

RESOLUTION NO. 2022-2221

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING THE DEVELOPMENT AGREEMENT WITH GOODYEAR AIRPARK INDUSTRIAL DEVELOPMENT, LLC; PROVIDING AUTHORIZATION AND DIRECTION FOR EXECUTION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City of Goodyear and to have the terms of such agreements run with the land; and

WHEREAS, Goodyear Airpark Industrial, LLC, a Delaware limited liability company (the "Developer") is the owner of approximately 14 acres of land (the "Property") generally located at the southwest corner of Bullard Avenue and Lower Buckeye Parkway, in Goodyear, Arizona, which is more specifically described in the Development Agreement attached hereto as Exhibit A; and

WHEREAS, the Developer receives a benefit from this Development Agreement by having certain assurances with respect to rezoning or condemnation of the Property; and

WHEREAS, the City acknowledges and agrees that the development of the Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents; and

WHEREAS, this Agreement is consistent with the portions of the City's General Plan applicable to the Property on the date this Agreement is executed; and

WHEREAS, the Developer and City desire to enter into this Agreement for the purpose of outlining and setting forth certain obligations and commitments of the Parties relative to the Property, intending this Agreement to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

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

SECTION 1. The Mayor and Council of the City of Goodyear hereby approve the Development Agreement with Goodyear Airpark Industrial, LLC, a Delaware limited liability company, attached as Exhibit "A."

SECTION 2. The City Manager or her designee is hereby authorized and directed to sign and execute the Development Agreement with Goodyear Airpark Industrial, LLC and to take any and all actions necessary to carry out the intent of this Resolution and the terms of this Development Agreement.

SECTION 3. This Resolution shall become effective upon its adoption by the Mayor and Council of the City of Goodyear.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 20_____.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT 'A'

DEVELOPMENT AGREEMENT

**GOODYEAR AIRPARK INDUSTRIAL DEVELOPMENT, LLC
A DELAWARE LIMITED LIABILITY COMPANY**

(On the following pages)

When recorded please return to:

City Clerk
City of Goodyear
P.O. Box 5100
Goodyear, Arizona 85338

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 11 day of April, 2022 (the "Effective Date"), by and between Goodyear Airpark Industrial Development, LLC, a Delaware limited liability company (the "Developer") and the City of Goodyear, an Arizona municipal corporation, (the "City"). The Developer and the City may be referred to together as the "Parties."

RECITALS

A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City and to have the terms of such agreements run with the land; and

B. WHEREAS, Developer is the owner of approximately 14 acres of land (the "Property") generally located at the southwest corner of Bullard Avenue and Lower Buckeye Parkway, in Goodyear, Arizona, which is more specifically described on Exhibit A attached hereto; and

C. WHEREAS, Developer receives a benefit from this Development Agreement by having certain assurances with respect to rezoning or condemnation of the Property; and

D. WHEREAS, the City acknowledges and agrees that the development of the Property pursuant to this Agreement will result in planning and economic benefits to the City and its residents; and

E. WHEREAS, this Agreement is consistent with the portions of the City's General Plan applicable to the Property on the date this Agreement is executed; and

F. WHEREAS, the Developer and City desire to enter into this Agreement for the purpose of outlining and setting forth certain obligations and commitments of the Parties relative to the Property, intending this Agreement to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05; and

G. WHEREAS, the Mayor and City Council have authorized execution of this Agreement by Resolution No. _____.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual covenants and conditions and for valuable consideration the Parties agree as follows:

ARTICLE 1: BACKGROUND

- 1.1 Adoption of Recitals. The Parties adopt and incorporate the foregoing Recitals.
- 1.2 Designated Growth Area. The City hereby acknowledges and agrees that the Property is in an area of the City that the City has determined to be appropriate for development for multi-family and/or commercial (not industrial) uses to serve the current needs of the community.
- 1.3 Approval Contingent. This Agreement is subject to and contingent on approval by the City, pursuant to applicable State and City laws and regulations, of the re-zoning of the Property to PAD RES/MXD subject to conditions of approval that are standard in the City and are reasonably acceptable to Developer.

ARTICLE 2: REZONING PAD RES/MXD

- 2.1 Rezoning to PAD RES/MXD. The City has initiated, or within sixty (60) days of the Effective Date will initiate, on behalf of Developer, a rezoning of the Property from Industrial I-1 to PAD RES/MXD (the "Rezoning") and (although the City cannot contractually agree to approve the Rezoning) the City will diligently pursue such Rezoning to completion, with customary City re-zoning fees per the adopted fee schedule waived.
- 2.2 Developer Consent. Provided the City diligently pursues same to completion, Developer shall consent to the Rezoning.

ARTICLE 3: CONDEMNATION IN THE ALTERNATIVE

- 3.1 Condemnation. In the event the Rezoning is voluntarily withdrawn by Developer or is not completed as a result of an affirmative act or omission of Developer (a "Voluntary Withdrawal"), then the City reserves the right to subsequently acquire the Property by eminent domain ("Condemnation Proceedings"). For purposes of this Agreement, if Developer decides to withdraw the Rezoning because the City is proposing to impose Rezoning conditions of approval that are not consistent with the Ballpark Village or other multi-family projects located with the Ballpark Village or are not reasonably acceptable to Developer after good faith consultation and negotiation with the City, such withdrawal shall not be considered a Voluntary Withdrawal.
- 3.2 Valuation Date. In the event of any Condemnation Proceedings pursuant to Section 3.1 above, the Effective Date of this Agreement shall be used for purposes of establishing the date of valuation of the Property.
- 3.3 Limitation of Defense. In the event of a Voluntary Withdrawal and within twelve (12) months thereafter the City initiates an action to acquire the Property by eminent domain for

a municipal use, Developer waives any public use or necessity defense with respect to such Condemnation Proceedings.

ARTICLE 4: ADDITIONAL OBLIGATIONS

4.1 High Quality Development. Any multi-family development on the Property shall be Market Rate Class-A, as such term is typically considered in the City and substantially consistent with the designs and quality of the multi-family projects being developed on the parcels adjacent to the Property.

4.2 Ballpark Village Branding. Developer acknowledges that subject property is located in the Ballpark Village and will cooperate and implement the Ballpark Village branding to a similar extent as adjoining development projects have implemented.

ARTICLE 5: DEFAULT

5.1 Default. Failure or unreasonable delay by either Party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof (the "Notice of Default") from the other Party (or thirty (30) days following the Notice of Default, if the failure cannot reasonably be cured within such ten (10) day period) shall constitute a default under this Agreement (a "Default"). The Parties agree that so long as any party is diligently pursuing the remedy or correction of any performance or obligation hereunder, such Party shall not be in Default hereunder. The Notice of Default shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured, if possible. In the event of a default hereunder by any Party, the non-defaulting Party shall be entitled to all remedies at both law and in equity.

5.2 Reserved.

ARTICLE 6: CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

6.1 Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

6.2 No Personal Liability. No member, shareholder, partner, owner, manager, officer, director, representative, agent, official, or employee of the City or Developer shall be personally monetarily liable to the other party, or any successor or assignee, (a) in the event of any default or breach by any Party, (b) for any amount which may become due to such Party or its successor or assign, or (c) pursuant to any obligation of any Party under the terms of this Agreement..

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:

City of Goodyear
ATTN: City Manager
190 N. Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85358

With a copy to:

City of Goodyear
ATTN: Development Services Director
190 Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338

and

City of Goodyear
ATTN: City Attorney
190 Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338

If to Developer:

Goodyear Airpark Industrial Development, LLC
ATTN: David R. Krumwiede
3131 E. Camelback Rd., Suite 318
Phoenix, AZ 85016

With a copy to:

Burch & Cracchiolo, P.A.
ATTN: Ed Bull
1850 N. Central Ave., Suite 1700
Phoenix, Arizona 85004

or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

7.2 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

7.3 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Delaware and that it is duly qualified to do business in the State

of Arizona and is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the City that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

7.4 Entire Agreement. This Agreement, including any exhibits, constitutes the entire agreement between the Parties pertaining to the subject matter hereof. This provision applies to the entirety of the Development Agreement only; additional and separate zoning conditions/stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

7.5 Severability. Any provision of this Agreement that is declared void or unenforceable shall be severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect.

7.6 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction location in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

7.7 Recordation of Agreement and Subsequent Amendment: Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Maricopa County Recorder no later than ten (10) days after the City and the Developer execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

7.8 Attorneys' Fees and Costs. If either Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs.

7.9 Run With the Land; Conveyance or Assignment. The burdens and benefits of this Agreement will be binding upon and inure to the benefit of the Parties to the Agreement and their respective successors and assigns and shall run with the land. The rights and obligations of the Developer under this Agreement may be transferred or assigned, in whole or in part, to any subsequent Owner of all or part of the Property, by written instrument recorded in the Official Records of Maricopa County, Arizona. Upon assignment, the assignee shall assume and be responsible for all obligations and liabilities of Developer herein which are the subject of the assignment and the assignor shall be released from any further obligations or liabilities pursuant to this Agreement which are the subject of the assignment. All successors and assigns of Developer that wish to assign any rights under this Agreement shall also be bound by the terms of this section and each successive assignment of the rights hereunder shall also be subject to the requirements of this Agreement.

7.10 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement and no person or entity not a party hereto shall have any right or cause of action hereunder.

7.11 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.

7.12 No Exceptions to Title. Except as otherwise provided herein, the City and Developer hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the Property.

7.13 Further Acts. Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

7.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date above written.

“CITY”

THE CITY OF GOODYEAR, an Arizona
municipal corporation:

By: _____
Its: City Manager

ATTEST:

By: _____
City Clerk

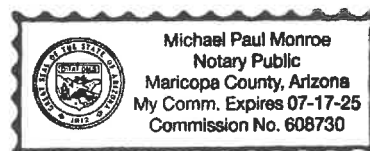
APPROVED AS TO FORM:

City Attorney
State of Arizona)
)
County of Maricopa)

“DEVELOPER”

GOODYEAR AIRPARK INDUSTRIAL
DEVELOPMENT, LLC, a Delaware limited
liability company

By: 
Name: David Krumwiede
Title: Authorized Signatory



On this 11 day of April, 2022, before me personally appeared David Krumwiede, as the Authorized Signatory of Goodyear Airpark Industrial Development, LLC, a Delaware limited liability company, whose identity was proved to me on the basis of satisfactorily evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed the above/attached document.

Notary Seal:

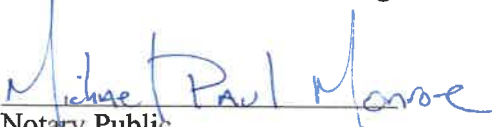

Notary Public

Exhibit A

A Portion of the Southwest Quarter of Section 17, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the West Quarter Corner of said Section 17, being marked by a 3" City of Goodyear brass cap in handhole, from which the Southwest corner of said section 17, being marked by a 3" City of Goodyear brass cap in handhole, bears South 0 degrees 49 minutes 43 seconds East, 2651.36 feet;

Thence along the West line of said Southwest Quarter, South 0 degrees 49 minutes 43 seconds East, 1325.68 feet to the Southwest corner of the North half of said Southwest quarter;

Thence along the South line of said North half, South 89 degrees 53 minutes 50 seconds East, 1326.10 feet to a point on the East right-of-way line of Wood Boulevard as described in [Document No. 2007-1113993](#) and [Document No. 2008-0278500](#) of Maricopa County Records;

Thence along said East right-of-way line, North 0 degrees 06 minutes 08 seconds East, 45.00 feet to the Point of Beginning;

Thence continuing along said East right-of-way line, North 0 degrees 06 minutes 08 seconds East, 275.77 feet;

Thence continuing along said East right-of-way line, North 3 degrees 54 minutes 59 seconds East, 120.26 feet;

Thence continuing along said East right-of-way line, North 0 degrees 06 minutes 08 seconds East, 148.67 feet;

Thence continuing along said East right-of-way line, North 45 degrees 10 minutes 53 seconds East, 22.60 feet to a point on the South right-of-way line of Lower Buckeye Parkway as described in [Book 332, Page 4](#) and [Book 963, Page 22](#) of Maricopa County Records;

Thence along said South right-of-way line, South 89 degrees 44 minutes 22 seconds East, 468.37 feet to the beginning of a curve, concave Southwest, having a radius of 1945.00 feet;

Thence continuing along said South right-of-way line, Southeasterly 383.38 feet along the arc of said curve to the right through a central angle of 11 degrees 17 minutes 37 seconds;

Thence continuing along said South right-of-way line, South 78 degrees 26 minutes 45 seconds East, 283.57 feet to a point on the West right-of-way line of Bullard Avenue as described in [Book 963, Page 22](#) of Maricopa County Records and the beginning of a non-tangent curve, concave Easterly, from which the radius point bears South 79 degrees 46 minutes 20 seconds East a distance of 2515.00 feet;

Thence along said West right-of-way line, Southerly 476.13 feet along the arc of said curve to the left through a central angle of 10 degrees 50 minutes 49 seconds to a point on the North line of that parcel described in [Document No. 2016-0079842](#) of Maricopa County Records;

Thence along said North line, on a non-tangent line North 88 degrees 14 minutes 49 seconds West, 86.73 feet;

Thence continuing along said North line, South 0 degrees 06 minutes 11 seconds West, 20.00 feet;

Thence continuing along said North line, North 88 degrees 14 minutes 49 seconds West, 945.82 feet;

thence continuing along said North line, North 89 degrees 53 minutes 50 seconds West, 80.00 feet to the Point of Beginning.