

## **ORDINANCE NO. 2020-1480**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, CONDITIONALLY REZONING APPROXIMATELY 153.66 ACRES OF PROPERTY LOCATED AT THE NORTHWEST CORNER OF ESTRELLA PARKWAY AND ELWOOD STREET, KNOWN AS AVION AT BALLPARK VILLAGE; AMENDING THE ZONING MAP OF THE CITY OF GOODYEAR; PROVIDING FOR NON-ABRIDGEMENT; PROVIDING FOR CORRECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PENALTIES.

WHEREAS, this property subject to this Ordinance consists of approximately 153.66 acres and is located at the northwest corner of Estrella Parkway and Elwood Street and is known as Avion at Ballpark Village (formerly known as Sun-DS Farms) as more particularly described in that certain document titled “Legal Description,” which document was declared a public record by Resolution No. 2020-2102, three copies of which are on file with the City Clerk of the City of Goodyear, Arizona, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the “Property”); and

WHEREAS, on June 9, 2008, the City Council conditionally approved the Final Planned Area Development (PAD) for Sun-DS Farms, LLC with the adoption of Ordinance No. 08-1116; and,

WHEREAS, the overall Sun-DS Farms, LLC Final PAD consisted of 160 acres; and,

WHEREAS, the Sun-DS Farms, LLC Final PAD included 85 acres of residential land use, 10 acres of Office Condo land use, 41 acres of Business Park land use, 18 acres of Neighborhood Commercial land use and six acres of parks; and,

WHEREAS, on November 10, 2014, the City Council conditionally approved a rezone called Sun-DS Farms, LLC Final PAD Amendment with the adoption of Ordinance No. 14-1310; and,

WHEREAS, this rezone eliminated 18 acres of Neighborhood Commercial land use and 10 acres of Office land use, increased Low Density Residential land use from 54 to 68 acres, increased Low Medium Density land use from 31 to 39 acres and changed Business Park land use to Commerce Center land use and increased it from 41 to 47 acres, and established revised development standards for Low Medium Density land use to allow for alternative housing product; and,

WHEREAS, on January 9, 2019, the City Council adopted Ordinance 2019-1423 conditionally rezoning the Property from Final PAD District (Sun-DS Farms, LLC PAD Amendment book dated May 2008) to Final PAD District (Sun-DS Farms Final Pad Regulatory Standards Book, November 2018); and

WHEREAS, the 2019 rezoning ordinance changed the land use designation of 47 acres of the Property from commerce center to Medium Density Residential; and,

WHEREAS, the proposed rezoning will replace the Sun-DS Farms Regulatory Standards Book with the Avion at Ballpark Village Planned Area Development (October 2020) Development

Regulations which will include the uses allowed in the R1-6 Reduced, R1-4 Reduced, R1-A and R1-C single family residential districts; and,

WHEREAS, city staff finds that the proposed rezoning will not adversely impact the surrounding area as the proposed land uses will allow for the orderly growth and continued development of residential uses at this site; and

WHEREAS, an alternative citizen review process was conducted for this proposal due to the city of Goodyear Emergency Declaration in Response to Coronavirus and notice of the application was provided to property owners within 500 feet of the property at least 35 calendar days prior to public hearing to provide ample opportunity for input prior to noticing the public hearing itself. To date, no objections or inquiries were received as a result of this notification

WHEREAS, public notice that this rezoning was to be considered and reviewed at a public hearing held before the Planning and Zoning Commission on October 14, 2020, appeared in the Arizona Republic Southwest Valley edition on September 25, 2020; and

WHEREAS, a public hearing was held before the Planning and Zoning Commission on October 14, 2020, and at that meeting the Commission voted 6-0 to recommend approval of the proposed rezoning; and

WHEREAS, public notice that this rezoning was to be considered and reviewed at a public hearing held before the City Council on October 26, 2020, appeared in the Arizona Republic Southwest Valley edition on September 25, 2020; and

WHEREAS, the Mayor and Council of the City of Goodyear, Arizona find the adoption of this Ordinance to be in the best interests of the public interest, health, comfort, convenience, safety, and general welfare of the citizens of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

**SECTION 1. DESCRIPTION OF PROPERTY BEING REZONED**

This Ordinance No. 2020-1480 applies to approximately 153.66 acres located at the northwest corner of Estrella Parkway and Elwood Street and legally described in that certain document titled "Legal Description," which document was declared public record by Resolution No. 2020-2102, three copies of which are on file with the City Clerk of the City of Goodyear, Arizona, and which is referred to and made a part hereof as if fully set forth in this Ordinance (the "Property").

**SECTION 2. ADOPTION OF FINDINGS**

The clauses set forth above are hereby adopted and incorporated herein by this reference as if fully set forth herein.

### SECTION 3. REZONING

The Property is hereby conditionally rezoned from Final Planned Area Development (PAD) District (Sun-DS Farms Final Pad Regulatory Standards Book, November 2018) to Final Planned Area Development (PAD) District by the adoption herein of that certain document titled, “Avion at Ballpark Village Planned Area Development (October 2020) Development Regulations,” which document was declared a public record by Resolution No. 2020-2102, three copies of which are on file with the City Clerk of the City of Goodyear, Arizona and which is referred to, and is adopted and made a part hereof as if fully set forth in this Ordinance.

### SECTION 4. STIPULATIONS

The rezoning of the Property is subject to the following stipulations and conditions:

1. Except as otherwise provided herein, all development within the Property shall be in compliance with the Avion at Ballpark Village Planned Area Development (October 2020) Development Regulations which document was declared a public record by Resolution No. 2020-2102, three copies of which are on file with the City Clerk of the city of Goodyear, Arizona and which is referred to, adopted, and made a part hereof as is fully set forth in this ordinance, and with all conditions and stipulations of approval;
2. The City will consider renaming W. Lower Buckeye Road to Ballpark Village Boulevard pursuant to the process established by the City Council for renaming streets.
3. Proposed phasing submitted with the rezoning application and referred to in the Avion at Ballpark Village Planned Area Development (October 2020) Development Regulations is not approved with this rezoning and must be reviewed and at the discretion of the City Engineer or his designee approved through the preliminary plat processes;
4. Except as otherwise provided in stipulation 5, Owner shall construct full south half-street improvements within the existing W. Lower Buckeye Road alignment from Estrella to the western boundary of the Property required for a Minor Collector Road, which road shall include but not be limited to: paving consisting of a minimum 4-foot bike lane and two 12-foot travel lanes, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting. The south half-street improvements referred to herein shall be constructed pursuant to a written phasing plan approved by the City Engineer or his designee;
5. As an alternative to the construction of the full south half-street improvements referred to in stipulation 4 above, Owner shall construct full south half-street improvements within the existing W. Lower

Buckeye Road alignment from Estrella to 157<sup>th</sup> Avenue required for a Minor Collector Road, which road shall include but not limited to: paving consisting of a minimum 4-foot bike lane and two 12-foot travel lanes, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting. In addition, Owner shall construct a pedestrian path along the northern boundary of the Property west of 157<sup>th</sup> Avenue following the abandonment referred to below beginning at the point where the existing improvements within W. Lower Buckeye Road ends to the western boundary of the Property. The pedestrian path shall include a minimum of an eight (8) foot stabilized granite path with landscaping on either side of the pedestrian path comparable to landscaping required for a Collector Street Median with low water consumptive plants from the ADWR's approved list and decomposed granite in accordance with the Engineering Design Standards and Policies. If Owner pursues this alternative, Owner shall submit an application with all supporting documents, including required clearance letters, to abandon the south-half of Lower Buckeye Road from 157<sup>th</sup> Ave to the boundary of Sarival Village Parcel 5. No final plat subdividing all or part of the Property adjacent to Lower Buckeye Road west of 157<sup>th</sup> Avenue shall be approved until the abandonment referred to herein has been approved by Council. The improvements referred to herein shall be constructed pursuant to a written phasing plan approved by the City Engineer or his designee;

6. Except as provided in stipulation 7, Owner shall construct full north half-street improvements for Elwood Street required for a Minor Arterial as set forth in the Engineering Design Standards in effect at the time of construction for the section of Elwood Street along the southern boundary of the Property, including, but not limited to, pavement, curb and gutter, one-half median, one-half median landscaping, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Elwood Street Improvements"). Notwithstanding the foregoing, at the request of the City Engineer or designee, rather than constructing the median and installing the median landscaping, Property Owner shall remit to the City an in-lieu payment for one-half the cost of a full median and full-median landscaping, for any required median. The in-lieu payment for the median shall be based on the estimated cost of the improvements as determined by the City Engineer or designee and the in-lieu payments for the medians and median landscaping shall be paid prior to the recordation of the first final plat subdividing all or part of the property adjacent to the roadway where a median is to be installed. Except as otherwise provided in a written development agreement approved by Council or a written phase plan approved by the City Engineer or his designee, the Elwood Street Improvements shall either be completed and accepted by the City Engineer or his designee subject to the two-year warranty period or shall be substantially completed as determined by the City Engineer or his designee and financial assurances provided to the City to ensure the

completion of the Elwood Street Improvements prior to the issuance of the first building permit for the construction of any structure, except for model homes; within any portion of the Property included within any final plat subdividing all or part of the Property adjacent to Elwood Street;

7. If, when Owner records a final plat subdividing all or part of the Property adjacent to Elwood Street or seeks approval of a site plan for development of a portion of the Property adjacent to Elwood Street, the improvements to Elwood Street Owner is required to construct in Stipulation 6 have been constructed by others, are under construction by others, or have been permitted by others, Owner shall remit to the City an in-lieu payment for the costs incurred in constructing such improvements if completed or an in-lieu payment for the estimated costs of constructing such improvements. The in-lieu payment required in this stipulation 7 shall be made prior to the recordation of the first final plat subdividing all or part of the Property adjacent to Elwood Street or prior to the issuance of any permit associated with infrastructure required with the approval of the first site plan for development of a portion of the Property adjacent to Elwood Street, whichever is earlier. To the extent legally enforceable, the City will limit the amount of the in-lieu payment to be made pursuant to this stipulation to the amount reflected in any private agreement between the Owner and the entity that funded the construction of the Elwood Street Improvements provided a copy of the private agreement is submitted to the City when the in-lieu payment is requested. If there is a challenge to the enforceability to the amount of the in-lieu payment, the City will collect the full amount of the in-lieu payment described herein until the dispute is resolved;
8. Owner shall construct full west half-street improvements to Estrella Parkway required for a Scenic Arterial as set forth in the Engineering Design Standards in effect at the time of construction for the section of Estrella Parkway along the eastern boundary of the Property, which improvements include, but are not limited to, pavement, curb and gutter, sidewalks, street frontage landscape and landscape irrigation, and street lighting (the "Estrella Parkway Improvements"). Except as otherwise provided in a written development agreement approved by Council or a written phase plan approved by the City Engineer or his designee, the Estrella Parkway Improvements shall either be completed and accepted by the City Engineer or his designee subject to the two-year warranty period or shall be substantially completed as determined by the City Engineer or his designee and financial assurances provided to the City to ensure the completion of the Estrella Parkway Improvements prior to the issuance of the first building permit for the construction of any structure, except for model homes; within any portion of the Property included within any final plat subdividing all or part of the Property adjacent to Estrella Parkway;

9. Property Owner shall dedicate, at no cost to the City, all rights-of-way and/or easements within the boundaries of the Property that are: (i) needed for the construction of infrastructure improvements required for the City to provide water and wastewater services to the Property; (ii) required to be dedicated under any applicable law, code, ordinance, rule, regulations, standards, guidelines governing the development of the Property including, but not limited to the City of Goodyear subdivision regulations, Building Codes and Regulations, and the City of Goodyear's Engineering Design Standards and Policies; (iii) required for the construction of improvements for which Owner is responsible for making in-lieu payments; (iv) required to be dedicated pursuant to any development agreement with the City regarding the development of the Property; (v) required for the construction of the infrastructure improvements to be constructed pursuant to the stipulations herein, and/or (vi) required public infrastructure improvements Owner is required to construct pursuant to any applicable law, code, ordinance, rule, regulations, standards, guidelines governing the development of the Property including, but not limited to the City of Goodyear subdivision regulations, Building Codes and Regulations, and the City of Goodyear's Engineering Design Standards and Policies. The rights-of-way to be dedicated shall be dedicated in fee and all rights-of-ways and easements shall be dedicated lien free and, unless otherwise agreed to by the City, free of all other easements or other encumbrances. Unless the timing of the required dedications is modified by any stipulation in this ordinance, the terms of a written development agreement approved by the Council or a written phasing plan approved by the City Engineer or his designee, all dedications shall be made prior to or concurrent with recordation of a final plat that includes the area in which the dedicated property is located as required by the City Engineer or his designee;
10. The Owner is responsible for a proportionate share of the costs for adjacent traffic signals and for additional adjacent traffic signals identified in an approved Traffic Impact Analysis/Study as being needed. Owner shall make an in-lieu payment for the cost of traffic signal adjacent to the Property. The in-lieu payment shall be made prior to the recordation of any final plat that includes any portion of the Property adjacent to the intersection for which an in-lieu payment is required. The in-lieu payment shall be based on the actual cost of the traffic signal if it has been constructed or if the payment is required before the signal is constructed it shall be based on the estimated cost of the traffic signal as determined by the City Engineer or designee. Owner's traffic signal obligations include, but may not be limited to:
  - a. 25% at Lower Buckeye Road and Estrella Parkway;
  - b. 50% at Pioneer Street (Wood Boulevard) and Estrella Parkway;
  - c. 25% at Elwood Street and Estrella Parkway;

11. In addition to the specific infrastructure identified in this Ordinance, Owner shall construct all infrastructure improvements required by the City of Goodyear subdivision regulations and Engineering Design Standards and Policy Manual in effect at the time of construction;
12. Owner shall apply to the Arizona Department of Water Resources (ADWR) for the extinguishment of the Type 1 Rights appurtenant to the Property and request that any assured water supply credits issued by ADWR as a result of any such extinguishment be credited to the City of Goodyear. Said extinguishment shall occur prior to recordation of the first final plat subdividing all or part of the Property or the issuance of any construction permits for work within the Property, whichever is earlier;
13. The approximate seven acre community park that is to be developed within the Property, including all of the amenities that are to be included in that park, shall be included in the first final plat recorded subdividing all or part of the Property and shall be substantially completed prior to the issuance of the first building permit for any structure within the Property, except for model homes, within the first final plat recorded subdividing all or part of the Property;
14. The developer shall provide for a waiver agreement, which shall run with the land, for each initial homebuyer to sign, and shall include the following statement in the waiver agreement: “Avion at Ballpark Village is subject to attendant noise, vibrations, dust, and all other effects that may be caused by overflights and by the operation of aircraft landing at, or taking off from, Luke Air Force Base and/or the Phoenix-Goodyear Airport. The owner does release and discharge the City of Goodyear, developer and homebuilder from any liability for any and all claims for future damages and complaints of any kind to persons or property that may arise at any time in the future from the operation of such aircraft near and over the area”;
15. The Public Sales Report and all final plats subdividing all or part of the Property shall include a statement that Avion at Ballpark Village is subject to attendant noise, vibrations, dust, and all other effects that may be caused by overflights and by the operation of aircraft landing at, or taking off from, Luke Air Force Base and/or the Phoenix-Goodyear Airport;
16. Signage shall be posted within all subdivision sales offices identifying the location of the Luke Air Force Base Accident Potential Zones (APZs), 65 LDN and higher noise contours, and departure corridors, as well as the Phoenix-Goodyear Airport Traffic Pattern Area and noise contours per the Goodyear General Plan. This display shall include a 24-inch by 36-inch map at the main entrance of such sales facilities and shall include the approximate locations of the homes being sold clearly depicted. The required contents of the map shall be provided by the City of Goodyear;
17. The following information shall be disclosed in the Public Sales Report and by note on the final plat, and shall be provided in a separate

acknowledgment, which shall run with the land, for each initial homebuyer to sign: “Avion at Ballpark Village is in close proximity to agricultural uses and may therefore be subject to noise, dust, and odors associated with such uses”;

18. The growing of crops on the subject property within 50 feet of any occupied residential dwelling is prohibited. Agricultural composting is prohibited anywhere on the Property; and
19. The developer shall establish a homeowners association (HOA) for the residential parcels within Avion at Ballpark Village, with said HOA owning and maintaining all private open space areas, private trails, and other private community amenities within the residential parcels, and maintaining all arterial and collector road rights-of-way landscaping abutting or within the residential parcels except for arterial median landscaping. A note shall be placed on each final plat indicating HOA ownership and maintenance responsibilities of these private tracts and public rights-of-way landscaping.

#### SECTION 5. ABRIDGMENT OF OTHER LAWS

Except where expressly provided, nothing contained herein shall be construed to be an abridgement of any other ordinance, regulation, or requirement of the City of Goodyear.

#### SECTION 6. AMENDMENT TO ZONING MAP

The Zoning Map of the City of Goodyear is hereby amended to reflect the rezoning set forth in Section 3 of this Ordinance by the adoption of that certain document titled, “Supplementary Zoning Map No. 20-01A,” which document was declared a public record by Resolution 2020-2081, three copies of which are on file with the City Clerk of the City of Goodyear, Arizona and which is referred to and made a part hereof as if fully set forth in this Ordinance, and such amendment to the Zoning Map shall be filed with the City Clerk in the same manner as the Zoning Map of the City of Goodyear.

#### SECTION 7. CORRECTIONS

The Zoning Administrator, City Clerk, and the codifiers of this Ordinance are authorized to make necessary clerical corrections to this Ordinance, including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

#### SECTION 8. SEVERABILITY

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent



jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of the ordinance or parts thereof.

## SECTION 9.     EFFECTIVE DATE

This Ordinance shall become effective as prescribed by law. The provisions of the City of Goodyear Zoning Ordinance being amended by this ordinance shall remain in full force and effect until the effective date of this ordinance.

## SECTION 10.   PENALTIES

Any person who violates and provision of this ordinance shall be subject to penalties set forth in Section 1-2-3 of the City of Goodyear Zoning Ordinance as it may be amended from time to time and which currently provides:

### **Section 1-2-3 Violations and Penalties**

- A.     It is unlawful to construct, erect, install, alter, change, maintain, use or to permit the construction, erection, installation, alteration, change, maintenance, or use of any house, **building, structure**, sign, landscaped area, **parking lot** or fence, or to permit the use of any **lot** or land contrary to, or in violation of any provisions of this **Ordinance**, or of any conditions, stipulations or requirements included as a condition of any applicable approval. Any land **use** that is specifically prohibited by this **Ordinance** or is unspecified and not classified by the **Zoning Administrator** is prohibited in any **district**.
- B.     Responsible Party. The responsible party for any violations hereunder is the owner of personal property improvements or real property and/or person in possession or control of any personal property improvements or real property (**Person**). The responsible party shall be responsible for any violations hereunder whether or not the responsible party or its agent committed the prohibited act(s) or neglected to prevent the commission of the prohibited act(s) by another.
- C.     Every Responsible Party shall be deemed responsible or guilty of a separate offense for each and every day during which any violation is committed or continued.
- D.     Penalty. Any **Person** who violates any of the provisions of this **Ordinance** and any **amendments** there to and/or any conditions, stipulations or requirements included as a condition of any applicable approval shall be:
  - 1.     Subject to civil sanctions of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) per offense; or
  - 2.     Guilty of a class 1 misdemeanor, punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by a

