

When recorded, return to:

PRE-ANNEXATION DEVELOPMENT AGREEMENT
(BNC National Bank)

THIS PRE-ANNEXATION DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the ____ day of _____, 2012 by and between the CITY OF MARICOPA, an Arizona municipal corporation (“City”), and BNC National Bank, a National Banking Association (“Owner”) (City and Owner are collectively called the “Parties”).

RECITALS

A. The Owner owns approximately 189.06 acres of land (“Property”) located in an unincorporated area of Pinal County, Arizona. The Property is legally described and depicted on Exhibit "A" attached hereto.

B. City and Owner desire to annex the Property into the City. Owner and City agree that the City's General Plan Land Use Map Designation for the Property shall be amended to incorporate Commercial and Medium Density Residential (2-6du/ac) Use designations. The Parties believe that a combination of Commercial and Medium Density Residential (2-6du/ac) Uses are appropriate and desirable for the Property.

C. The City initiated an Annexation Petition for the Property and other property dated July 20, 2011, and recorded as Document No. 2011-060137, Official Records of Pinal County Recorder (the “Annexation Petition”). The City subsequently amended the territory to be annexed (dated June 21, 2012, and recorded as Document No. 2012-052653), reducing the annexation area to include only 11.8 ac of the north most portion of the Property. Owner supports this and future Annexations affecting the Property based on the City’s agreement that the Property will be designated for a combination of Commercial and Medium Density Residential (2-6du/ac) Uses on the City’s General Plan Land Use Map.

D. The Parties believe that amending the Property's General Plan Land Use Map Designation to allow a combination of Commercial and Medium Density Residential (2-6du/ac), and annexation of the Property into the City pursuant to the terms of this Agreement will result in significant benefits to the City and Property.

E. A.R.S. §9-500.05 authorizes the City to enter into a development agreement with the Owner for the purposes of establishing the conditions, terms, restrictions and requirements

for annexation of the Property by the City and other matters relating to the development of the Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm, and agree as follows:

1. Incorporation of Recitals and Exhibits. The foregoing recitals and all exhibits attached to this Agreement are hereby incorporated into this Agreement as though fully restated herein.

2. General Plan Land Use Map Designation. If the Property is annexed, the City shall support General Plan Land Use Map amendments for all the Property, or such portion thereof as elected by the Owner, to a combination of Commercial Land Use, Medium Density Residential (2-6du/ac) Land Use, or as otherwise agreed to by the City. Prior to any amendment to the General Plan, Owner shall provide evidence establishing the change in use is fiscally solvent and will not create a financial burden to the City. Requests for General Plan amendments shall include, but not limited to, a fiscal impact analysis explaining how the proposal supports the goals and objectives of the General Plan, provided that for purposes of the foregoing, the City recognizes that a Commercial Land Use designation has the same fiscal benefit to the City as an Employment Land Use designation. Upon finding the proposed change in use supports the goals and objectives of the General Plan, the General Plan Land Use Map designations shall be amended accordingly, and subsequent Zoning requests consistent with the General Plan may be approved. The City shall support an initial General Plan Amendment, which will change the entire Property from its current designation of Employment to a new designation of Commercial and the City agrees to process and request Council approval of this initial General Plan Amendment before any additional annexation will be contemplated beyond the current annexation. Subsequent to the completion of the initial General Plan Amendment, as specified in the preceding sentence, and in the event the Owners then propose additional General Plan Land Use Map amendment which would create a net loss of Commercial Land Use, i.e. Residential or any other non-Commercial Use on the Property, the Owner or others shall have provided an equal and appropriate amount of Commercial Land Use designation in the general vicinity of the Property not currently in the City's Planning Boundary, prior to or currently with this additional General Plan Amendment approval, at a time and manner acceptable to the City. The City will determine whether a Major or Minor General Plan Amendment is necessary and whether before or after annexation, but if not done prior to or contemporaneously with annexation of the Property, then the General Plan Amendment will be processed as soon after annexation as possible. Owner shall be responsible for submitting all applications, supporting documents, and related fees associated with the General Plan Amendment(s). If a combination of Commercial, Medium Density Residential, or other mutually agreeable General Plan Land Use designation is not obtained for all of the Property within two (2) years after this currently contemplated annexation, then until such occurs, Owner may elect to terminate this Agreement and to de-annex the Property, and the City will cause the de-annexation of the Property if the Owner makes this election.

3. Annexation of the Property. The City can determine whether and when to proceed with annexation of the Property, but if the City proceeds with annexation of any property in the Annexation Petition it will include the Property in such initial annexation if it is legally able to do so. If only a portion of the Property can be annexed in the initial annexation, then the City will offer to include such portion of the Property in the initial annexation subject to Owner providing written consent in Owner's sole discretion. If Owner consents to including a portion of the Property in the initial annexation, then Owner and City shall annex the remainder of the Property as soon thereafter as reasonably possible. If all or a portion of the Property is not in the first annexation, then the parties intend to annex the entire Property as soon as reasonably possible thereafter prior to December 30, 2013 and shall take all reasonable actions to do so in accordance with this Agreement, and the City shall use reasonable efforts to process a General Plan Land Use Map amendment to include a combination of Commercial and Medium Density Residential (2-6du/ac) designation for all of the Property as soon as possible. If annexation of the entire Property has not occurred by December 30, 2013, then Owner may terminate this Agreement by giving notice to the City and the annexation of the Property not previously annexed shall not occur and Owner may in its sole discretion de-annex any portion of the Property that was annexed and the City will take all actions necessary to cause such de-annexation.

4. Regulation of Development. The rules, regulations, development fees and official policies of City applicable to and governing the development of the Property shall be those rules, regulations, development fees and official policies which are existing and "in force" for the City as of the recording of this Agreement, and the City shall not impose or enact any additional conditions, zoning exactions, dedications, rules or regulations applicable to or governing the development of the Property except only as follows:

(a) Future land use rules, regulations and official policies of City which are consistent with and not contrary to the existing land use regulations applicable to and governing the development of the Property, or contrary land use regulations of which the application to the Property has been consented to in writing by Owner;

(b) Future land use rules, regulations and official policies of City enacted as necessary to comply with future state and federal laws and regulations, provided that in the event any such state or federal laws or regulations prevent or preclude compliance with this Agreement, such affected provisions of this Agreement shall be modified as may be necessary in order to comply with such state and federal laws and regulations; and

(c) Future generally applicable land use rules, regulations and official policies of City reasonably necessary in order to protect the public health and safety and in connection with *bona fide* public health and safety purposes and not arbitrarily imposed.

5. Uniform Treatment and Benefits. The City covenants and agrees that it will apply the same benefits and treatment to the Property as applied to other Commercial and Medium

Density Residential (2-6du/ac) designated property in the same general area and that no additional obligations or requirements shall be imposed in connection with any aspect of the zoning, platting, improvement or other development or use of the Property that are not imposed on other Commercial and Medium Density Residential (2-6du/ac) designated property in the same general area.

6. Successors and Assigns. The burdens and benefits of this Agreement will run with the land and be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Upon the transfer of all or any portion of the Property, the transferring party will be released from any liability arising after the transfer with respect to the portion of the Property transferred.

7. Amendment or Cancellation of Agreement. Except as provided in Section 3, this Agreement may be amended or cancelled, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the Parties hereto. Within ten (10) days after any such amendment or cancellation of this Agreement, the City will record such amendment or cancellation in the Official Records of Pinal County, Arizona.

8. Notice.

8.1 Manner of Service. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") will be validly given, filed, made, delivered or served 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 Maricopa
45145 W. Madison Avenue
Maricopa, Arizona 85239
Attn: City Attorney

If to the Owner: BNC National Bank
17550 N. Permitter Drive
Scottsdale, Arizona 85255
Attn: Mark H. Rutter

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 will be given at least ten (10) days before the date on which the change is to become effective.

8.2 Mailing Effective. Notices given by mail must be certified and will be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above, or the next business day if sent by overnight delivery or courier.

9. General Provisions.

9.1 Waiver. No delay in exercising any right or remedy will constitute a waiver thereof and no waiver by the Parties of the breach of any provision of this Agreement will be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

9.2 Attorneys' Fees and Costs. If legal action by either party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

9.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.4 Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and will not control or affect the meaning or construction of any of the provisions of this Agreement.

9.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and will not be changed or added to except in the manner provided in Section 6 above. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written with regard to the subject matter of this Agreement, other than specifically incorporated herein by reference, are superseded by this Agreement.

9.6 Governing Law; Venue. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

9.7 Recordation. No later than ten (10) days after the City and the Owner have executed this Agreement, the City shall cause it to be recorded in its entirety in the Official Records of Pinal County, Arizona.

9.8 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party ("Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged

default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies legally and equitably available to it.

9.9 Authority. The Owner represents and warrants to the City: (1) that it is duly formed and validly existing under the laws of the State of Arizona; and (2) that the individual executing this Agreement on behalf of the Owner is authorized and empowered to bind the Owner. The City represents and warrants to the Owner: (1) that it is a duly formed municipal corporation with the State of Arizona; and (2) that the individual executing this Agreement on behalf of the City is authorized and empowered to bind the City.

9.10 Conflict of Interest. This Agreement is subject to the terms of A.R.S. § 38-511.

9.11 Estoppel. The Parties hereto covenant and agree with each other to provide within twenty-one (21) days of written request from the other an estoppel certificate signed by a duly authorized representative of such party indicating that the other party is not then in default under any of the obligations pursuant to this Agreement.

9.12 Term. This Agreement shall be effective upon its recordation and shall automatically terminate ten (10) years after the effective date of the City Ordinance annexing the Property as set forth herein.

9.13 No Owner Representations. Nothing contained herein shall be deemed to obligate the Owner to commence or complete any part or all of the development of the Property or any planning in connection with such development.

9.14 Claims. Owner releases any claims arising under A.R.S. 12-1132 through 12-1138 for a diminution in value of the Property resulting from this Agreement or an annexation of the Property in accordance with this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as provided herein.

CITY:

CITY OF MARICOPA, an Arizona municipal corporation

By: _____, Mayor

Date: _____

Approved as to Form:

By: _____
City Attorney

Date: _____

Attested by:

By: _____
City Clerk

Date: _____

STATE OF ARIZONA)
) ss.
County of Pinal)

Subscribed and sworn to before me this ___ day of _____, 20___, by _____, the Mayor of CITY OF MARICOPA, an Arizona municipal corporation.

Notary Public

My Commission Expires

OWNER:

BNC National Bank, a National Banking Association

By: _____

Name: Mark H. Rutter

Title: Sr. VP of Commercial Real Estate

Date: _____

STATE OF ARIZONA)
) ss.
County of _____)

Subscribed and sworn to before me this ____ day of _____,
20__, by _____, the _____ of BNC National Bank, a National
Banking Association

Notary Public

My Commission Expires

EXHIBIT "A"

Legal Description of Property:

That part of the Southeast quarter of Section 15 and the Northeast quarter of Section 22, Township 5 South, Range 4 East of the Gila as Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows:

Beginning at the South quarter corner of said Section 22, lying south and west of the Union Pacific Railroad, thence North 00 degrees 31 minutes 04 seconds West, 2704.67 feet along the west section line and to the TRUE POINT OF BEGINNING.

Thence North 00 degrees 31 seconds 04 seconds West, 2703.81 feet, continuing along the west section line of said Section 22 to a point of intersection of the west Section line 22 and the west Section line 15 identified by a department of interior brass cap in concrete;

Thence North 00 degrees 08 minutes 07 East 1281.91 feet to a point on the Southerly Right-Of-Way of the Union Pacific Railroad;

Thence continuing North 54 degrees 07 minutes 15 seconds along the Southerly Right-of-Way of the Union Pacific Railroad 3226.19 feet to the intersection of the Union Pacific Railroad with the western section line of said Section 22;

Thence South 00 degrees 28 minutes 41 seconds East departing the Southerly Right-of-Way of the Union Pacific Railroad, a distance of 2100.38 feet, to a point labeled the west quarter Section 23, identified by a AZ highway department brass cap;

Thence North 89 degrees 52 minutes 45 seconds West a distance of 2610.16 feet to the Point of Beginning.