

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF DAVIS
AND
WILLIAM R. DUFFEL, JOSEPH A. DUFFEL AND
DUFFEL FINANCIAL AND CONSTRUCTION COMPANY

This Development Agreement (hereinafter "Agreement") is made and entered into this 28th day of SEPTEMBER, 1994, by and between the CITY OF DAVIS, a Municipal corporation, (hereinafter "City") and WILLIAM R. DUFFEL, JOSEPH A. DUFFEL AND DUFFEL FINANCIAL AND CONSTRUCTION COMPANY, a California Corporation, (hereinafter collectively referred to as "DUFFEL"), pursuant to the authority conferred upon the City by Article XI, Section 7, of the California Constitution and Sections 65864 through 65869.5 of the California Government Code and City Resolution No. 5996, adopted on June 29, 1988, establishing rules, regulations and procedures for the consideration of development agreements.

RECITALS

1. Enabling Authority. Government Code Sections 65864-65869.5 authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property. Under Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements.

DUFFEL has an equitable legal interest in that certain real property constituting approximately 424 acres located in the north central area of the Davis, north of Covell Boulevard and east of Pole Line Road, commonly referred to as the Wildhorse property, and more particularly described in Exhibit "A" attached hereto and incorporated by reference (hereinafter the "Property").

2. Development Agreement Goals. City and DUFFEL desire to enter into this Agreement relating to the Property in order to facilitate the creation of a physical environment that will conform to and complement the goals of the City, provide substantial public open space and the timely provisions of necessary infrastructure, protect adjacent land uses and natural resources from adverse impacts through the implementation of the City's General Plan and reduce the economic risk of development to DUFFEL and the City.

3. Project Background and Entitlements. On July 27, 1994, the Davis City Council held public hearings on the Final Environmental Impact Report ("FEIR") for the Wildhorse Project. On that date, the City Council certified the FEIR as adequate and complete. At the same time the Davis City Council approved an intent to amend the General Plan.

On September 21, 1994, the Davis City Council approved the Wildhorse amendment to the City's General Plan, a copy of which is attached hereto as Exhibit "B" and incorporated herein.

On September 28, 1994, the Davis City Council approved the rezoning/preliminary planned development zoning of the Wildhorse

Project, a copy of which is attached hereto as Exhibit "C" and incorporated herein.

On April 12, 1989, the Wildhorse Project was approved by the Davis City Council for an allocation in the 1993/94 year of 10 single family units. On December 19, 1990, the Wildhorse Project was approved by the City Council for an allocation in the 1992/93 year of 75 single family units and in the 1993/94 year of 75 single family units. On January 13, 1993, the Wildhorse Project was approved by the City Council for an allocation in the 1996/97 year of 140 single family units. Said units are in addition to 209 multi-family units (150 multi-family units and 59 units on the dedicated land site) that are not subject to allocation.

4. Project Description. The Project includes approximately 424 acres. Approximately 13.8 acres are to be improved and dedicated to the City for neighborhood greenbelts; approximately 37.0 acres are to be provided to the City by irrevocable offer of dedication consisting of 16.5 acres for development by the City of the Davis greenbelt public access corridor; and 20.5 acres which are to be improved by DUFFEL in accordance with the environmental mitigation measures and General Plan policies. Approximately ten (10) acres are to be provided, through dedication, for development of two five-acre neighborhood parks. The development will also provide a 9.0 net acre elementary school site. Approximately 164 net acres shall be developed by DUFFEL as a golf course, which includes an existing drainage channel to be improved by DUFFEL.

Approximately 26.1 net acres shall be retained as a horse farm. The horse farm contains three dwelling units.

Approximately 3.93 net acres are to be served by utility stubs and other improvements and dedicated as directed by City to a non-profit developer for development as part of the Affordable Housing requirement for the project. Approximately 6.5 acres will be used to provide 52 affordable for-sale or self-help units. Approximately 8.0 net acres are to be developed with 150 multi-family dwelling units of which 69 shall be offered at rents affordable to low and very low income households. Approximately 49.7 acres are to be improved by DUFFEL and dedicated to the City as streets, including green street spaces.

The property is to be developed into a maximum of 851 dwelling units, inclusive of all affordable housing and all density bonus units. The 851 dwelling units includes both single and multi-family units, but does not include the three existing dwelling units on the horse farm.

The permitted land uses described in this recital shall be referred to generally as the "Project".

5. Development Plan. For purposes of this Agreement, the term "Development Plan" shall mean all of those permits and approvals issued by the City in connection with the Project. In addition, "Development Plan" shall mean all plans, ordinances, resolutions, codes, rules, regulations and official policies of City, including without limitations, all policy interpretations approved by the City Council in 1992, in effect on the date of execution of this Agreement which govern the permitted uses, development and phasing of the Property. This agreement and its attached exhibits are also a part of the development plan. Copies of the General Plan, Planned Development Ordinance, Zoning Regulations, Subdivision Ordinance in

effect on the date this Agreement becomes effective and the documents comprising the Development Plan are on file in the office of the City Planning Director, marked as Exhibit "D" and are made a part hereof by this reference.

6. General Plan Consistency. The City hereby finds that this Agreement is consistent with the City of Davis General Plan, as amended, on the effective date of this Agreement. The Project will provide balanced land uses subject to appropriate standards and requirements with respect to land development and usage so as to promote the overall quality of life and the environment within the City.

7. Consideration; Vested Rights. Development of the Property in accordance with the terms of this Agreement and the Development Plan requires major investment by DUFFEL in public facilities, substantial initial on-site improvements, dedications of land for public benefit and purposes, and a substantial commitment of the resources of DUFFEL to achieve the public purposes and benefits of the Project for the City. It is expressly understood by the parties that the General Plan criteria for phasing of development give priority to developments which, among other things, contribute to open space and housing diversity. The contributions of this Project to public open space, recreational facilities and housing diversity are key elements of consideration for the City's execution of this Agreement.

By entering into this Agreement, the City will receive the benefit of the dedication, construction and installation of various public facilities and improvements. In addition, this Agreement provides the City with the assurance of implementation of the General Plan. It also provides assurance

that, in implementing those plans, development will not proceed without the timely provision of public facilities and services required to serve the new development.

By entering into this Agreement and relying thereupon, DUFFEL is obtaining a vested right to proceed with the Project in accordance with the terms and conditions of this Agreement, and in accordance with, and to the extent of, the Development Plan. DUFFEL's vested right to proceed with the Project shall be subject to any subsequent discretionary approvals required in order to complete the Project, provided that any conditions, terms, restrictions, and requirement for such subsequent discretionary approvals shall not prevent development of the land for the uses and the density or intensity of development set forth in this Agreement and the Development Plan.

8. Agreement Processing. On September 6, 1994, the Project Planning Commission conducted a duly noticed public hearing on this Agreement. On September 28, 1994, after a duly noticed public hearing held on September 21, 1994, the City Council adopted Ordinance Number _____ approving this Agreement which will become effective thirty (30) days after September 28, 1994.

NOW THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and covenants of the parties contained in this Agreement, the parties agree as follows:

Section 1. GENERAL PROVISIONS.

1.1 Property Description and Binding Covenants. The Property is that real property described in Exhibit "A". It is intended and determined that the provisions of this Agreement, to the extent permitted by law, shall constitute covenants which shall run with the Property and the benefits and burdens of this Agreement shall be binding upon and inure to the benefit of the parties and their successors in interest.

1.2 Interest of Duffel: Parties to be Bound. DUFFEL represents that DUFFEL has equitable and legal interest in the Property and that all other persons holding legal or equitable interests in the Property are to be bound by this Agreement.

1.3 Term. The term of this Agreement shall commence on the effective date of the ordinance authorizing the approval and execution of this Agreement, or upon the effective date of the Wildhorse Rezoning Preliminary Planned Development Ordinance, whichever occurs later (the "Effective Date"), and shall extend for a period of fifteen (15) years from that date unless terminated, modified, or extended by the circumstances set forth in this Agreement or by the mutual agreement of the parties.

1.4 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the fifteen (15) year term;
- (b) Completion of the Project in accordance with the Development Plan and the City's issuance of all required occupancy permits and acceptance of all improvements and dedications required under the Development Plan and this Agreement;

(c) Entry after all appeals have been exhausted of final judgment or issuance of a final order directing the City to set aside, withdraw, or abrogate the City Council's approval of this Agreement or any material part of the Development Plan;

(d) Termination pursuant to the provisions of this Agreement;

(e) If LAFCO does not approve the Wildhorse Annexation application within three (3) years of the effective date of this Agreement.

1.5 Assignment. (a) DUFFEL shall have the right to sell, mortgage, hypothecate, assign or transfer the Property in whole or in part, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement provided that any such sale, mortgage, hypothecation, assignment, or transfer shall include the assignment of those rights, duties, and obligations arising under or from this Agreement applicable to the Property or portions thereof being assigned, transferred or sold. The City shall be notified of each such sale, mortgage, hypothecation, assignment or transfer within ten (10) days of close of escrow. The consent of the City shall not be required for any transfer of interests pursuant to this Agreement. Said notice shall include (for notice purposes pursuant to this Agreement) the names and addresses of the parties to the transaction and a description of the nature of the transaction. The City shall not impose any other conditions on or otherwise have any rights of approval over said sale, mortgage, hypothecation, assignment, or transfer.

(b) In the event that any person or entity acquires title to the Property as the result of a foreclosure sale or trustee's sale under a mortgage

or deed of trust which was recorded prior to the recordation of this Development Agreement (any such sale under such previously recorded mortgage or deed of trust being referred to as a "Senior Foreclosure Sale"), the purchaser at the Senior Foreclosure Sale shall have sixty (60) days from the date of the Senior Foreclosure Sale within which to deliver to the City a written notice (the "Assumption Notice"), in recordable form, which: (i) sets forth the date of the Senior Foreclosure Sale and identifies the sender as the current title holder of the Property; (ii) affirms and ratifies all of the terms and conditions of this Development Agreement; and, (iii) clearly states that, notwithstanding the Senior Foreclosure Sale, the current title holder of the Property unconditionally assumes and agrees to be bound by all of the terms and conditions of this Development Agreement and that the Property shall continue to be bound by all of the terms and conditions of this Development Agreement. If the City receives a proper Assumption Notice within such sixty (60) day period, then this Development Agreement shall continue in full force and effect. If the City does not receive a proper Assumption Notice within such sixty (60) day period, then this Development Agreement shall automatically terminate, and neither party shall have any further rights or obligations hereunder.

This subsection (b) shall expire nine months after the effective date of this Agreement or the recordation of the first final map for this Project, whichever occurs first. Thereafter, any person who acquires the Property who gains the benefit or asserts the right to an entitlement approved by the City pursuant to this Agreement shall be bound by the terms of this Agreement.

1.6 Subdivision. It is understood and agreed by the parties that the Property may be subdivided after the effective date of this Agreement. One or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned, or transferred to persons for development by them in accordance with the provisions of this Agreement. Upon completion of any phase or tract of development of the Project as determined by City, and upon DUFFEL or its successor's request, the City, may release that completed phase or tract from any further obligations under this Agreement.

1.7 Amendment. This Agreement may be amended from time to time by the mutual consent of the parties or their successors in the same manner as its adoption by ordinance as set forth in Government Code Sections 65867, 65867.5, and 65868.

1.8 Operating Memoranda. The parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in general terms under this Agreement. If and when the parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate, they shall effectuate such clarifications, minor changes, or minor adjustments through operating memoranda approved in writing by the parties. "Minor" as used above shall not include the use of Operating Memoranda to increase the number of dwelling units, to decrease the public open space by more than 1% of the total public open space area (exclusive of the golf course, which is private open

space) or to accelerate the allocation schedule. In addition, "minor" shall not include reductions in the size of the planned west park, neighborhood greenbelts or green streets in Phase I south and west of Wildhorse Boulevard. After execution, such operating memoranda shall be attached hereto and may be further changed and amended from time to time as necessary, with further approval by City and DUFFEL. Unless required by law, no such operating memorandum shall require prior notice or hearing, nor shall it constitute an amendment to this Agreement.

1.9 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and DUFFEL. Notice shall be effective on the date delivered in person, or the date when the postal authorities indicate that the mailing was delivered to the address of the receiving party indicated below:

Notice to the City:

CITY OF DAVIS
Department of Planning and Building
23 Russell Boulevard
Davis, California 95616
Attn: Planning Director

Notice to DUFFEL:

Duffel Financial and Construction
Company
1430 Willow Pass Road
Concord, California 94520
Attn: Mr. Joseph Duffel

City and DUFFEL shall notify the other party of any change in address.

Section 2. DEVELOPMENT OF THE PROPERTY.

2.1 Vesting of Land Use Entitlements. The uses and the density of development of the Property shall be those set forth in the Wildhorse General Plan amendment, attached hereto as Exhibit "B," the Wildhorse Rezoning/Preliminary Planned Development Zoning, attached hereto as Exhibit "C," the Development Plan and the Wildhorse Land Uses and Densities attached as Exhibit "D," and incorporated by reference. The maximum allowable height and size of structures and buildings to be constructed on the Property shall be as determined by applicable zoning regulations that are part of the Development Plan.

2.2 Rules, Regulations and Policies. Rules governing the development of the Property shall be those contained in the Development Plan or as provided for by this Agreement. In the event of any conflict between the provisions of this Agreement and any resolution, rule, regulation, or policy of the City, the provisions of this Agreement shall control.

2.3 No Conflicting Enactment. Except as provided in Section 2.4 of this Agreement, neither the City Council nor any other agency of the City shall enact an ordinance or other measure which reduces DUFFEL's vested development rights as provided in this Agreement.

2.4 Application of Subsequently Enacted or Modified Rules Regulations and Ordinances. The City may, during the term of this Agreement, apply such City-enacted or modified rules, regulations, ordinances, laws, and official policies including improvement and construction standards and specifications and plans adopted or modified after

the date of this Agreement which do not prevent development of the Property in accordance with the uses and density provided for by the Development Plan and the terms of this Agreement.

Should an ordinance or resolution or other measure be enacted, whether by action of the City Council, by initiative referendum or otherwise which relates to the rate, timing or sequencing of the development or construction of the subject property, including, but not limited to, development no-growth or slow-growth moratoria, to the extent any such measure is inconsistent with the spirit, intent or letter of the phasing requirements for development already set forth for the subject property by the development plan and this Agreement, City agrees that such ordinance, resolution or other measure shall not apply to the subject property, or any development thereof, or construction related thereto, or construction of improvements necessary therefor.

2.5 City Fees, Taxes, and Assessments. Existing and future City fees, taxes, and assessments shall apply to the Project provided that:

(a) Their application to the Property is prospective only as to applications for building and other development permits or approvals of tentative subdivision maps not yet accepted for processing at the time of adoption of the fee, tax or assessment; and

(b) Their application would not prevent development in accordance with the terms of this Agreement and the Development Plan; and

(c) Except as provided in section 3.11 of this Agreement, nothing in this Agreement constitutes a waiver of DUFFEL's right to

challenge the legality of any future fees, taxes or assessments as applied to the Project and Property.

As provided in the payment agreement between the City and DUFFEL, DUFFEL shall, within thirty (30) days following the City Council's actions to approve or not approve this Agreement and the rezoning/preliminary planned development zoning, reimburse City for its costs in processing the development applications for the Wildhorse Project and for negotiating this Agreement.

2.6 Allocations.

(a) The City Council has previously approved the following housing allocations for the Wildhorse Project: 75 single family units in year 1992/93; 85 single family units in year 1993/94; and 140 single family units in year 1996/97. City agrees to revise the allocation of 140 single family units from year 1996/97 to year 1995/96.

(b) City agrees to grant an allocation of 7 additional units in year 1995/96 for a total of 147 units for year 1995/96; an allocation of 112 single family units (lots) in Allocation year 1998/99; 112 single family units in Allocation Year 1999/2000; and 111 single family units in Allocation Year 2000/01.

Allocation to obtain a building permit in a particular year may be carried forward to subsequent years.

Allocations shall remain in effect for the term of this Agreement.

2.7 Project Phasing.

DUFFEL shall phase the development of the Wildhorse Project in three (3) phases, as follows:

(a) Phase I: Phase I will consist of a Final Map(s) creating within such phase a maximum of 516 dwelling units consisting of 307 single family units and 209 multi-family units. Prior to the issuance of a building permit for the 101st single family unit, street improvements for the entire length of the street currently designated as Wildhorse Boulevard and Wildhorse Drive (from Pole Line Road to Covell Boulevard) shall be completed, including sidewalk, and bikepath. Prior to the issuance of a building permit for the 101st single family unit, the rough grading of the golf course shall be completed.

(b) Phase II: The golf course shall be completed no later than 12 months following the issuance of the building permit for the 101st single family unit.

(c) Phase III: Phase III will consist of a Final Map(s) creating 335 additional single family lots bringing the maximum total of 851 dwelling units for Phases I, II and III. Prior to the recordation of final maps for Phase III, the golf course and the two streets providing access to the golf course (currently designated as Clubhouse Drive and Golf Drive) shall be completed. However, the permanent clubhouse for the golf course does not need to be completed to meet this requirement.

In addition, building permits for units within Phase III shall not be issued until sixty (60) days prior to the completion of the Mace Boulevard/Interstate 80 interchange improvements. The date of "60 days prior" shall be determined by the City Public Works Director after construction work on the interchange is commenced. Disclosure of this limit on the issuance of building permits shall be disclosed in writing by DUFFEL,

and DUFFEL's successors in interest, if any, to DUFFEL's successors in interest, purchasers of lots and to prospective builders. In addition, pursuant to Government Code Section 66434.2 notice of this limitation shall be recorded concurrently with the final map in a manner designed to give record notice of this restriction to potential purchasers and builders.

The sequence and location of phasing are shown on the Phasing Plan attached hereto marked Exhibit "F".

2.8 Affordable Housing Program. DUFFEL shall comply with the City's Affordable Housing Ordinance by compliance with the individualized affordable housing plan attached hereto as Exhibit "G" subject to the following conditions:

(a) The 69 affordable units in the high density multi-family site shall include 49 low income units and 20 very low income units. These units shall be permanently affordable and shall be encumbered by deed restrictions to that effect. Monitoring of the units to ensure compliance with affordability and other requirements shall be worked out in detail jointly by the City and DUFFEL. The City may require DUFFEL or DUFFEL's successors in interest to enter into a contract with a non-profit housing organization or the Yolo County Housing Authority for the monitoring of these units.

(b) DUFFEL, or DUFFEL's successors in interest shall fully disclose in writing to all future purchasers of lots in the Wildhorse project the location and configuration of all proposed affordable housing in the project. The disclosure form shall be subject to review and approval by the City Planning Director, prior to the recordation of the first final map creating single family lots in the Wildhorse project.

(c) The 3.93 net acres of land to be dedicated for affordable housing shall be provided by an irrevocable offer of dedication to the City or the City's designee prior to or concurrently with recordation of the first final map. The property shall be 3.93 net acres and shall not be subject to any encumbrances or easements. Public improvements to serve this site shall be completed, or be secured in accordance with Government Code Section 66499 et seq. at the time the irrevocable offer of dedication is made.

(d) The 52 for-sale affordable housing or self-help units shall be provided according to the purchase prices, income limits and program parameters of the City which are in effect at the time the units are sold.

(e) A minimum of 26 for-sale affordable housing units shall receive certificates of occupancy, for every one hundred (100) building permits issued for the market rate units in Phase III east of proposed Golf Drive, up to the total of 52 for-sale affordable housing units in this part of the project.

The above-described requirements are deemed to constitute full compliance with City's Affordable Housing Ordinance for the project.

2.9 Applications. City agrees that it shall promptly accept for processing and review and take action on, all complete applications for development permits or other entitlements for development of the Property in accordance with the Development Plan and this Agreement if proper fee deposits are paid and regular billings are paid in a timely manner.

2.10 Cooperation. In the event state or federal laws or regulations enacted after the effective date of this Agreement, or formal action of any governmental jurisdiction other than the City, prevent compliance with one or more provisions of this Agreement, or require changes in plans, maps or

permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended, or suspended only to the minimum extent necessary to comply with such state or federal laws or regulations or the regulations of governmental jurisdictions other than the City. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or plans, maps, or permits subject to compliance with applicable federal, state, and local laws and regulations.

2.11 Changes in Project; Review by City Agencies. No change, modification, revision, or alteration may be made in the Development Plan relating to the permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings or the provisions for reservation or dedication of land for public purposes without review and approval by those agencies of City approving the Development Plan in the first instance.

2.12 Environmental and Off-Site Mitigation. In order to fulfill its duties under this Agreement and the Rezoning/Preliminary Planned Development Zoning, DUFFEL shall comply with the Mitigation Monitoring Program attached to the Rezoning/Preliminary Planned Development as Exhibit "G."

Without limiting the foregoing, DUFFEL agrees to and shall grant an irrevocable offer of dedication (IOD) for the Davis Greenbelt public access and agricultural buffer area. The property to be offered for dedication is that property shown as the Davis Greenbelt and Agricultural buffer on Exhibit H, attached hereto. The granting of this IOD shall be a condition of the first tentative map for the project and shall be offered at the time of the approval

20

of the first final map for the project. DUFFEL shall grade and provide erosion control for the IOD area during the construction of the golf course. 16.5 acres of the IOD area shall be developed by the City, in the future, as a public access corridor. The remaining 20.5 acres shall be improved by DUFFEL during the construction of the golf course in compliance with environmental mitigation measures and measures approved in the City's General Plan policy interpretations.

2.13 Life of Maps and Development Permits. All tentative maps and other discretionary approvals obtained for the Development Plan shall remain in effect during the term of this Agreement.

If any such map or other discretionary approvals would remain in effect until a later date under the Subdivision Map Act then the map or other discretionary approval shall remain in effect until such later date.

2.14 Notification to La Buena Vida Homeowners' Association. City shall provide mailed notice to the president of the La Buena Vida Homeowners Association of development applications made for the Wildhorse Project, including tentative map final planned development and design review applications, and applications made for amendment of this Agreement at the same time and in the same manner as City provides mailed notice to property owners within 300 feet of a planning project; provided that the homeowners association provides the City Planning Department with the current president's name and address and any changes to this information. Nothing in this section shall be deemed to create any third party beneficiary rights in the La Buena Vida Homeowners' Association, persons living adjacent to the Wildhorse Project or any another person, entity or

organization, nor shall failure to give notice render any planning approval, final map, development agreement amendment or other approval invalid by reason of lack of notice.

Section 3. PUBLIC IMPROVEMENTS

3.1 Public Improvements - General. DUFFEL shall be responsible for constructing and financing the public infrastructure improvements necessary to serve the Project. Public Infrastructure improvements shall be designed and constructed to the City's specifications in effect at the time such improvements are constructed. The specific infrastructure improvements shall be determined prior to the time of final map for each phase of the Wildhorse Project. In addition to those public improvements known to be required at the time of execution of this Agreement, additional public improvements necessary to serve development of the Property may be designated by the City at the time of tentative subdivision review and approval or at the time of other appropriate development review of the Project provided that the infrastructure modifications are necessary to mitigate identified potential environmental impacts as contained in the Final EIR for the project, serve the development, provide for the orderly development under the General Plan and/or are necessary to protect the public health or safety.

The parties agree to participate in one or more assessment or community facilities districts which are established by City to finance the acquisition or construction of public facilities benefiting the City. DUFFEL participation shall be on a prorata share basis.

Without limiting the foregoing, DUFFEL and City agree that the following infrastructure and public improvements and facilities shall be provided in the manner stated below:

3.2 Greenbelt, Park and Open Space Obligations; Golf Course Conservation Easement.

(a) In addition to the neighborhood greenbelts and green streets, DUFFEL shall dedicate the areas of open space and park shown in Exhibit "H". Such dedications shall be made prior to or concurrently with the recordation of final maps for the property adjacent to the areas to be dedicated. In addition, DUFFEL shall dedicate such other open space, park or other areas as required by environmental mitigation measures and the rezoning/preliminary planned development zoning. DUFFEL's obligation to improve neighborhood greenbelts and green street spaces shall be secured in the same manner as other subdivision improvements at the time of recordation of final maps for adjacent residential development. DUFFEL shall improve neighborhood greenbelts and green street spaces at the same time as adjacent residential development.

(b) DUFFEL shall improve or cause to be improved the west 5-acre park to City specifications with the first phase of the residential development up to a maximum of \$575,000 excluding the costs for City inspections, plan checks and processing, and further excluding the costs and/or value of the public improvement,s within the right-of-way to serve the park site. This obligation shall be a condition of the first tentative map for Phase I residential development and the irrevocable offer of dedication for the park shall be made prior to or at the time of recordation of the first final

map for Phase I residential development. The obligation to improve or cause the west park to be improved shall be secured in the same manner as other subdivision public improvements at the time of recordation of the first final map for Phase I residential development. Improvement of the park shall be commenced at the same time as residential development adjacent to the park is commenced; provided, however, that construction of the park shall be completed prior to the issuance of a building permit for the 201st residential unit regardless of the order or location of Phase I residential construction. DUFFEL shall not be reimbursed for the cost of construction of this park.

(c) DUFFEL shall dedicate the second five acre park prior to or at the time of recordation of a final map for the Phase I development adjacent to the second five acre park. All public improvements to serve the site shall be completed, or secured in accordance with Government Code Section 66499 et seq., at the time of the dedication of this site.

(d) DUFFEL shall receive credit against parkland dedication and in lieu fees for the ten (10) acres of park land. The balance of the park dedication requirement of \$70,050 (0.467 acres x \$150,000) shall be paid by DUFFEL through in lieu fees. The in lieu fees shall be paid as final maps are recorded for residential lots which require such payment (i.e. the first lots shall be credited for the land dedication, once the land dedication "credit" is exhausted the remaining subdivision maps and lots within such maps shall pay the in lieu park fees).

(e) DUFFEL shall dedicate and improve the neighborhood greenbelts and green streets shown on Exhibit "H" concurrently with development of the phase in which they are contained. The one-acre open

space located at the east end of Phase III shall be considered part of the neighborhood greenbelt.

(f) DUFFEL shall record a conservation easement in favor of the City or a non profit land trust selected and approved by the City on the property to be used as a golf course. The conservation easement shall preclude development of the golf course property for other urban uses and structures. The conservation easement shall be recorded prior to the recordation of the final map which includes the 230th single family lot in Phase I.

3.3 School Dedication Requirement. DUFFEL shall provide a school site to the Davis Joint Unified School District as provided in the Memorandum of Understanding between DUFFEL, the School District and the City attached hereto as Exhibit "T".

3.4 Pole Line Road Corridor Plan Contribution - Not Subject to Reimbursement. DUFFEL shall contribute \$240,000 towards the implementation of the Pole Line Road Corridor Plan in addition to the project's Major Projects Financing Plan fees attributable to the Pole Line Road Corridor Plan. The \$240,000 shall be paid to the City in three installments: 1) \$48,000 (20%) prior to or concurrent with the recordation of the first final map for the Wildhorse project; 2) \$96,000 (40%) prior to or concurrent with the recordation of the final map which includes the 180th single family lot; and 3) \$96,000 (40%) prior to or concurrently with the recordation of the final map which includes the 300th single family lot. There shall be no reimbursement by the City to DUFFEL for this total contribution of \$240,000.

The City shall use the \$240,000 contribution towards the implementation of the Pole Line Road Corridor Plan as follows: \$91,200 (38%) north of Covell Boulevard; and \$148,800 (62%) south of Covell Boulevard.

3.5 Pole Line Road Corridor Plan Contribution - Subject to Reimbursement. DUFFEL shall contribute \$284,000 towards the implementation of the Pole Line Road Corridor Plan in addition to the project's Major Project's Financing Plan Fees attributable to the Pole Line Road Corridor Plan (including Major Project's Financing Plan project A.32). The \$284,000 is the total of \$109,000 for the implementation of the Plan north of Covell Boulevard, (Major Projects Financing Plan project A.32) (10% of \$1,094,505) and \$175,000 for the implementation of the Plan south of Covell Boulevard (=11.5% of \$1,524,740). The total \$284,000 shall be paid to the City prior to or concurrently with the recordation of the first final map for the Wildhorse Project.

City shall reimburse DUFFEL the total of \$284,000, with no interest, at the rate of \$50,000 per fiscal year beginning July 1, 1996 until the \$284,000 is fully reimbursed. City shall pay the reimbursement on February 1st of each year.

3.6 Covell Boulevard Sound Mitigation. DUFFEL shall contribute \$26,520 towards the implementation of "sound mitigation" in the Major Projects Financing Plan project A.26, the widening of Covell Boulevard between Baywood and Monarch. The \$26,520 equals 10.4% of the estimated \$255,000 cost of this project. The total \$26,520 shall be paid to the City prior to or concurrently with the recordation of the first final map for the Wildhorse

Project. This contribution is in addition to the projects' Major Projects Financing Plan fees attributable to project A.26.

City shall reimburse DUFFEL for the \$26,520 from Major Projects Financing Plan fees no later than one year from the completion of the sound mitigation improvements.

3.7 Drainage. DUFFEL and City agree that each will undertake the following responsibilities with respect to the "Four Party drainage agreement" between DUFFEL, Northstar, Crossroads and the City and will agree to seek to amend and execute revisions to the Four Party agreement to include the following provisions:

(a) With respect to the crossing already constructed under F Street, the City shall reimburse Northstar for the Wildhorse Project share, with the timing of the reimbursement to be consistent with the existing provisions of the four party agreement.

(b) With respect to the drainage culvert improvements under Pole Line Road, DUFFEL shall design or shall cause the design of the culvert improvements to be prepared concurrently with the design of the Pole Line Road improvements required for the Wildhorse Project. The design of the culvert improvements shall be subject to the review and approval of the City Engineer. DUFFEL shall construct or cause the construction of the culvert improvements concurrently with the other Pole Line Road improvements. Upon completion of the improvements and acceptance of the improvements by the City, City shall reimburse DUFFEL for the cost of the culvert improvements, and the proportionate share of the engineering design costs of the culvert improvements. DUFFEL shall keep records of such design and

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construction costs to the satisfaction of the City's Public Works Director, and such records shall be submitted to the City for its review and approval prior to the City making the reimbursement.

(c) DUFFEL, at its own expense, shall increase the capacity of the drainage channel through the Wildhorse property to the capacity required by the City.

3.8 Water Wells. DUFFEL agrees to (a) provide, at no cost to the City, access to the City for as many test well sites as needed by the City; and (b) provide to the City, through dedication, at no cost to the City, one production well site at a location specified by the City with an estimated size of 2,500 square feet.

3.9 Covell Boulevard Grade-Separated Crossing. DUFFEL shall pay to the City the sum of \$22,500 towards the preliminary engineering and design costs of the Covell grade-separated crossing (Major Projects Financing Plan project A.14). This sum shall be paid to the City prior to or concurrently with the recordation of the first final map for the Wildhorse project. This contribution is in addition to the Wildhorse Project's Major Projects Financing Plan fees attributable to project A.14. There shall be no reimbursement for this payment.

3.10 Major Project Financing Fees. DUFFEL shall pay those Major Project Financing Plan Fees attributable to the Wildhorse Project at the time provided by law for the payment of such fees. DUFFEL understands and acknowledges that City would not enter into this Agreement absent City's ability to charge Major Project Financing Plan Fees in effect at the time building permits are issued for the different phases and units of the

Wildhorse Project. DUFFEL agrees that it shall pay those fees attributable to the Project in effect at the time of payment of such fees. DUFFEL understands and acknowledges that the Major Project Financing Plan fees will be imposed, adjusted, modified and/or amended from time to time by the City Council during the term of this Agreement. Such impositions, amendments, modifications and/or adjustments will be subject to public notice and hearing prior to their adoption and will be subject to protest by DUFFEL at such time. The public notice and hearing for such impositions, amendments, modifications and/or adjustments will provide DUFFEL with notice of the proposed amendments, modifications and/or adjustments and an opportunity to be heard thereon. DUFFEL may rely on the general published notice of proposed impositions, amendments, modifications and/or adjustments or may request that the City provide mailed notice to DUFFEL by making such request, in writing, on an annual basis to the City Clerk. DUFFEL hereby acknowledges that the City may make such impositions, modifications, amendments and/or adjustments to take into account changing requirements and changing costs for public projects, which projects are required to serve the Wildhorse development. Therefore, DUFFEL's ability to challenge such impositions, modifications, amendments and/or adjustments shall be limited to DUFFEL's right to request a fee adjustment under section 10-95 of the Davis City Code and DUFFEL's right to challenge the imposition, modification, amendment and/or adjustment of such fees pursuant to section 66020 of the Government Code. DUFFEL and City agree that the time to challenge the imposition, modification, amendment and/or adjustment of a fee under section 66020 begins to run from the date that the

City approves the imposition, amendment, modification and/or adjustment and not from the time that the fee is paid. DUFFEL hereby expressly waives its right, if any, to assert that the time to challenge a fee runs from the date of payment of such fee.

3.11 Noise Mitigation. In addition to any other noise mitigation required as a mitigation measure in the Wildhorse FEIR or mitigation monitoring plan, DUFFEL shall pay for double-pane windows for the north windows of the five residential buildings in the La Buena Vida development which have north windows closest to the proposed elementary school. The addresses of these buildings are: 2912 Pole Line Road; 2917 Austin Street; 2848 Bidwell Street; 2842 Bidwell Street; and 2836 Bidwell Street. The installations of the double pane windows shall occur prior to the construction of the school or prior to the issuance of the building permit for the 201st single-family unit, whichever of these events occurs first. If school plans become available prior to the building permit for the 201st single-family unit and cause the potential for greater school noise at the northwest end of La Buena Vida, double-pane windows shall be installed on the north windows at 2906 Pole Line Road and 2911 Austin Street instead of 2842 Bidwell Street and 2836 Bidwell Street.

DUFFEL shall allow the La Buena Vida Homeowners Association to purchase double pane windows in the bulk purchase by DUFFEL of the double pane windows required to comply with this section.

3.12 Golf Course Irrigation. The City agrees with DUFFEL that shadow-aquifer wells rather than deep wells shall be preferred as a water

source for golf course irrigation. This agreement does not conflict with, eliminate or obviate the mitigation measures in the Wildhorse project EIR.

Section 4. DEFAULT AND PERIODIC REVIEW.

4.1 Periodic Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith compliance by DUFFEL with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code section 65865.1. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Development Agreement. DUFFEL shall pay a processing fee for each annual review in the amount established by resolution of the City Council. A finding by City of good faith compliance by DUFFEL with the terms of this Agreement shall conclusively determine said issue up to and including the date of said review.

Upon not less than thirty (30) days written notice by the Planning Director of City, DUFFEL shall provide such information as may be reasonably requested by the Planning Director and deemed by the Planning Director to be required in order to ascertain compliance with this Agreement. City shall deposit in the mail to DUFFEL a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least ten (10) calendar days prior to any such periodic review. DUFFEL shall be permitted an opportunity to be heard orally and/or in writing regarding its performance under this Agreement before the City Council or, if the matter is referred to the City Project Planning Commission, before said Commission.

Upon completion of the terms of this Agreement, DUFFEL may request a notice of completion for the project. The Planning Department shall process such request in a similar fashion as a periodic review. If the City agrees that the terms of this Agreement have been met, the Planning Director shall record a notice of completion of the Agreement and no further periodic reviews shall be held.

4.2 Letter of Compliance. If DUFFEL is found to be in compliance with this Agreement after the annual review, the City shall issue a Letter of Compliance to DUFFEL stating that, after the most recent annual review, and based upon information known by or made known to the City Council, and/or the City Project Planning Commission, the City finds that (a) this Agreement remains in effect, and (b) DUFFEL is not in default. The letter shall contain information necessary to communicate notice of the finding of compliance.

4.3 Default; Notice. If at any time (including following completion of periodic review), City determines that, based on substantial evidence, DUFFEL is in default, the City shall give written notice of such default to DUFFEL or successors. The City shall specify in said notice the alleged nature of the default, and suggested or potential actions and timing to cure said default where appropriate.

City shall have no duty to give notice of an annual review to anyone having an ownership interest in a portion of the Project deemed complete by the City and released from the obligations of this Agreement.

4.4 Default; Period to Cure. DUFFEL shall have either sixty (60) days or any period mutually agreed to by the parties to cure any alleged default. If

City finds and determines, on the basis of substantial evidence, that DUFFEL or its successor in interest has not complied in good faith with the terms or conditions of this Agreement and has failed to cure the default within the prescribed period or any period mutually agreed to by the parties, City may terminate or modify this Agreement or may institute legal proceedings.

Section 5. **ENFORCEMENT AND REMEDIES.**

5.1 Enforcement; Cumulative Remedies. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

5.2 Hold Harmless Agreement. DUFFEL agrees to indemnify and hold City and City's elective and appointive councils, boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, and from claims for property damage which may arise from DUFFEL's contractors', subcontractors', agents', or employees' operations under this Agreement. DUFFEL agrees to and shall defend the City and City's elective and appointive councils, boards, commissions, officers, agents, and employees from any suits

or actions at law or in equity for damage caused by reason of the aforesaid operations under this Agreement.

5.3 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate fully with each other in defending said action and the validity of each provision of this Agreement, however, each party shall be liable for its own legal expenses and costs.

5.4 Attorneys' Fees. In any arbitration, quasi judicial, or administrative proceedings, or any action in any court of competent jurisdiction, brought by either party to enforce any covenant or any of such party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and all costs or reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party.

Section 6. CONFLICTS OF LAW.

6.1 Conflict of City and State or Federal Laws. If compliance with one or more substantive provisions of this Agreement is precluded by the enactment of state or federal laws or regulations, or the action or inaction of any other affected governmental jurisdiction, the parties shall take the following actions:

(a) Notice and Copies. Provide the other party with written notice of such state or federal regulation, provide a copy of such regulation and a statement of conflict with the provisions of this Agreement.

(b) Modification Conference. Within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation.

(c) Council Hearings. Thereafter, regardless of whether the parties reach an agreement on the effect of such federal or state law or regulation upon this Agreement, the matter shall be scheduled for hearing before the Davis City Council. Ten (10) days written notice of such hearing shall be given, pursuant to Government Code sections 65091 through 65095. The City Council, at such hearing, shall determine the exact modification or suspension required by such federal or state law or regulation. DUFFEL, at the hearing, shall have the right to offer oral and written testimony. Any modification or suspension shall require the affirmative vote of not less than a majority of the authorized voting members of the Council. Any suspension or modification may be subject to judicial review in conformance with Section 5 of this Agreement.

(d) Waiver of Liability. City hereby disclaims any liability for actions to implement any state or federal law or regulation affecting the performance of, or compliance with this Agreement. DUFFEL hereby waives any cause of action at law or equity it may have against City arising from City's lawful implementation of any state or federal law or regulation affecting the performance of, or compliance with this Agreement.

Section 7 MISCELLANEOUS PROVISIONS.

7.1 Authority to Execute. The persons executing this Agreement on behalf of DUFFEL warrant and represent that they have the authority to execute this Agreement on behalf of their corporation, partnership or business entity and represent that they have the authority to bind DUFFEL to the performance of their obligations herein.

7.2 Amendment or Cancellation by Mutual Consent. Either party to this Agreement may give notice of intent to amend or cancel this Agreement pursuant to California Government Code section 65868.

7.3 Construction of Agreement. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California.

This Agreement has been reviewed and revised by legal counsel for both DUFFEL and City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

7.4 Covenant of Good Faith and Fair Dealing. Neither party shall do anything which shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement; each party shall refrain from doing anything which would render its performance under this Agreement impossible; and each party shall do everything which this

Agreement contemplates that such party shall do to accomplish the objectives and purposes of this Agreement.

7.5 Enforced Delays: Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by entities other than the City, enactment of conflicting state or federal laws or regulations, including but not limited to new or supplementary state or federal environmental regulations, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer, as may be mutually agreed upon.

7.6 Entire Agreement. This Agreement, together with the exhibits, constitute the entire agreement between the parties with respect to the subject matter of this Agreement.

7.7 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, file or record any required instruments and writings necessary to evidence or consummate the transactions contemplated by this Agreement, and take any

actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

7.8 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties to this Agreement and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

7.9 No Waiver. No delay or omission by either party in exercising any right or power accruing upon noncompliance or failure to perform by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereon.

7.10 Severability. If any provision of this Agreement shall be adjudicated to be invalid, void, or illegal, shall in no way affect, impair, or invalidate any other provision hereof, unless such adjudication affects a material part of this Agreement. Notwithstanding any other provisions of this Agreement, in the event that any material provision of this Agreement is found to unenforceable, void or voidable, DUFFEL or the City may terminate this Agreement upon providing written notice to the other party. The parties hereby agree that they would have entered into the remaining portions of this Agreement not adjudged to be invalid, void or illegal. In the event that all or any portion of this Agreement is found to be enforceable, this Agreement, or the portion which is found to be enforceable, shall be deemed to be a statement of intention by the parties. The parties further agree that in

such event they shall take all steps necessary and allowable under applicable law to comply with such public hearings and/or notice requirements as may be necessary in order to make valid this Agreement or that portion which found to be unenforceable.

7.11 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Recorder of Yolo County no later than ten (10) days following execution of this Agreement by City which execution will take place no sooner than the effective date of the ordinance approving this Agreement. If the parties amend or cancel this Agreement as herein provided, or as otherwise provided by state legislation or by local ordinance, the City Clerk shall, after such action takes effect, cause an appropriate notice of such action to be recorded with the Recorder of Yolo County. The cost recordation shall be borne by DUFFEL.

7.12 Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of pages, including notary acknowledgment forms, and, in addition, 9 exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- EXHIBIT A - PROPERTY DESCRIPTION AND MAP
- EXHIBIT B - WILDHORSE GENERAL PLAN AMENDMENT
- EXHIBIT C - WILDHORSE PREZONING/PRELIMINARY
PLANNED DEVELOPMENT ZONING
ORDINANCE
- EXHIBIT D - DEVELOPMENT PLAN DOCUMENTS
- EXHIBIT E - LAND USES AND DENSITIES
- EXHIBIT F - WILDHORSE PHASING MAP
- EXHIBIT G - AFFORDABLE HOUSING PLAN
- EXHIBIT H - GREENBELTS, PARKS AND OPEN SPACE
- EXHIBIT I - MEMORANDUM OF UNDERSTANDING
REGARDING SCHOOL SITE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove written.

CITY OF DAVIS, a municipal corporation

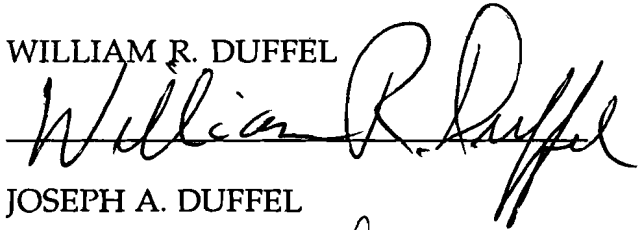
By: 

Mayor

ATTEST: _____
City Clerk

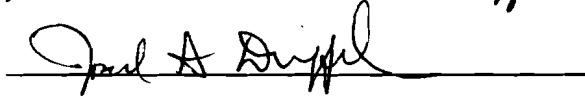
DATED: 1 Oct 94

WILLIAM R. DUFFEL



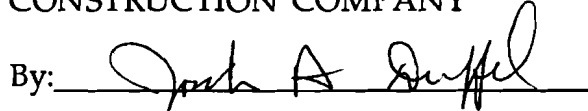
DATED:

JOSEPH A. DUFFEL



DATED: 1 Oct 94

DUFFEL FINANCIAL AND CONSTRUCTION COMPANY

By: 

-AND-

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CITY COUNCIL

By: _____
Clerk of the City Council

APPROVED AS TO FORM:

By: _____
City Attorney