). These in-lieu fees shall be used to construct or otherwise provide housing affordable to income eligible senior households. Said in-lieu fees shall be paid by the Developer as set forth in the schedules in accordance with the Second Amended and Restated Affordable Housing Agreement (AH-O-47 AMD#2), which are as follows:

1(b). For the In-Lieu Fee of \$30,000 per unit of 30 affordable dwelling units: The first two hundred fifty thousand (\$250,000) shall be paid at the time of the approval of the first residential Zoning Clearance for the 138-unit senior development within the Project. An additional two hundred and fifty thousand dollars (\$250,000) shall be paid within one year after that date. The remaining four hundred thousand dollars (\$400,000) shall be paid at the time of the approval of the Zoning Clearance that includes the 200th unit for the Project.

1(c). For the In-Lieu Fee of \$50,000 per unit of 62 affordable dwelling units: first payment of seven hundred seventy-five thousand dollars (\$775,000) upon the building permit issued for the seventy-fifth (75th) dwelling unit on the Property; second payment of seven hundred seventy-five thousand dollars (\$775,000) upon the building permit issued for the one hundred fiftieth (150th) unit on the Property; third payment of seven hundred seventy-five thousand dollars

(\$775,000) upon the building permit issued for the two hundred and twenty-fifth (225th) unit on the Property; and, fourth payment of seven hundred seventy-five thousand dollars (\$775,000) upon the building permit issued for the two hundred and seventy-fifth (275th) unit on the property; or, all payments shall be made no later than five years following the Effective Date of the Second Amended and Restated Affordable Housing Agreement/Senior Housing Agreement (AH-O-47 AMD#2), whichever occurs first. The City shall not issue building permits for more than seventy-four units on the Property prior to the Developer's first payment of the In-Lieu Fee.

2. Air Quality. Developer shall undertake all possible mitigation measures identified in **Exhibit E**, the Prioritization Criteria, Section II.A., and maximize all possible point scores; provided, however, that in satisfying the requirements of Air Quality Criteria 4.c., saving of trees on the development site, Developer shall be required to save in place all of the trees rated C or better as are identified in the tree report prepared by Richard Ibarra of Trees Etcetera, Addendum letter number 4, dated March 25, 2004. In the event that any Coast Live Oak, Scrub Oak, California Pepper and California Sycamore trees cannot be saved in place, the Developer shall transplant these trees on site. This transplantation shall conform to the tree transplantation standards contained within the Standards for Nursery Stock prepared by the American Standards Institute, dated November 6, 1996.

3. Hillside Protection. Developer shall record "Conservation Easements" totaling approximately 1,096 acres identified as Parcels F, H, I, K, FFF, GGG, HHH, III, JJJ, MMM, NNN, and OOO in Tentative Tract Map 5364, no later than thirty (30) days after recordation of the applicable final tract map and

undertake the Hillside Protection Mitigation measures specified in the Development Approvals. This Conservation Easement is separate from and in addition to the golf course dedication discussed below.

F. Golf Course Dedication. Within thirty (30) days of the Annexation Date, Developer shall offer to dedicate to the City Parcels KKK and LLL consisting of approximately 190 acres as defined in Tentative Tract Map 5364. No consideration shall be required for acceptance of the offer by the City beyond that provided in this Development Agreement.

Within thirty (30) days of the Annexation Date, Developer shall offer to dedicate to the City Parcel J consisting of approximately 27 acres as defined in Tentative Tract Map 5364. Such offer shall be subject to a reversionary interest in favor of the Developer. No consideration shall be required for acceptance of the offer by the City beyond that provided for in this Development Agreement. If the City does not accept the offer within six (6) months of receipt of the offer to dedicate for the express purpose of construction and operation of a public golf course said offer shall expire. If the City accepts within six (6) months of receipt of the offer to dedicate, for the express purpose of construction and operation of a public golf course, the City shall have eighteen (18) months from the date of acceptance within which to begin physical construction of a public golf course. If the City does not begin physical construction within that eighteen (18) month period, parcel J shall revert to the Developer.

G. Water Tank Site. Developer shall offer to dedicate a water tank site identified as Parcel KK of Tract Map 5364 no later than one hundred eighty (180) days after Annexation Date, or recordation of final map, whichever comes first.

Part II: Development Schedule

A. Applications for Initial Approvals. Developer shall submit applications for the following approvals within the time frames set forth below. The failure of Developer to submit applications for the Initial Approvals within the periods set forth below shall constitute a default under this Agreement.

1. Planned Development Permits. Within the Term of the Development Agreement, Developer shall apply for and receive approval of all Planned Development Permit(s) or Modification(s) to the Master Planned Development Permit that will enable development of the Project on all or any portion of the Property.

2. Development of Senior and Senior Affordable Units. The Project's Specific Plan SP-S-24 allows for a 138-unit senior condominium development with affordable units for low income senior households within Planning Area 4, which incorporates a density bonus of 32.9% approved by the City in accordance with California Government Code Sections 65915(b)(1)(A) and (f)(1) of the California Government Code, and such density bonus is further described in the Second Amended and Restated Affordable Housing Agreement/Senior Housing Agreement (AH-O-47 AMD#2). Developer shall pursue to completion the development of the 138 senior units within the Project, consistent with Section 25 (Timing of Development) of this Agreement.

EXHIBIT "D"**RES. NO 2003-70****PRIORITIZATION CRITERIA**

for the
Residential Building Permit Allocation System

Section I - ESTABLISHMENT OF A REVIEW PROCESS

- A. Grant Allocations. Grant allocations shall be awarded after a project has been placed in a Queue. Placement in a Queue will be determined by the ranking of a project utilizing Criteria.
- B. Criteria. Criteria will be used to evaluate the impact of proposed development projects on affordable housing, resource conservation, air quality, project location, longevity, development agreements, and density. The evaluation of development projects will be accomplished through the assignment of points based upon consistency with criteria set forth in Section II. The categories of Criteria are:
1. Air Quality
 2. Infill Development (location on the Valley floor)
 3. Affordable Housing
 4. Development Agreement
- C. Scoring System. Points earned within each category of the Criteria shall be summed for each development project. The project(s) with the highest point total shall be placed into a Queue in the Allocation System.

Section II - CRITERIA

Development projects will be evaluated pursuant to the Criteria which allows for a maximum possible points of 153 as set forth as follows:

- A. Air Quality (93 points)
1. Public Transportation (8 points)
 - a. The development project is located within:
 - i. One-quarter (1/4) mile of a transit stop (6 points), or
 - ii. One-half (1/2) mile of a transit stop (3 points).
 - b. The project will construct, or contribute to a City trust fund for the construction of, a City approved bus turnout, per the City's existing or proposed bus system routes. The turnout will be in place at the time of occupancy to meet the public transportation demand generated by the development project (2 points). The amount contributed to the trust fund

would be determined based on the cost of construction of a bus turnout. Funds contributed under this criterion may also be used for the purchase of natural gas vehicles (vans or buses) to enhance the efficiency of the City's existing vehicles or dispatch system that demonstrably reduces traffic congestion and improves air quality.

2. Private Transportation (12 points)

- a. A minimum contribution of \$107.08 per unit to the City for use in an "Air Quality Impact Fund" (1 point). Each additional \$107.08 per unit contribution will receive an additional 1 point, up to a maximum total of 12 points. (0-12 points) Contributions made can be used to offset any required environmental air quality mitigation fees.

or

- b. The project will provide van or shuttle service for use by its residents. The shuttle must be part of the project's conditions of approval and remain in place for a minimum of 10 years. Termination of the service prior to the minimum ten-year period will require contribution to the Air Quality Fund of \$25,000 for each year of non-operation. This criterion is limited to rental development or to projects that are able to provide long-term control. (12 points)

3. Proximity to Shopping Facilities (2 points)

The project is located in close proximity to daily shopping facilities such as: supermarkets, restaurants, dry cleaners and/or retail clothing stores.

- a. The development project is located within:
 - i. One-quarter (1/4) mile of a neighborhood commercial center (2 points), or
 - ii. One-half (1/2) mile of a neighborhood commercial center (1 point).

4. Building Design and Amenities (71 points)

- a. All residential units incorporate features or use materials that provide for energy savings that exceed the minimum requirements under Title 24, as follows:
 - i. Exceed minimum requirements by fifteen (15) percent. (25 points)

- ii. Exceed minimum requirements by twenty (20) percent. (50 points)
- b. Meandering public sidewalks or pedestrian pathways are provided to reduce on-site automobile usage. (1 point)
- c. Trees on the development site will be saved and incorporated into the site plan or the parkway to help conserve energy within the dwelling unit(s). Trees saved must also have been rated by a certified arborist in a tree report prepared for the project at "C" condition or better, and be evaluated as a Class No. 1, 2 or 3 according to the "Shade Tree Evaluation" published by the International Shade Tree Conference, Incorporated. The project shall be awarded 2 points for every 20% of the trees rated C or better and Class 1, 2, or 3 being saved on site or relocated. (0-10 points)
- d. New Trees
 - i. Detached Dwelling Units

Five (5) points per tree, up to a total of ten (10) points for two (2) trees, shall be granted if the developer agrees to:

- (1) plant one (1) (5 points) or two (2) (10 points) trees, a minimum of 36" box in size on each lot or on an adjoining parkway (above requirements of City landscape guidelines)*/**; or
- (2) contribute \$1,000 per tree to a tree fund for each single-family dwelling unit.

* If all of the required trees cannot be placed within the development, the developer shall either (a) make a contribution to the City's tree fund for the remaining number of trees, or (b) donate the remaining trees to the Park District or the School District to be planted in designated public areas.

** When the developer is not responsible for installing the landscaping on each individual lot, the developer will provide a tree voucher to each homeowner at the close of escrow for the selection and installation of the required tree(s), in accordance with approved landscape plans. The tree(s) must be installed within twelve (12) months of the home receiving a final inspection certificate from the City. All homeowners

will be informed in writing of the requirements regarding the installation and maintenance of their tree(s). Such requirements will also be incorporated into the project CC&R's, and the HOA will be responsible for the enforcement of these requirements.

ii. Attached Dwelling Units

Five (5) or ten (10) points shall be granted if the developer agrees to:

- (1) plant one (1) tree per two (2) units (5 points) or one (1) tree per unit (10 points). Trees shall be a minimum of 36" box in size and planted within the project area or on an adjoining parkway (above requirements of City landscape guidelines)*; or
- (2) contribute \$1,000 per two (2) units (5 points) or \$1,000 per unit (10 points) to a tree fund.

* If all of the required trees cannot be placed within the development, the developer shall either (a) make a contribution to the City's tree fund for the remaining number of trees, or (b) donate the remaining trees to the Park District or the School District to be planted in designated public areas.

The tree fund will only be used by the City to plant and replace equal size trees in the public right-of-way, or on publicly owned property, per the City's annual Tree Removal and Replacement Program and/or Landscape District Planning Program.

B. Infill (10 points)

1. Project Location (10 points)

- a. The project is on the valley floor; or the project is located immediately adjacent to the valley floor, consists of 30 units or less, and is developed on slopes of 15% or less. (10 points)

C. Housing (30 points)

All affordable units designated for very low income households shall be regulated by an Affordable Housing Agreement and will have received all project approvals before submitting an application for allocation grants.

1. Affordable Housing (30 points)

- a. The project provides housing for lower or very low-income households, by reserving at least five (5) percent of the total project units as affordable, as follows:
 - i. Fifteen (15) points for each 5% of the total units designated for lower or very low income households. (no more than a total of 30 points).

D. Development Agreement (20 points)

Pursuant to Government Code Section 65864, a development agreement has been approved concurrently with the project's approval. All projects that receive points under this section of the Prioritization Criteria must show substantial evidence of compliance with all three components of the Managed-Growth Plan, Measure "Q": reducing air quality impacts; protecting the hillsides; and providing affordable housing. In addition, the Development Agreement shall also further each of the purposes of the Simi Valley Save Open-space and Agricultural Resources Measure "O". All projects that enter into a development agreement for the purpose of being placed in the Development Agreement Queue or for receiving 20 points in the Prioritization Criteria for placement in the All Other Projects Queue will be required to provide 20% of the units as affordable to low and very low-income households. If the developer or applicant wants another builder to provide the affordable component requirement off-site, a monetary contribution of \$10,000 to \$50,000 per unit will be required, depending on what is negotiated in the Development Agreement. (20 points)

EXHIBIT "E"

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
)
)
)
)
)
)

Space Above Line for Recorder's Use Only

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT ("**Conservation Easement**") is made this ____ day of _____, ____ by RUNKLE CANYON, LLC, a Delaware limited liability company ("**Grantor**"), in favor of the CITY OF SIMI VALLEY, a municipal corporation ("**Grantee**"). Grantor and Grantee are some time singularly referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Grantor is the sole owner in fee simple of certain real property consisting of approximately (1,095.9) acres, located in the City of Simi Valley, Ventura County, California, and described in **Exhibit "A"** attached hereto, and shown in **Exhibit "B"**, attached and by this reference made a part hereof ("**Property**"). The Easement Area consists of approximately 1,095.9 acres of land, consisting of lots F, H, I, K, FFF, GGG, HHH, III, JJJ, MMM, NNN, and OOO, as defined in Tentative Tract Map 5364 and the Runkle Canyon Specific Plan, adopted by the City Council of Simi Valley on May 10, 2004.

B. Landowner intends that the conservation values of the Property be preserved and maintained by permitting only those land uses that do not significantly conflict with those Conservation Values as are listed and described herein.

C. Grantor intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Property as described herein in perpetuity.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

1. Grant of Conservation Easement. Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property pursuant to the provisions of Civil Code section 815 et seq. This Conservation Easement shall run with the land and be binding on Grantor's heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Property or any portion of it.

2. Purpose. The purpose of this Conservation Easement is to ensure the Property will be retained in perpetuity for open space and other conservation purposes and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to such activities and uses as are specifically set forth on ***Exhibit "C"***, attached hereto and incorporated herein by this reference.

3. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (1) To enter upon the Property at reasonable times, with a 24-hour advance notice to Grantor (except in case of emergency, when advance notice shall be unnecessary), in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Conservation Easement, provided that the Grantee entering the Property shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property.
- (2) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;

4. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are consistent with the purposes of this Conservation Easement.

5. Assignment. This Conservation Easement is transferable by Grantee, but Grantee may assign its rights and obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3. The Grantee shall require its assignee to record the assignment in the county where the Property is located. Grantor may assign its obligations established in this Conservation Easement. In such a situation, Grantor shall provide notice to Grantee of such assignment.

6. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other party or parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-business-day delivery or by first class mail, postage prepaid, addressed as follows:

To Grantor: Runkle Canyon, LLC
Attn: Glen Longarini and Ron Mertz
2512 Springfield Court, Suite 180
Valencia, CA 91355

With a copy by mail to:
KB Home, Attn: Legal Department,
10990 Wilshire Blvd., Seventh Floor
Los Angeles, CA, 90024

And by e-mail to: pdarrow@kbhome.com

To Grantee: City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063
Attention: City Manager

or to such other address as a party shall designate by written notice to the other parties. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

7. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Ventura County, State of California.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement the day and year first above written.

Attest: **City of Simi Valley, A Municipal Corporation**

Ky Spangler
Deputy Director/City Clerk

By: _____
Robert O. Huber, Mayor of the City of Simi
Valley, California

Approved as to Form: **Runkle Canyon, LLC**
A Delaware Limited Liability Company

Lonnie J. Eldridge, City Attorney

By: _____
Glen Longarini, Authorized Agent

Approved as to Content:

Eric J. Levitt, City Manager

Jody Kershberg
Director of Administrative Services

Peter Lyons, Director
Department of Environmental Services

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant of the Conservation Easement dated _____, by RUNKLE CANYON, LLC is hereby accepted by the undersigned officer on behalf of the CITY OF SIMI VALLEY.

GRANTEE:

**City of Simi Valley,
A Municipal corporation**

By: _____
Eric J. Levitt
Its: City Manager

Dated: _____

Exhibit "A" [to Conservation Easement]

Legal Description

To Be Provided

Exhibit "B" [to Conservation Easement]

Map

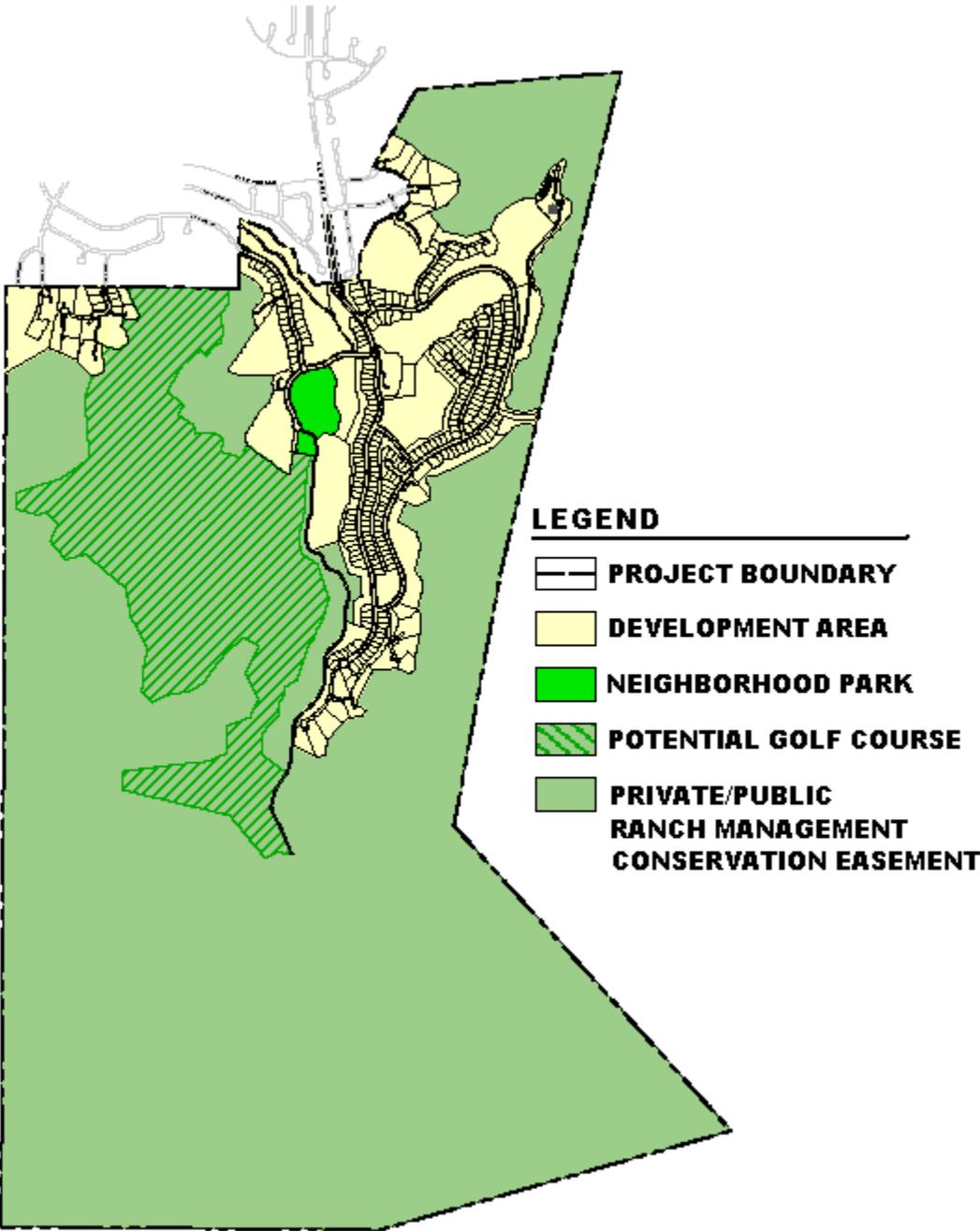


Exhibit "C" [to Conservation Easement]

Permitted Uses

Only the following Permitted Uses shall be permitted on the Property.

Other than the following uses listed below, other uses specifically including residential development is specifically prohibited.

The only Permitted Uses in the Open Space lots (F, H, I, K, FFF, GGG, HHH, III, JJJ, MMM, NNN and OOO), described as Exhibit "A" and as illustrated in recorded Tract Map 5364 Phases 1, 2, 3 and 4, Lot MMM, as illustrated in Tentative Tract Map 5364, and the Runkle Canyon Specific Plan, as adopted by the City Council of Simi Valley on May 10, 2004, shall be the following:

- a) Publicly accessible open space;
- b) Multi-use recreational paths, trails, interpretive nodes, information kiosks, and related facilities;
- c) Drainage facilities related to the Runkle Canyon Dam and Reservoir;
- d) Equestrian;
- e) Livestock grazing, unless restricted by agreement, permit, or ordinance;
- f) Environmental mitigation and habitat enhancement;
- g) Film and Television Production (no permanent structures);
- h) Improvements accessory to land uses allowed above.

The subdivision of the Easement Area may occur pursuant to by Sections 66418.2 and 66426 of the California Government Code allowing for the division of land that is purchased for mitigation and dedicated in perpetuity for environmental purposes. The Landowner specifically retains the right to create Environmental Subdivisions on the property.

ACKNOWLEDGMENT

State of California)

)

County of _____)

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

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)

EXHIBIT "F"

RUNKLE RANCH OPEN SPACE/MANAGEMENT PLAN

Purpose:

This Open Space/Ranch Management Plan is designed to:

Protect and enhance the panoramic, visual and aesthetic value of the Open Space Area; allow for the continuation of historic agricultural/grazing use of the property; preserve and enhance the rural and recreational use of the designated open space parcels contained in the Runkle Canyon Specific Plan.

Area Covered by Management Plan:

This Open Space/Ranch Management Plan shall apply to the following Open Space Lots, Zoned Open Space (SP), identified in recorded Tract Map 5364 Phases 1, 2, 3, and 4, including Tentative Tract Map 5364 MMM, (as described in Attachment A hereto) and the Runkle Canyon Specific Plan, as adopted by the City Council of Simi Valley on May 10, 2004:

1. Lot F
2. Lot H
3. Lot I
4. Lot K
5. Lot FFF
6. Lot GGG
7. Lot HHH
8. Lot III
9. Lot JJJ
10. Lot MMM
11. Lot NNN
12. Lot OOO

Existing Setting:

The area covered by this Open Space/Ranch Management Plan is approximately 1,096 acres, currently and historically used as a cattle grazing and ranch operation.

Burro Flats is a unique portion of Runkle Canyon's southern ridgeline that affords expansive views of the Simi Valley. The southeast corner of the Runkle Canyon Specific Plan area includes a portion of Burro Flats, known as "Dry Lake." This is likely due to the approximately 0.8 acre seasonal vernal pool at this location. Historically cattle were taken to Burro Flats/Dry Lake to graze and water.

During the 1930's throughout the 1950's many motion pictures and television series utilized the natural terrain, vegetation and ranch lands of Runkle Canyon, Burro Flats and its environs for scenic backdrops. Additional film production occurred near Runkle Canyon in the 1980's and 1990's.

Allowed Uses:

The only permitted uses on the parcels covered by the Open Space/Ranch Management Plan shall be:

- a) Publicly accessible open space;
- b) Multi-use recreational paths, trails, interpretive nodes, information kiosks, and related facilities;
- c) Drainage facilities related to the Runkle Canyon Dam and Reservoir;
- d) Equestrian;
- e) Livestock grazing, unless restricted by agreement, permit, or ordinance;
- f) Environmental mitigation and habitat Enhancement;
- g) Film and Television Production (no permanent structures);
- i) Improvements accessory to land uses allowed above.

The subdivision of the Open Space area may occur pursuant to Sections 66418.2 and 66426 of the California Government Code allowing for the division of land that is purchased for mitigation and dedicated in perpetuity for environmental purposes. The Landowner specifically retains the right to create Environmental Subdivisions on the property.

No Residential Development Permitted:

No residential development in the designated Open Space area is allowed.

Archaeological Areas:

Archaeological surveys within this Open Space area have discovered several sites that contain prehistoric stone hand tools and stone fragments. These sites shall be protected, per the Conditions of Approval of the Runkle Canyon Specific Plan.

Resource Stewardship:

All ranching and farming operations shall be conducted in accordance with good management practices that address soil and water conservation, erosion control, pest management, nutrient management and habitat protection.

Cattle Grazing:

Since 1910, the primary use of the property has been grazing of cattle and horses, and limited grain production. Based on the topography and vegetation, grazing lands are of limited value. Based on historic use, and weather patterns, approximately 70 pair of cattle (140 head equivalent) can be supported during a dry year, and up to 125 pair (250 head equivalent) can be supported in a typical year. Future use of the Open Space parcels shall not exceed 250 head equivalent per year.

Feedlots Prohibited:

The establishment or maintenance of a private or commercial feedlot is prohibited. For purposes of this Management Plan, "feedlot" is defined as a permanently constructed confined area or facility which is used and maintained for purposes of engaging in the business of feeding livestock and which is not grazed or cropped annually. For purposes of this Management Plan, a "feedlot" shall not include the establishment, use or maintenance of corrals, holding pens or pastures. Nothing in this section shall prevent Landowner from supplemental feeding, confining livestock for discretionary seasonal feeding or from leasing grazing rights for livestock owned by others.

Fencing:

Existing fencing may be repaired and replaced, at their existing locations, and new fencing erected for purposes of reasonable and customary management of livestock and wildlife, and for protection of designated mitigation and restoration areas. Such fencing shall not unreasonably interfere with the public access to established trails and paths.

Public Access/Trails:

Public access to the designated Open Space shall be via multi-use recreational paths and trails as designated in the Runkle Canyon Specific Plan (Figure 5.3-1/Appendix B). These trails and paths may be constructed, repaired and reasonably adjusted as to location. Landowner retains all ownership rights, including, but not limited to, the right to limit access by any member of the public to lands that are not subject to trail easements. Landowner may post signs or install fencing to protect private property from trespass and to protect public safety.

Vehicle access is permitted by Landowner for ranch management activities and operations, and by easement holders, including but not limited to Rancho Simi Recreation and Park District, Ventura County Watershed Protection District, Southern California Edison, and others.

Signs:

No billboards shall be erected in the designated Open Space. Signs describing permitted or prohibited activities in the Open Space area, and to control unauthorized entry or use, are permitted.

Runkle Dam and Reservoir:

Ventura County Flood Control District (now the Ventura County Watershed Protection District) completed construction in 1949 of the Runkle Dam and Reservoir to provide for improved flood control for lands and neighborhoods north of the Dam location. The Runkle Canyon Dam and Reservoir are not included in the Open Space area, however several drainage facilities and access roads related to the Runkle Canyon Dam and Reservoir are located in the Open Space area.

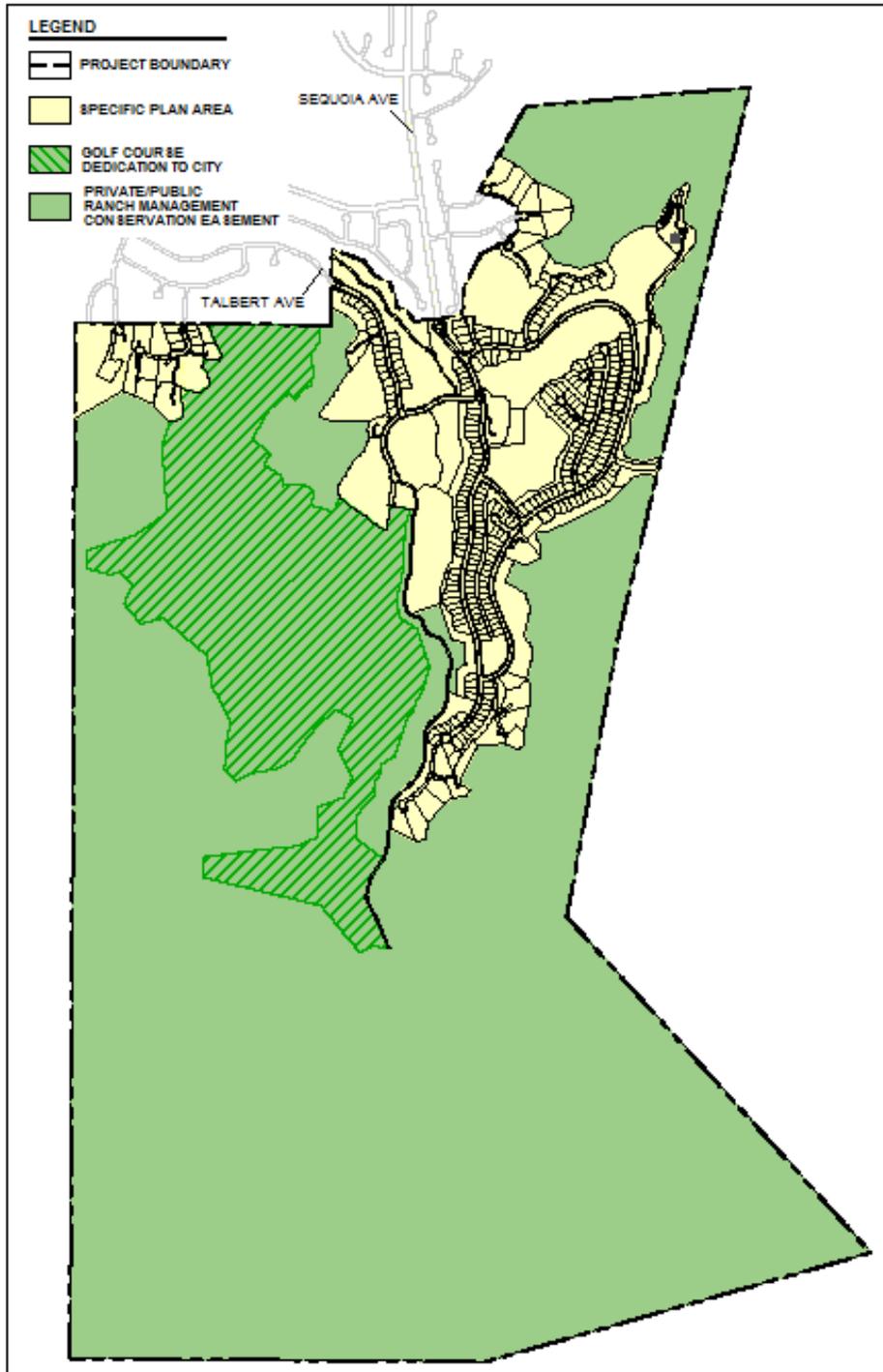
Vegetation Management/Pest Management:

Nothing in this document shall prohibit the reasonable vegetation management for fire safety, or to control or eliminate noxious weeds and non-native plant species from the property. Landowner shall have the right to plant, maintain, and/or remove native vegetation on the property. Any use of controlled burning shall be coordinated with the County/City Fire Department and Air Pollution Control District. Use of pesticides, herbicides or other biocides shall be done using best management practices in conformity state law and County Agricultural Commissioner's rules. Landowner shall have the right to control or eradicate feral and non-native animals.

Attachment A: Tract Map showing Open Space Parcels

Attachment B: Figure 5.3-1 Conceptual Trail System Master Plan

Attachment "A" [to Runkle Ranch Open Space/Management Plan]



SITE PLAN
Runkle Canyon Specific Plan



Attachment "B" [to Runkle Ranch Open Space/Management Plan]
[[Figure 5.3-1 Conceptual Trail System Master Plan]]

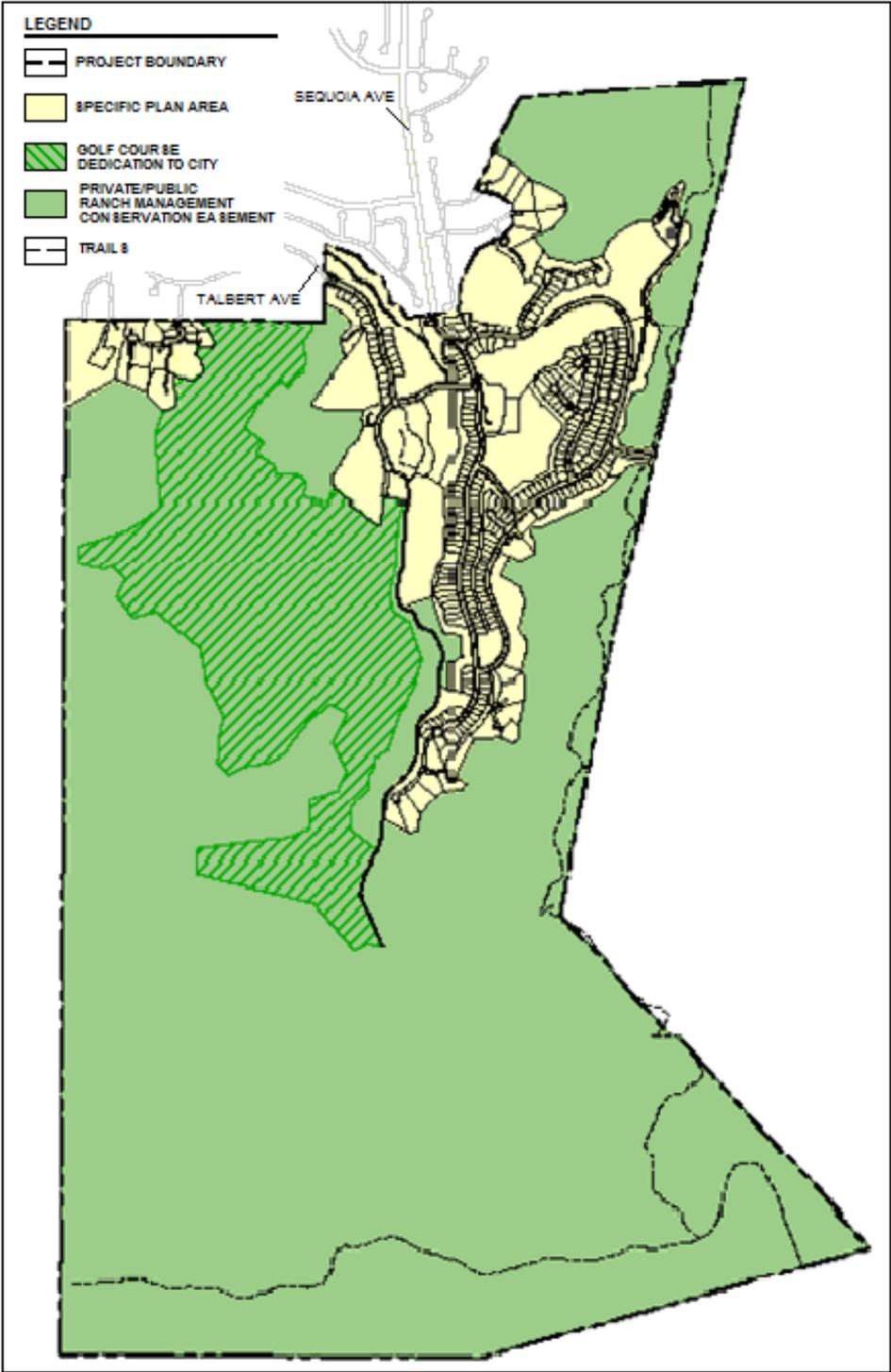


EXHIBIT "G"

LIST OF PROPERTY'S DEVELOPMENT APPROVALS

1. Tentative Tract Map No. TT5364 and Planned Development Permit PD-S-930 approved per City Council Resolution No. 2004-43;
2. Planned Development Permit PD-S-930 Modification PD-S-930 MOD#1 approved per Planning Commission Resolution No. SVPC 09-2013;
3. Planned Development Permit Modification PD-S-930 MOD#2 approved per Planning Commission Resolution No. SVPC 07-2015;
4. Conditional Use Permit CUP-S-770 approved per Planning Commission Resolution No. SVPC 08-201;5
5. Runkle Canyon Specific Plan, SP-S-24 approved per City Council Ordinance No. 1057;
6. Second Amended and Restated Affordable Housing Agreement ("Senior Housing Agreement") (AH-0-47 AMD#2); and,
7. All other entitlement approvals for development of the Property, including but not limited to all CEQA compliance documents certified or approved by the City.

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

City of Simi Valley
Attn. City Clerk
2929 Tapo Canyon Road
Simi Valley, CA 93063

[Space above for recorder's use.]

This document is recorded for the benefit of the City of Simi Valley and therefore is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

APN: 634-0-333-25/634-0-340-01

**SECOND AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT
("SENIOR HOUSING AGREEMENT") (AH-O-47 AMD#2) BETWEEN THE CITY OF
SIMI VALLEY AND RUNKLE CANYON, LLC**

This Second Amended and Restated Affordable Housing Agreement ("Senior Housing Agreement" or "SHA") (AH-O-47 AMD#2) provides rights to the City of Simi Valley in regulating the sale and occupancy of one hundred thirty-eight (138) units for senior households within the Runkle Canyon Development, 461-unit subdivision for a period of fifty-five (55) years from the initial sale date of each Senior Housing Unit.

This Senior Housing Agreement is entered into as of the same date as the Second Amended and Restated Development Agreement (DA-04-01 AMD#2) (“the SHA Effective Date”), by and between the City of Simi Valley, a municipal corporation (the “City”), and Runkle Canyon, LLC, a Delaware limited liability company (the “Developer”), (each a “Party,” and collectively, “Parties”), with reference to the following facts:

A. The Developer is the owner of certain real property consisting of approximately 12.51 acres located generally at the northeast corner of Sequoia Avenue and Palm Street in the City of Simi Valley, California, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Property”).

B. In order to qualify in the Development Agreement Queue of the Residential Building Permit Allocation System, DEVELOPER was required to set aside twenty- percent (20%) of the Runkle Canyon Development as affordable to income qualified seniors.

C. The Property is subject to that certain Amended and Restated Affordable Housing Agreement, by and among the City of Simi Valley, a municipal corporation (the “City”) and Runkle Canyon, LLC, a Delaware limited liability company recorded in the Official Records of the County of Ventura on June 15, 2015 as Document No. 20150615-00090013-0 (the “Affordable Agreement”). The property is also subject to that certain Development Agreement Amendment No. DA-04-01, and as may be amended, by and among the City of Simi Valley and Runkle Canyon, LLC (the “Development Agreement”). The Parties anticipate amending the Development Agreement concurrently with entering into this SHA. This SHA rescinds the Affordable Agreement in its entirety, and shall supersede all provisions in the Affordable Agreement.

D. Under the terms of Section 2.01 of the Affordable Agreement, Runkle Canyon, LLC agreed to provide sixty-two (62) of the one hundred thirty-eight (138) for- sale senior units within the 461 unit subdivision (the “Project”) to low-income households at an affordable price and pay a fee in-lieu totaling Nine Hundred Thousand Dollars (\$900,000) or \$30,000 per unit for each of the 30 senior units (the “AA In-Lieu Fee”), which are also required per Exhibit C, Part I.E and Part II.A.2 of the Development Agreement.

E. Under the terms of Section 14.07 of the Affordable Agreement, the obligation to provide the affordable housing units under the Affordable Agreement is binding upon the Developer.

F. Under the terms of Section 14.09 of the Affordable Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations under the Affordable Agreement constitute covenants running with the land and are binding upon the Developer.

G. The Developer represents that as a result of changes to market conditions, the Developer desires to terminate the Affordable Agreement and pay a

fee in- lieu of providing sixty-two (62) of the one hundred thirty-eight (138) for sale units to low- income households. On May 18, 2016, the Developer requested and the City of Simi Valley Affordable Housing Sub-Committee recommended that the City Council approve this SHA. The Developer and City mutually agree that this SHA will provide an alternate means of satisfying the Developer's affordable housing obligations in the Affordable Agreement and as conditioned by the City in the approvals for the Runkle Canyon Development, and the Parties mutually agree that this SHA, requiring a payment of \$4.0 million to the City (\$900,000 as previously agreed to in the Affordable Agreement plus \$3.1 million as agreed in this SHA), and the Parties concurrent entry into the Second Amended and Restated Development Agreement for related public purposes, shall fully satisfy all prior affordable housing obligations imposed upon the development of the Property, including but not limited to those imposed by the Affordable Agreement and all of the entitlement approvals for the development of the Property, which approvals are more particularly described on Exhibit B, attached hereto and incorporated herein (the "Entitlement Approvals")

H. Therefore, in accordance with the foregoing paragraph, the Developer has agreed to the following: 1) make a Three Million One Hundred Thousand Dollars (\$3.1 million) payment to the City under the Resolution 2003-70 of the City's Residential Building Permit Allocation System; 2) make a \$900,000 payment to the City as agreed to in the Affordable Agreement; and 3) concurrently enter into the Second Amended and Restated Development Agreement. These actions by Developer fully satisfy all of the Developer's affordable housing obligations with respect to the Project.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed by the Parties as follows:

ARTICLE I DEFINITIONS

- 1.1 The following terms shall have the following meanings in this SHA:
- (a) "Days" shall mean calendar days.
 - (b) "DEVELOPER" shall mean all applicants, developers, permittees, and all owners of the subject Project and all successors and assigns thereto.
 - (c) "Development Agreement" shall mean that certain Second Amended and Restated Development Agreement (DA-04-01 AMD#2) entered into between City and DEVELOPER concurrent with this SHA,
 - (d) "Eligible Buyer" shall mean a Senior Household.
 - (e) "Owner" shall mean the person or all of the persons holding legal title to the Senior Housing Unit, and their successors to that title.

- (f) "Runkle Canyon Development" shall mean the four hundred and sixty-one (461) single-family housing units to be developed on the 1,595.5-acre site, including approvals of GPA-58; Z-S-570; SP-S-24; TT-5364; PD-S-930 and associated modifications, TP-S-616; TP-S-616; CUP-S-770, DA-01-03; CSV- ANEX-73; as well as the conditions of approval, construction and all related improvements located therein.
- (g) "Public Report" shall mean the document of the same name issued by the Bureau of Real Estate of the State of California with respect to sales of subdivision units.
- (h) "Senior Household" shall mean a household in which at least one household member is fifty-five (55) years of age or older, and may also include a household member without age restriction who is a caretaker providing primary physical or economic support, and which otherwise meets all the requirements established in California Civil Code Section 51.3 et seq., as may be adopted and amended from time to time, and any other household complying with California Civil Code Section 51.3 et seq.
- (i) "Senior Housing Unit (SHU)" shall mean each of the one hundred and thirty-eight (138) units reserved for sale and occupancy by Eligible Buyers, sometimes referred collectively as "SHUs".
- (j) "Transfer" shall mean any voluntary or involuntary sale, assignment or transfer of ownership of or any interest in the Project, including but not limited to, a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the Project, or any interest evidenced by a land contract, a trustee's sale, judicial foreclosure sale, or deed in-lieu of foreclosure.

**ARTICLE II
TERMINATION OF PRIOR AGREEMENT**

- 2.1 The Affordable Agreement is hereby terminated in its entirety and replaced by this SHA, providing an alternate means for satisfying all of the Developer's affordable housing obligations, including but not limited to all prior affordable housing obligations imposed upon development of the Property by the superseded Affordable Agreement and the previous Entitlement Approvals, more particularly described in attached Exhibit B.

**ARTICLE III
IN-LIEU FEES**

- 3.1 In-Lieu Fee of \$900,000. Runkle Canyon, LLC agrees to pay the AA In-Lieu Fee totaling Nine Hundred Thousand Dollars (\$900,000) or \$30,000 per unit for each of the 30 senior units, as previously agreed to in the superseded Affordable Agreement, which are also described in Exhibit C, Part I.E and Part II.A.2 of the Development Agreement.

- 3.2 Time of Payment for \$900,000; Satisfaction of Obligation. For the AA In-Lieu Fee of \$30,000 per unit of 30 affordable units: the first two hundred fifty thousand dollars (\$250,000) shall be paid at the time of the approval of the first residential Zoning Clearance for the 138-unit senior development within the Project. An additional two hundred fifty thousand dollars (\$250,000) shall be paid within one year after the date. The remaining four hundred thousand dollars (\$400,000) shall be paid at the time of the approval of the Zone Clearance that includes the 200th unit for the Project.
- 3.3 In-Lieu Fee of \$3,100,000. In addition to the AA In-Lieu Fee payment of \$900,000 described in section 3.1 above, the Developer shall pay an affordable housing obligation fee in the amount of Three Million One Hundred Thousand Dollars (\$3,100,000) in this SHA,(the "SHA In-Lieu Fee," and collectively, with the AA In-Lieu Fee, the "In-Lieu Fees"), to the City under Section II.D of Resolution 2003-70 of the City's Residential Building Permit Allocation System, and Developer shall concurrently enter into the Second Amended and Restated Development Agreement, to fully satisfy all of the Developer's affordable housing obligations with respect to the Property, including but not limited to all affordable housing obligations previously imposed by the Entitlement Approvals, as described on attached Exhibit B.
- 3.4 Time of Payment for \$3,100,000; Satisfaction of Obligation. The Developer shall pay the SHA In-Lieu Fee in the amount equal to Three Million One Hundred Thousand Dollars (\$3,100,000) prior to the issuance building permits based on the following schedule: first payment of Seven Hundred Seventy Five Thousand Dollars (\$775,000) upon building permit issued for the seventy-fifth (75th) unit on the Property; second payment of Seven Hundred Seventy Five Thousand Dollars (\$775,000) shall be paid upon building permit issued for the one hundred and fifty (150th) unit on the Property; third payment of Seven Hundred Seventy Five Thousand Dollars (\$775,000) shall be paid upon building permit issued for the two hundred and twenty-fifth (225th) unit on the Property; fourth and final payment of Seven Hundred Seventy Five Thousand Dollars (\$775,000) shall be paid upon building permit issued for the two hundred and seventy-fifth (275th) unit on the Property; or all payments shall be made no later than five (5) years following the SHA Effective Date, whichever occurs first. The City shall not issue building permits for more than seventy-four (74) units at the Property prior to the Developer's first payment of the SHA In-Lieu Fee. The Developer's financial obligations under this SHA shall be deemed to be fully satisfied at such time as it has paid the full In-Lieu Fees to the City
- 3.5 Use of In-Lieu Fees. The City shall deposit the \$900,000 and the \$3.1 million in In-Lieu Fees paid pursuant to the terms of this SHA into the City's Local Housing Fund for use to increase, improve, and/or preserve the supply of affordable senior housing in the City.

**ARTICLE IV
DESIGNATION OF SENIOR HOUSING UNITS**

- 4.1 Designation of Senior Housing Units. CITY and DEVELOPER agree that: (a) the provisions which require each of the 138 units to be reserved for and occupied by Senior Households; (b) the payment of the AA In-Lieu Fee totaling Nine Hundred Thousand Dollars (\$900,000), or \$30,000 per unit for each of the 30 senior units; (c) the payment of the SHA In-Lieu Fee totaling Three Million One Hundred Thousand Dollars (\$3,100,000) in this SHA or \$50,000 per unit for each of the 62 senior units; and (d) Section 12.02 hereof, the Indemnification and Hold Harmless provisions, and Developer's concurrent entry into the Second Amended and Restated Development Agreement, are the primary considerations provided by DEVELOPER to cause the CITY to enter into this SHA. Without waiving any other rights, remedies or obligations under this SHA, the Parties hereto agree that any failure to sell any of the 138 units to Senior Households, or to make the payment of the In-Lieu Fees, or breach the provisions of Section 12.02, shall constitute a material breach of this SHA.

**ARTICLE V
CITY INCENTIVES**

- 5.1 Density Bonuses and Other Incentives. Pursuant to the State Density Bonus Law (Government Code Section 65915) ("DBL"), a senior housing project may be entitled to a density bonus. As the senior portion of the project includes 138 units, a density bonus of 20% is required under the DBL, and the City hereby grants an additional density bonus of 12.9%, for a total density bonus of 32.9%, consistent with Sections 65915(b)(1)(C), (f)(3) and (n) of the California Government Code.

The CITY has further agreed to provide additional concessions in the form of: 1) a reduction in the park in-lieu fee to be determined at the time a modification of PD-S-930 is approved for the senior units and 2) a waiver to the payment of the Public Facility Contribution fee for the affordable units in accordance with the Development Agreement.

- 5.2 Eligibility for Development Agreement Queue. It is understood and agreed by the parties that DEVELOPER would not be eligible for the Development Agreement Queue of the CITY's Residential Building Permit Allocation System without satisfying the requirements of SVMC Section 9-1.1803(a)(7); the execution, recordation and implementation of this SHA and the payment of the AA In-Lieu Fee for thirty (30) units, the payment of the SHA In-Lieu Fee for sixty-two (62) units and Developer's concurrent entry into the Second Amended and Restated Development Agreement. DEVELOPER has requested that this SHA be entered into as a condition for such eligibility and acknowledges that eligibility of the Runkle Canyon Development entitlements is specifically conditioned upon the Developer concurrently entering into this SHA and the Second Amended and Restated Development Agreement, and recordation of the same, and DEVELOPER's full and complete abidance by the terms thereof.

**ARTICLE VI
TERM**

- 6.1 Term of Agreement. The term of this SHA will be for a period of fifty-five (55) years commencing on the initial sale date of the first senior unit in the Project.

**ARTICLE VII
DEVELOPER PROMISES**

- 7.1 Development of Project. DEVELOPER agrees to pursue to completion the development of the 138 senior units within the Runkle Canyon Development consistent with Section 25 (Timing of Development) of DA-0401 AMD#2. DEVELOPER further agrees: (a) to ensure all units in the Project are reserved for Senior Households; and (b) to ensure that each initial Eligible Buyer executes an Affidavit and Acknowledgement of Age Qualified Occupancy prior to the close of escrow
- 7.2 Approvals. DEVELOPER agrees to obtain all required approvals, permits, allocation grants, licenses, waivers or variances (collectively referred to in this SHA as the "SHA Approvals") from all governmental agencies having jurisdiction with respect to the Project. DEVELOPER agrees to diligently pursue applications working in close conjunction with CITY. It is specifically understood and agreed by the parties that the City, the City Council, Planning, Commission and CITY's Affordable Housing Subcommittee retain complete discretion to review plans and applications submitted by DEVELOPER and to approve, disapprove, condition, or make recommendations with regard to those plans in their discretion. Nothing contained in this SHA is intended to restrict CITY in its planning and building permit process or in its authority to review applications in accordance with all federal, state, and local laws, nor shall CITY's failure to approve or grant a conditioned approval be a breach of this SHA nor be a basis for any claim or cause of action against the CITY.
- 7.3 Compliance with Use and Occupancy Laws. DEVELOPER agrees that for each sale, the DEVELOPER shall comply with all applicable State and local laws, statutes, ordinances, rules and regulations, as well as this SHA, restricting the use and occupancy and sale of each SHU in the Project.
- 7.4 Disabled Persons Occupancy. DEVELOPER agrees to cause the Development to be operated at all times in compliance with the provisions of: (1) the Unruh Act (Civil Code Section 51), (2) the California Fair Employment and Housing Act (Government Code Section 12900 – 12996), (3) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 701), (4) the United States Fair Housing Act, as amended (42 U.S.C. Section 12101), which relate to disabled persons access. Owner shall defend, indemnify, and hold harmless the City, its agents, officials, officers, representatives, and employees, from and against all claims, lawsuits, liabilities or damages of whatever nature arising out of or in connection with, or relating in any manner to any act or omission of Owner, its agents, employees, and subcontractors, and employees

thereof, pursuant to the performance or non- performance of this SHA. The Owner shall thoroughly investigate any and all claims and indemnify the City and do whatever is necessary to protect the City, its agents, officials, officers, representatives, and employees as to any such claims, lawsuits, liabilities, expenses, or damages arising out of this SHA.

- 7.5 Marketing and Sale of Senior Units. DEVELOPER agrees to market and sell the 138 senior units, which are the subject of this SHA, only to Eligible Buyers and to sell the balance of the remaining exempt Three Hundred Twenty Three (323) Units to buyers without age restrictions.
- 7.6 Buyer Affidavit of Eligibility for Purchase of SHU. Upon the first sale by DEVELOPER of an SHU to an Eligible Buyer or Buyers (“Buyers”), the DEVELOPER shall cause the Buyers of the SHU to sign an affidavit of eligibility and acknowledgement (“Buyer Affidavit of Eligibility”), attesting to the Buyer’s eligibility, or other residents’ eligibility, if the Buyers will not reside in the unit, to purchase a SHU, in the form attached hereto as Exhibit C. Upon any subsequent sale, the then-current Buyers who own the property shall cause any future Eligible Buyers to execute the Buyer Affidavit of Eligibility. This obligation of Buyers with respect to the Buyer Affidavit of Eligibility is enforceable by City against all future Buyers or owners of the property.
- 7.7 No Conveyance Without Execution of Affidavit and Acknowledgement of Age Qualified Occupancy. No SHU may be conveyed to a buyer during the 55 year term of this SHA without execution by the buyer of the affidavit attached hereto as Exhibit C, confirming that the buyer is 55 years of age or older, and thus eligible to purchase a SHU.
- Preparation of Closing Documents. DEVELOPER agrees to provide to the escrow for the sale of each SHU all appropriate closing documents which shall substantially conform to the requirements of this SHA.
- 7.8 Effect and Duration of Covenants. The covenants contained in this SHA shall be deemed to run with the land and shall remain in effect for a period of not less than fifty-five (55) years from the initial sale date of each senior unit.
- 7.9 Non-Subordination. This SHA shall not be made subordinate to any monetary lien recorded against the Property from the SHA Effective Date until the In-Lieu Fees are received by the City, except for any construction financing lien(s) recorded against the Property in order to allow Developer to comply with requirements of the Development Agreement being entered into concurrently with this SHA. The City shall not unreasonably withhold, condition or delay its consent to subordination of its rights hereunder to any such liens related to construction financing of the Project and shall promptly execute all documents reasonably required to evidence its subordination to such liens.
- 7.10 Polices to Ensure Senior Household Status of Community. DEVELOPER agrees that, in formulating the homeowner’s association (HOA), it will place in the association’s rules and covenants, conditions, and restrictions (CC&R’s) that the

HOA must adhere to policies and procedures that demonstrate an intent to operate as a community for Senior Households, including at a minimum policies that require such intent to be stated in: advertising for the facility, if any; written rules or regulations of the HOA; the practices of the HOA; and reasonable public postings in the common areas of the facilities representing that the community is intended for Senior Households. In addition, the association's rules must include a requirement that the HOA provide to the City upon request, no more frequently than once every two years, a reasonable estimate by the HOA of the number of units in the community that qualify as Senior Households.

ARTICLE VIII

[Intentionally left blank]

**ARTICLE IX
DISCLOSURE OF DOCUMENTS**

- 9.1 Review of Agreements and Disclosures. DEVELOPER agrees to disclose and review the provisions of this SHA with each potential buyer and their legal counsel, if requested. DEVELOPER agrees to make each sale of an SHU a condition precedent to each buyer's review, understanding of this SHA, and execution of the Buyer Affidavit of Eligibility. The requirements of this Section 9.1 apply to all future Buyers or owners of the Property.
- 9.2 Copies Provided. DEVELOPER agrees to provide each potential buyer with a copy of this SHA and the Buyer Affidavit of Eligibility, at the DEVELOPER's expense, and agrees to require that each buyer sign a statement in typeface of not less than twelve (12) point type acknowledging that he/she has received, read and understood the documents prior to receipt of a deposit for the purchase of a senior unit. DEVELOPER agrees that copies of the receipt statement, and age verification documents must be obtained prior to the opening of escrow. The requirements of this Section 9.2 apply to all future Buyers or owners of the Property.
- 9.3 Future Buyers or owners are subject to all provisions of this SHA which by their terms are applicable to future Buyers or owners, in addition to the provisions of Section 12.10 through 12.20.

**ARTICLE X
NON-DISCRIMINATION**

- 10.01 DEVELOPER covenants and agrees, by and for itself, its executors, administrators and assigns and all persons claiming under or through DEVELOPER that there shall be no discrimination against, or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, physical disability, mental condition, national origin or ancestry in the sale, transfer, use, occupancy, tenure or enjoyment of the Runkle Canyon Development or the Project, or any part thereof.

**ARTICLE XI
REPORTING AND AUDIT REQUIREMENTS**

- 11.1 Status Reports. From the time of commencement of construction of the first building until the last SHU has closed escrow, DEVELOPER agrees to provide, in such details as may reasonably be required by CITY, a Unit Summary Report no less than quarterly, which shall completely describe the actual progress of construction of the SHUs. The Report shall identify the status of each SHU using the format attached as Exhibit D to this SHA, incorporated herein by reference. DEVELOPER agrees to permit the sales office records to be inspected by the CITY to verify compliance with the terms of this SHA.
- 11.2 Notification of Public Report. DEVELOPER agrees that within thirty (30) days after receipt of the issuance of the final Public Report from the Bureau of Real Estate of the State of California regarding the Runkle Canyon Development, and of any subsequent Public Report, it will notify and provide CITY with a copy of that Report.

Notification of First SHU Available. DEVELOPER agrees to notify CITY at least thirty (30) days in advance of the date on which the first SHU will become available for sale.

- 11.3 Audit. DEVELOPER shall permit the CITY, with reasonable notice and during normal business hours, to inspect the Project to verify DEVELOPER's compliance with this SHA. DEVELOPER shall make available to the CITY, during business hours, such records as the CITY may reasonably request to verify such compliance. Should DEVELOPER fail to submit timely reports as required by Section 11.01 above, CITY may cause an audit to be conducted at the sole expense of DEVELOPER, in addition to any other available legal remedies. DEVELOPER shall cooperate with any such audit and further agrees to make available to CITY all documents relative to the sale of the SHUs and the Exempt Units to verify compliance with the terms of this SHA.

**ARTICLE XII
MISCELLANEOUS**

- 12.1 Notice Requirement Upon Default. If either party defaults or breaches any of the terms or conditions of this SHA, such party shall have thirty (30) days after service upon it of written notice of such default or breach in which to cure such default or breach by rendering a performance satisfactory to the other party unless such a delay would be futile. DEVELOPER and CITY may mutually agree to an extension of this time, provided that such Agreement is in writing.
- 12.2 Indemnification and Hold Harmless.
- (a) DEVELOPER hereby agrees to, and shall, defend, indemnify, save and hold CITY and its elected and appointed boards, commissions,

officers, agents and employees harmless from any and all claims, actions, costs, and liability for any damages, personal injury or death, which may arise, directly or indirectly, from DEVELOPER or DEVELOPER's contractors', subcontractors', agents', or employees' operations under this SHA. However, CITY shall select the attorney to represent the CITY, if DEVELOPER is a party, DEVELOPER's legal counsel shall reasonably cooperate in the defense of any such action, and CITY shall promptly transmit notice to DEVELOPER regarding the filing and service of a lawsuit relating to this SHA, as described herein, and provide a copy of any lawsuit to DEVELOPER within 30 calendar days of service upon the CITY.. The terms of this Section shall survive any termination of this SHA.

- (b) DEVELOPER shall not bring any claims, cross-claims, actions, actions or cross-complaints against the CITY, its agents, employees or representatives, arising out of any disputes between DEVELOPER and third parties as to the CITY approvals or the issuance of building permits for this Project.

12.3 Not for Benefit of Third Parties. This SHA does not create any enforceable right, cause of action, or claim in any third party. DEVELOPER, CITY or their successors in interest shall be the sole parties who shall have standing to enforce the terms or obligations or to bring suit for damages arising out of a breach of this SHA.

12.4 Violation of Conditions of Approval. Any violation of the conditions of any of the Project Approvals, including Specific Plan SP-S-24, the Development Agreement, and Planned Development Permit Modification PD-S-930 MOD#1, except for Conditions of Approval A-16 and A-17 in PD-S-930, which are superseded by Section 25 of the Second Amended and Restated Development Agreement, will also constitute a violation of this SHA, except to the extent any such conditions with respect to the DEVELOPER'S affordable housing obligations are modified by this SHA, and shall be enforceable as a breach hereof, as well as any other remedies available to the CITY.

12.5 Enforcement. If the DEVELOPER defaults in the performance or observation of any covenant, Agreement or obligation of the Developer set forth in this SHA, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the CITY to the DEVELOPER, then the CITY may declare an "Event of Default" to have occurred hereunder, and, at its option, may take any one or more of the following steps:

- (a) By mandamus or other suit, action or proceeding at law or in equity, require the DEVELOPER to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the CITY hereunder;
- (b) Have access to and inspect, examine and make copies of all of the books and records of the DEVELOPER pertaining to the Project;

Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and Agreements of the DEVELOPER.

The provisions of this Section 12.5 apply to, and are enforceable against, all future Buyers or owners of the Property

12.6 Assignment of Agreement. This SHA shall be binding upon DEVELOPER its executors, administrators and assigns. DEVELOPER shall not assign or transfer any of its rights or obligations under this SHA without the prior written consent of the CITY and any purported assignment made without its consent shall be null and void for all purposes; provided, however, that CITY's consent shall not be unreasonably withheld.

12.7 Recordation of Agreement.

- (a) Immediately following execution by the City and the Developer, the City shall cause this SHA to be recorded against the Property in the Official Records of the County of Ventura.
- (b) The covenants and conditions herein contained shall apply to and bind, during their respective periods of fee ownership, the Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property until terminated in accordance with this Section. Until the Property is released from the burdens of this SHA, the owners of fee title to the Property shall expressly make the conditions and covenants contained in this SHA a part of any deed or other instrument conveying any interest in such property.
- (c) At such time as the Developer has satisfied all conditions of this SHA and is released from the burdens of this SHA, this SHA shall be deemed fully satisfied by the Developer, and the City shall promptly evidence same by executing, upon Developer's request, a document confirming the Developer's full compliance with this SHA. Such evidence of Developer's full compliance will not necessary relieve Buyers or future owners of continuing obligations under this SHA.

12.8 Covenants Run with the Land. All of the provisions, Agreements, rights, powers, standards, terms, covenants and obligations contained in this SHA shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, reorganization or otherwise), and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Runkle Canyon Development, or the Project, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this SHA, including without limitation those applying to Buyers or owners of the property shall constitute covenants running with the land.

12.9 Notices. Written notice, demands and communications between CITY and DEVELOPER shall be deemed sufficient if dispatched by registered or certified mail, postage prepaid, return receipt requested to the principal offices of CITY and DEVELOPER, the addresses of which are hereinafter set forth. Such written notices, demands and communications may be sent in the manner prescribed to each other's addresses as either party may, from time to time, designate by mail, or the same may be delivered in person to representatives of either party upon such premises. The addresses are as follows:

(a) If to CITY:

City of Simi Valley
Attn: Director of Environmental Services
2929 Tapo Canyon Road
Simi Valley, CA 93063

(b) If to DEVELOPER:

Runkle Canyon, LLC
Attn: Glen Longarini and Ron Mertz
25152 Springfield Court, Suite 180
Valencia, CA 91355

With a copy to by mail and e-mail to:

KB Home, Attn: Legal Department
10990 Wilshire Blvd., Seventh Floor
Los Angeles, California 90024

And by e-mail to: pdarrow@kbhome.com

Notices herein shall be deemed given as of the date of personal service or three (3) consecutive calendar days after deposit of the same in the custody of the United States Postal Service.

12.10 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this SHA by the other party or the failure by the party to exercise its rights hereunder or upon a default by the other party herein shall not constitute a waiver of such party's right to demand strict compliance from such other party in the future.

12.11 Severability. If any one or more of the provisions contained in this SHA shall for any reason be held by a court of competent jurisdiction in a final, non-appealable decision to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this SHA, and this SHA shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein. In that event, both the City and Developer must confirm

in writing, in a notice to the other party, that the remaining terms of SHA are acceptable and enforceable, and the SHA, as revised, shall be recorded with the County of Ventura, Recorder's Office.

- 12.12 Caption and Pronouns. The captions and headings of the various Sections of this SHA are for convenience only, and are not be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and masculine, feminine and neuter shall be freely interchangeable.
- 12.13 Modification of Agreement. This SHA may be modified or amended by mutual consent of all of the parties, provided that all amendments are in writing and recorded with the County of Ventura, Recorder's Office.
- 12.14 Expenses. Developer shall pay City immediately upon demand all reasonable costs and expenses incurred by City in connection with the enforcement or satisfaction by City of any of Developer's obligation under this SHA.
- 12.15 Further Assurances. DEVELOPER shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper to carry out the purposes of this SHA.
- 12.16 Time. Time is of the essence of each term of this SHA.
- 12.17 Governing Law. This SHA shall be governed by, and constructed in accordance with the laws of the State of California. DEVELOPER and all persons and entities in any manner obligated to CITY under this SHA consent to the venue in the state court having jurisdiction where the property is located and also consent to service of process by any means authorized by California law.
- 12.18 Joint and Several Liability. The liability of all persons and entities who are in any manner obligated under this SHA shall be joint and several.
- 12.19 Conflicts of Interest. No member, official or employee of the CITY shall have any personal interest, direct or indirect, in this SHA, nor shall any such member, official or employee participate in any decision relating to this SHA which affects his or her personal interest or interests of any corporation, partnership or association in which he or she is directly or indirectly interested. The DEVELOPER warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this SHA.

12.20 Non-liability of CITY Officials and Employees. No member, elected official, officer or employee of the CITY shall be personally liable to the DEVELOPER in the event of any default or breach by the CITY or for any amount which may become due to the DEVELOPER or on any obligations under the terms of this SHA. IN WITNESS WHEREOF, the Parties hereto have executed this Senior Housing Agreement as of the Effective Date.

Attest: **City of Simi Valley, A Municipal Corporation**

/s/
Ky Spangler
Deputy Director/City Clerk

By: /s/
Robert O. Huber, Mayor of the
City of Simi Valley, California

Approved as to Form: **Runkle Canyon, LLC**
A Delaware Limited Liability Company

/s/
Lonnie J. Eldridge, City Attorney

By: /s/
Glen Longarini, Authorized Agent
Its:

Approved as to Content:

/s/
Eric J. Levitt, City Manager

/s/
Jody Kershberg
Director of Administrative Services

/s/
Peter Lyons, Director
Department of Environmental Services

EXHIBIT A**LEGAL DESCRIPTION**

Lot 208 and Parcel BD of Tract No. 5364, in the City of Simi Valley, County of Ventura, State of California, as per Map recorded in Book 162, pages 49 through 89, inclusive, of Maps, in the Office of the County Recorder of said County.

Except as to an undivided 50% interest of all oil, gas, minerals and other hydrocarbon substances in and under said land, without, however, any right to enter on the surface or within 500 feet beneath the surface thereof, as reserved by John H. Runkle, Gena T. Runkle, Ralph W. Runkle, James V. Runkle, Easter I. Runkle, Mary A. Heflin, as Executrix of the Will of Cowan A. Heflin, deceased, Mattie B. Runkle, Dewey R. Runkle, Marjorie E. Brown, Barbara C. Kelley, Beverly A. Speight, Robert E. Lane, Stanley P. Carter and Keith D. Lane, in deed recorded December 3, 1979, in Book 5553, Pages 1 and 27 of Official Records.

Except from a portion of said land an undivided 50% of all oil, gas, minerals and other hydrocarbon substances in and under said land, without, however, any right to enter on the surface or within 500 feet beneath the surface thereof, as reserved by John H. Runkle, Gena T. Runkle, Ralph W. Runkle, James V. Runkle, Easter I. Runkle, Mary A. Heflin, Henry L. Gates, Irene R. Gates, Mary A. Heflin, as Executrix of the Will of Cowan A. Heflin, deceased, Mattie B. Runkle, Dewey R. Runkle, Marjorie E. Brown, Barbara C. Kelley, Beverly A. Speight, Robert E. Lane, Robert T. Lane, Stanley P. Carter and Keith D. Lane, in deed recorded December 6, 1979 in Book 5555, Page 211 of Official Records.

EXHIBIT B

LIST OF PROPERTY'S DEVELOPMENT APPROVALS

1. Tentative Tract Map No. TT5364 and Planned Development Permit PD-S-930 approved per City Council Resolution No. 2004-43;
2. Planned Development Permit PD-S-930 Modification PD-S-930 MOD#1 approved per Planning Commission Resolution No. SVPC 09-2013;
3. Planned Development Permit Modification PD-S-930 MOD#2 approved per Planning Commission Resolution No. SVPC 07-2015;
4. Runkle Canyon Specific Plan, SP-S-24 approved per City Council Ordinance No. 1057;
5. Second Amended and Restated Development Agreement (DA-04-01 AMD#2; and,
6. All other entitlement approvals for development of the Property, including but not limited to all CEQA compliance documents certified or approved by the City.

EXHIBIT C

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

City of Simi Valley
Attn. City Clerk
2929 Tapo Canyon Road
Simi Valley, CA 93063

[Space above for recorder's use.]

This document is recorded for the benefit of the City of Simi Valley and therefore is exempt from the payment of a recording fee pursuant to Government Code Sections 6103 and 27383.

APN: 634-0-333-25/634-0-344-01

**AFFIDAVIT, ACKNOWLEDGMENT OF AGE QUALIFIED OCCUPANCY, AND
ACKNOWLEDGEMENT OF BINDING OBLIGATIONS UPON BUYER(S) IN SENIOR
HOUSING AGREEMENT**

The undersigned buyer or buyers (“Buyers”) have read and acknowledge the age restrictions applicable to the sale and occupancy of the residential property identified below (“Property”), as set forth in the Senior Housing Agreement recorded as Instrument No. [fill in *SHA Instrument Number*] in the Office of the County Recorder of the County of Ventura provided to Buyer by Seller, and do hereby swear, certify and affirm that the Buyers, and the occupants of the Property, whether the residents are the Buyers(s) or third parties, will be a Senior Household, which is defined in the Senior Housing Agreement as follows:

A household in which at least one household member is fifty-five (55) years of age or older and may also include a household member without age restriction who is a caretaker providing primary physical or economic support, and which otherwise meets all the

requirements established in California Civil Code Section 51.3 et seq., as may be adopted and amended from time to time, and any other household complying with California Civil Code Section 51.3 et seq.

The Buyers agree and acknowledge that they are bound by all requirements, terms and covenants of the Senior Housing Agreement which are by their terms made applicable to the Buyers of the Property.

Address of Residence (Property):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1. _____ 2. _____

Print name(s) of Buyer

1. _____ 2. _____

Signature(s) of Buyer

[If more Buyers, add appropriate signature lines]

Date: ____/____/201__

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public 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, or validity of that document.

State of California
County of _____ } ss.

On _____, 2016 before me, _____, Notary Public personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary

EXHIBIT D

**UNIT SUMMARY REPORT
RUNKLE CANYON, LLC**

Number of Units in Runkle Canyon Development _____

Number of Non-Senior Market Rate Units Under Construction _____

Number of Senior Units Under Construction _____

Number of Senior Unit Purchase Contracts Executed _____

Number of Senior Units in Escrow _____

Number of Senior Units Sold (Closed Escrow) _____

For units under construction, list anticipated completion date for each unit:

To the best of my abilities I acknowledge that the foregoing is true and correct.

Signature of Authorized
Representative