

When recorded, return to:
City of Maricopa
39700 W Civic Center Plaza
Maricopa, AZ 85138

**DEVELOPMENT AGREEMENT
AND
LOT SALE PROHIBITION**

BETWEEN

**CITY OF MARICOPA,
an Arizona municipal corporation**

AND

**CORTONA, INC.,
an Arizona corporation**

DEVELOPMENT AGREEMENT AND LOT SALE PROHIBITION

THIS DEVELOPMENT AGREEMENT AND LOT SALE PROHIBITION (the “Agreement”) is entered into by and between CITY OF MARICOPA, an Arizona municipal corporation (the “City”), and CORTONA, INC., an Arizona corporation (“Owner”). These entities are referred to collectively as the “Parties”.

RECITALS

A. Owner owns those certain parcels of real property (collectively, the “Parcels”) described on Exhibit “A” attached hereto and incorporated herein by reference, such parcels being a portion of the master-planned development (PAD) commonly known as Cortona Phase 1B, located within the City.

B. Owner intends to subdivide Cortona Phase 1B into roadways, lots, and tracts, pursuant to following final plats (each, a “Final Plat”): Cortona Phase 1B, Cortona – Parcel 7, Cortona – Parcel 7A, Cortona – Parcel 8, and Cortona – Parcel 8A. The Cortona Phase 1B final plat will dedicate roadways and create the specific parcels that will subsequently be subdivided by the recording of the other final plats. The Final Plats were approved by the City prior to the Parties’ execution of this Agreement.

C. In compliance with the City’s Subdivision Ordinance, the City must receive from the Owner the required Financial Assurance and approved improvement plans, as specified in the City’s Subdivision Ordinance for Construction for all the public improvements prior to recording the Final Plats.

D. The Parties desire to provide for the relief of the required "Financial Assurance for Construction" in exchange for the recording of a Lot Sale Prohibition upon the terms and conditions set forth herein.

E. The Parties hereto acknowledge that this Agreement constitutes a “**Development Agreement**” within the meaning of Arizona Revised Statutes, Section 9-500.05 and is consistent with the City’s General Plan.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, it is understood and agreed by the Parties as follows:

1. Recitals. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. Relief of the Required Financial Assurance for Construction. The City shall record the Cortona Phase 1B Final Plat immediately following the recordation of this Agreement without receipt of the required Financial Assurance for Construction. Upon the recording of the Cortona Phase 1B Final Plat, the parcels created by such plat (parcels 7, 7A, 8, and 8A) shall be the “Parcels” for all purposes under this Agreement. In addition, upon receipt of Owner’s request, the

City shall record the following Final Plats without receipt of the required Financial Assurance for Construction: Cortona – Parcel 7, Cortona – Parcel 7A, Cortona – Parcel 8, and Cortona – Parcel 8A.

3. Lot Sale Prohibition. Owner agrees that a “Notice of Lot Sale Prohibition” (the “Notice”) in the form of Exhibit “B” attached hereto and incorporated herein by reference shall be recorded against the Parcels promptly following the execution of this Agreement by the City and that no individual lots within the Parcels will be sold until the Owner’s obligations under this Agreement have been fulfilled to the satisfaction of the City. Specifically, neither Owner nor any successor owner of a Parcel may or shall sell individual lots within such Parcel unless and until (a) all subdivision improvements shown on or required by the Cortona Phase 1B Final Plat and the applicable Final Plat for a Parcel or on the improvement plans for such Parcel approved by the City in connection therewith have been constructed, and (b) the City executes and records against such Parcel in the records of Pinal County, Arizona an instrument (a “Partial Release”) in the form of Exhibit “C” attached hereto and incorporated herein by reference releasing such Parcel from the restrictions and the obligations of Owner (or any successor owner) under this Agreement and under the applicable Notice. Notwithstanding the foregoing, this Agreement shall not prevent or otherwise restrict Owner from selling any or all of the Parcels to one or more purchasers in bulk (meaning a sale that is not a so-called retail sale of a lot with a home constructed thereon to a consumer purchaser).

4. Substitution of Assurances. The owner of a Parcel may submit substitute assurances in a form and amount acceptable to the City at any time such owner is not in default of this Agreement and, upon City’s receipt of such substitute assurances, the City shall execute and record a Partial Release for the applicable Parcel.

5. Maintenance of Parcels. During such time as the Parcels are not being developed, Owner (or any successor owner of the Parcels, as applicable) shall be permitted to perform general maintenance on the Parcels, and shall maintain the Parcels in a reasonably neat and orderly manner, generally free and clear of weeds, trash, etc. Owner shall have the right and be entitled to allow the Parcels to be used for agricultural uses until such time development begins. Routine site compliance inspections will be performed by the City to verify active agriculture use; if it is determined that the site is no longer being used for agriculture purposes, the owner shall submit to the City an alternative dust and weed control plan within seven (7) calendar days.

6. Indemnity. Owner shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys fees, experts fees and court costs associated) which arise from or relate in any way to any act or omission by Owner, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the obligations under this Agreement. The provisions of this Section 6, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives. Owner shall have no defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of the City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of Owner shall

survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

7. Dispute Resolution. In the event a dispute arises under this Agreement, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association (“AAA”) but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Owner. The matter in dispute shall be submitted to a mediator mutually selected by Owner and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Owner shall request that the Presiding Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the Parties. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

8. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or, as may be appropriate, in the Justice Courts of Pinal County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 8.

9. Binding Nature. The provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their respective representatives, successors and assigns. Upon transfer of the Parcels by Owner, the new owner shall automatically become Owner hereunder with respect to the Parcels and the old owner shall be released from this Agreement.

10. Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

11. Notices. All notices, demands or other writings in this Agreement to be given, made or sent by any party hereto to other parties will be deemed to have been fully given, made or sent when made in writing and personally delivered or deposited in the United States mail postpaid, registered or certified and addressed as follows:

To City: City of Maricopa
Attn: City Manager
39700 W. Civic Center Plaza
Maricopa, Arizona 85138

And: Denis M. Fitzgibbons, Esq.
Fitzgibbons Law Offices, P.L.C.
1115 E. Cottonwood Lane, Suite 150
Casa Grande, Arizona 85122

To Owner: Cortona, Inc.
Attn: Keith Miller
7373 N. Scottsdale Road, Suite B210
Scottsdale, AZ 85253

12. Waiver of Terms and Conditions. The failure of City or Owner to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

13. Entire Agreement, Waivers and Amendments. This Agreement, including the exhibits which are incorporated herein by this reference, constitutes the entire understanding and agreement of the Parties. This Agreement integrated all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers or amendments of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties hereto.

14. No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between City and Owner. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm organization or corporation may have any right or cause of action hereunder.

15. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time.

16. Attorneys' Fees and Costs. In the event of a dispute under this Agreement which results in litigation, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

17. Time of the Essence. Time is of the essence to this Agreement and with respect to the performance required by each Party hereunder.

18. Construction. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. §38-511.

19. Recordation. This Agreement shall be recorded, at Owner's sole cost, in its entirety, in the Official Records of Pinal County, Arizona not later than ten (10) days after execution by the last Party.

20. Right to Intervene. In the event that this Agreement or any approvals given by the City related to this Agreement are ever challenged, Owner reserves the right to intervene in such action at Owner's sole cost and expense.

21. Police Powers. Except as specifically provided herein, nothing in this Agreement shall be interpreted or applied to require, restrict, or limit, in any manner whatsoever, or to impinge in any way upon, the City's ability to exercise its police powers.

[signatures follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date that this Agreement has been fully executed and hereby swear and affirm that they are duly authorized in accordance with law to execute this Agreement.

CITY OF MARICOPA,
an Arizona municipal corporation

By: _____
Christian Price, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Vanessa Bueras, City Clerk

By: _____
Denis M. Fitzgibbons, City Attorney

STATE OF ARIZONA }
 } §
COUNTY OF _____ }

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____ of City of Maricopa, an Arizona municipality, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the above/attached instrument.

Notary Public

[signatures continue on following page]

EXHIBIT “A”

Legal Description of the Parcels

EXHIBIT “B”

Notice of Lot Sale Prohibition

[see attached]

When Recorded, return to:
City of Maricopa
39700 W Civic Center Plaza
Maricopa, AZ 85138

NOTICE OF LOT SALE PROHIBITION

Notice is hereby given that Cortona, Inc., an Arizona corporation ("Owner"), has subdivided or will be subdividing a single family residential subdivision under the name of "Cortona Phase 1B," which includes the following plats (collectively, the "Plats"): Cortona Phase 1B, Cortona – Parcel 7, Cortona – Parcel 7A, Cortona – Parcel 8, and Cortona – Parcel 8A. "Cortona Phase 1B" includes those certain parcels (the "Parcels") more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. The "Cortona Phase 1B" subdivision and the Parcels are located in the City of Maricopa ("City") and as of the recording of this Notice of Lot Sale Prohibition ("Notice"), Owner is the owner of all lots and tracts in the Parcels.

Owner has requested that the City relieve Owner and its financial institution lender from the financial assurance requirement. City has agreed to allow the recordation of the Plats and allow the approval of the improvement plans for “Cortona Phase 1B” on the condition that this Notice be recorded against the Parcels and that except for bulk sales permitted pursuant to the Agreement, no individual lots or tracts within the Parcels be sold, conveyed or leased by Owner until such time as a termination of this Notice is signed by the City and recorded against the applicable portion of the Parcels being released.

Dated: _____

Cortona, Inc., an Arizona corporation

By: _____

Name: _____

Its: _____

STATE OF ARIZONA }
COUNTY OF _____ } §

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by _____, _____ of Cortona, Inc., an Arizona corporation, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the above/attached instrument.

Notary Public

EXHIBIT “A”

Legal Description of the Parcels

EXHIBIT “C”

Partial Release of Development Agreement and Lot Sale Prohibition

[see attached]

When recorded, return to:

**PARTIAL RELEASE OF
DEVELOPMENT AGREEMENT
AND
LOT SALE PROHIBITION**

KNOW ALL MEN BY THESE PRESENTS:

That certain real property described as:

See Exhibit "A" attached hereto and incorporated herein by reference;

is hereby released from that certain DEVELOPMENT AGREEMENT AND LOT SALE PROHIBITION (the "Agreement"), entered into by and between CITY OF MARICOPA, an Arizona municipal corporation (the "City"), and Cortona, Inc., an Arizona corporation ("Owner"), **recorded _____, 2022 in Instrument No. 2022-_____, Records of Pinal County, Arizona**, and is also released from that certain LOT SALE PROHIBITION, by Owner in favor of City, **recorded _____, 2022 in Instrument No. 2022-_____, Records of Pinal County, Arizona**. This instrument is not intended to terminate the Agreement, and the Agreement is confirmed as being in full force and effect with respect to all real property subjected thereto and not released therefrom by this instrument or other instruments of release.

[signature page follows]

[signature page to Partial Release]

CITY OF MARICOPA, an Arizona
municipal corporation

By: _____
Christian Price, Mayor

Date: _____, 20__

Attest:

Approved as to Form:

By: _____
Vanessa Bueras, City Clerk

By: _____
Denis M. Fitzgibbons, City Attorney

STATE OF ARIZONA }
 } §
COUNTY OF _____ }

The instrument described below was acknowledged before me this ____ day of _____, 2022 by _____ of City of Maricopa, an Arizona municipality, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the above/attached instrument.

Notary Public

EXHIBIT “A”

Legal Description of the Released Property