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STATE OF NEVADA  
COUNTY OF WASHOE

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **05/01/2009 - 05/02/2009**, for exact publication dates please see last line of Proof of Publication below.

Signed:



MAY 04 2009

Subscribed and sworn to before me

TANA CICCOTTI  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 02-75250-2 - Expires May 16, 2010



**Proof of Publication**

NOTICE OF ADOPTION WASHOE COUNTY ORDINANCE NO. 1399 BILL NO. 1580  
ORDINANCE NO. 1399 An Ordinance pursuant to Nevada Revised Statutes 278.0201 through 278.0207 approving Development Agreement Case No. DA09-002 for Tentative Subdivision Map Case No. TM04-001 for Sun Mesa Subdivision as previously approved by the Board of Washoe County Planning Commission. (BILL NO. 1578) PUBLIC NOTICE IS HEREBY GIVEN that an adequate number of typewritten copies of the above-numbered and entitled Ordinance are available for public inspection and distribution at the office of the County Clerk of Washoe County, at her office in the County Courthouse in Reno, Nevada, 75 Court Street, Reno, Washoe County, Nevada; and can be found on the County Clerk's website, [www.washoecounty.us/clerks](http://www.washoecounty.us/clerks). and that said Ordinance was proposed by Commissioner Larkin on April 14, 2009, and was passed and adopted without amendment at the regular meeting on April 28, 2009, by the following vote of the Board of County Commissioners: Those Voting Aye: John Breternitz David E. Humke Kitty Jung Bonnie Weber Those Voting Nay: None Those Absent: Robert M. Larkin This Ordinance shall be in full force and effect from and after May 8, 2009, i.e., the date of the second publication of such Ordinance by its title only. IN WITNESS WHEREOF, The Board of County Commissioners of Washoe County, Nevada, has caused this

MAY 6 - 2009

ord. 1399 ✓

ordinance to be published by title only. AMY HARVEY, Washoe County Clerk and Clerk of the Board of County Commissioners 639953 May 1, 8, 2009

SUMMARY: An ordinance approving Development Agreement Case No. DA09-002 which will extend the approval of Tentative Subdivision Map Case No. TM04-001 for Sun Mesa Subdivision, as previously approved by the Washoe County Planning Commission.

BILL NO. 1580

ORDINANCE NO. 1399

AN ORDINANCE PURSUANT TO NEVADA REVISED STATUTES 278.0201 THROUGH 278.0207 APPROVING DEVELOPMENT AGREEMENT CASE NO. DA09-002 FOR TENTATIVE SUBDIVISION MAP CASE NO. TM04-001 FOR SUN MESA SUBDIVISION AS PREVIOUSLY APPROVED BY THE WASHOE COUNTY PLANNING COMMISSION.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WASHOE DOES ORDAIN:

SECTION 1.

The Development Agreement for Tentative Subdivision Map, Case No. TM04-001, for Sun Mesa, a Common Open Space Subdivision, is attached and is an acceptable document with which to ensure the public interest in providing detailed plans for phasing and financing of infrastructure and construction of the development.

Proposed on the 14<sup>th</sup> day of April, 2009.

Proposed by Commissioner LARKIN.

Passed on the 28<sup>th</sup> day of April, 2009.

Vote:

Ayes: Humke, Jung, Weber, Breternitz

Nays: None

Absent: LARKIN



David E. Humke, Chairman  
Washoe County Commission



ATTEST:  
Amy Harvey  
Amy Harvey, County Clerk

This ordinance shall be in force and effect from and after the 8<sup>th</sup> day of May, 2009.

139961

## AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between **Nevada State Bank**, a Nevada corporation (the "Landowner"); and the **COUNTY OF WASHOE**, a political subdivision of the State of Nevada, ("County").

### **1. GENERAL.**

1.1 Property. The Landowner is the owner of real property located in Washoe County, Nevada known as Assessor's Parcel Number 504-460-02 in Washoe County (the "Property"), and is a portion of the project known as Sun Mesa as more particularly described in Exhibit A, attached hereto. Original development of the project was planned in 4 phases. Final maps for Phase 1 and Phase 2 have been recorded as described in paragraph 1.3 herein and the Property contains all the remaining land that was planned as Phase 3 and Phase 4.

1.2 Tentative Map. The Property has a County land use designation of Medium Density Suburban ("MDS"), which allows residential subdivision development at a density of three single family dwellings per acre. On April 21, 2004 the County issued its Action Order, which is incorporated herein by this reference as Exhibit B, approving a tentative map application for the Property known as Tentative Subdivision Map Case File No. TM04-001 for Sun Mesa (the "Tentative Map") for a total of 207 lots. The land covered by the Tentative Map includes the Property and the Previous Final Maps as described in paragraph 1.3 herein. The development of the Property must be conducted pursuant to the Tentative Map and applicable law, including the Nevada Revised Statutes, the Nevada Administrative Code, and the Washoe County Development Code (the "Code").

1.3 Previous Final Maps. Sun Mesa, LLC, the previous owner of the Property caused the recordation of two final maps covering a portion of the land covered by the Tentative Map as described below.

1.3.1 Sun Mesa - Phase 1, as shown on the Official Plat of Sun Mesa - Phase 1, recorded on March 14, 2006 as Subdivision Tract Map 4618, Document No. 3360640, Official Records of Washoe County, Nevada, containing 50 lots.

1.3.1 Sun Mesa - Phase 2, as shown on the Official Plat of Sun Mesa - Phase 2, recorded on May 16, 2007 as Subdivision Tract Map 4780, Document No. 3533088, Official Records of Washoe County, Nevada, containing 54 lots.

1.4 Tentative Map Extension. On May 7, 2008, the County issued its Action Order, which is incorporated herein by this reference as Exhibit C, approving an Extension of Time Request for Tentative Subdivision Map Case No. TM04-001, extending approval of the Tentative Map until May 11, 2009.

1.5 Final Map Requirements. Pursuant to NRS 278.360(1), unless the parties have entered into an agreement concerning the development of land authorized by NRS 278.0201, the Landowner must cause the next final map (the "Next Final Map") to be recorded prior to the extended expiration date of May 11, 2009. The parties believe it is in the public interest to enter into

this Agreement and provide, among other matters, additional time to design and to establish phasing and financing for the infrastructure and construction of the development.

**2. AGREEMENT CONCERNING DEVELOPMENT OF LAND.**

2.1 Compliance with NRS 278.0201 and Code. This Agreement is an agreement concerning the development of land under NRS 278.0201 and Article 814 of the Code. The Landowner is the owner of fee title to the Property, and therefore has a legal interest in the Property. In compliance with NRS 278.0201(1), the following covenants, terms and conditions are set forth.

2.1.1 The land which is subject to this Agreement is APN 504-460-02 as more particularly described in Exhibit A.

2.1.2 The duration of this Agreement shall be for five (5) years from the date of signing by the Board of County Commissioners, provided that all the terms of this Agreement shall remain binding and enforceable regarding construction or development commenced, and any related permits, on any portion of the Property subject to the Tentative Map, a recorded final map or any use permit in existence at the time of expiration of this Agreement.

2.1.3 Exhibits described herein and all other materials and information deemed reasonably necessary and required by the County's Community Development Department ("Community Development") must be submitted in substantial compliance with the Tentative Map and no later than 120 days prior to the first anniversary of this Agreement. Final terms and specifications of all exhibits and other materials, except as otherwise provided in this Agreement, must also be completed between the parties by the first anniversary of this Agreement. These deadlines may be extended for up to one additional year at the discretion of the Director of Community Development. However the time extended for these deadlines, if any, shall not exceed an aggregate of one year.

2.1.4 The permitted uses on the Property and the density or intensity of its use, are as provided in the Tentative Map and the Code. The permitted use of the Property under the Tentative Map is the remaining 103 approved lots in a common open space residential subdivision, having approximate lots ranging from 6,534 square feet to 35,719 square feet in size, with an average lot size of 9,583 square feet, and a density of 2.79 lots per acre, which complies with the Property's Medium Density Suburban (MDS) land use designation.

2.1.5 The maximum height of the proposed buildings will comply with the Medium Density Suburban maximum height limit of 35 feet, and the maximum size of the buildings will comply with size restrictions in the Code to conform with building setbacks as well as other applicable building code requirements.

2.1.6 The provisions for the dedication of any portion of the Property for public use are as provided in the Tentative Map and the Code. The majority of common area within the Tentative Map is open space, to be constructed by the developer and maintained by the subdivision homeowners association.

2.1.7 Terms and conditions relating to construction and financing of necessary public improvements and facilities, including participation in special assessment district proceedings, if necessary, will be supplied pursuant to Section 2.1.3. This will include the following exhibits.

- Exhibit D: A phasing plan for final maps and infrastructure, including construction phasing and financing plan with information on required bonding or other acceptable guarantees of performance and completion (Article 110.610 Washoe County Development Code) for each development phase or stage.
- Exhibit E: In the event that financing includes participation in a special assessment district, information and methodology on the proposed funding mechanism and benefiting properties for the services and infrastructure, i.e. GID, SAD, LID, HOA, etc.

2.1.8 Phasing and deadline dates for project grading and development with information on required bonding or other acceptable guarantees of performance and completion (Article 110.610 Washoe County Development Code) for each development phase or stage. This shall constitute Exhibit F.

2.1.9 The next final map, to be no less than five lots, shall be recorded on or before the second anniversary of this Agreement. Each successive map, if the Landowner chooses to record in a series, must include a minimum of five lots.

2.1.10 A Development Standards Handbook, to be designated Exhibit G, shall consist of the following: project description with site plan; development phasing and building setbacks; grading, drainage and erosion controls; fences and walls; lighting standards and energy conservation; revegetation and open space maintenance; and public facilities including water and sewer service, fire protection and security and emergency services. Exhibit G may include other materials and information deemed reasonably necessary and required by Community Development.

2.2 Code and Changes to the Law. The parties agree that changes in federal, state or county law concerning public health, safety or welfare will apply to any final map or other permit.

2.3 Public Notice. Any and all public notices required to be given in connection with this Agreement shall be given in accordance with Section 110.814.25 of the Code

2.4 Assumption of Risk. The Landowner acknowledges and agrees that the Landowner is proceeding voluntarily and at its own risk in entering into this Agreement and without advice, promises or guarantees of any kind from the County, other than as expressly set forth herein. The Landowner waives any claims for damages against the County that might arise out of, or relate to, a subsequent court determination that this Agreement or any provision in it is invalid and/or unenforceable, including any claim based on NRS 278.0233(1) regarding the requirements, limitations, or conditions imposed pursuant to this Agreement.

2.5 Default and Termination of Agreement. This Agreement shall become null and void in the event of expiration or termination of the Tentative Map; or in the event of noncompliance by Landowner with any term or deadline set forth in this Agreement, in which case all proceedings concerning the Tentative Map shall be also terminated. In any event, however, all the terms of this Agreement shall remain binding and enforceable regarding construction or development commenced, and any related permits, on any portion of the Property subject to the Tentative Map or any recorded final map in existence at the time of termination of this Agreement.

2.6 Alternative Development. Nothing contained herein prohibits or impairs development of the Property in any manner allowed by the Code other than pursuant to the Tentative Map (e.g., new tentative map, new special use permit, nonresidential development allowed under the land use designation) and this Agreement shall not apply to said alternative development unless the parties mutually so agree and amendment to this Agreement accordingly.

### 3. MISCELLANEOUS PROVISIONS.

3.1 Time is of the Essence. Time is of the essence in this Agreement.

3.2 Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

3.3 Assignability of the Agreement. This Agreement shall be binding upon all future successors in interest of the Property and any said successor shall assume the duties and obligations under this Agreement.

3.4 County Funding Contingency. In the event the governing body appropriating funds for the County fails to obligate funds necessary to carry out the obligations of this Agreement beyond County's then current fiscal period, this Agreement shall be terminated without penalty, charge or sanction.

3.5 Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.

3.6 Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of Nevada. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada, including both its procedural and substantive laws and irrespective of its conflict of laws rules, and venue for any action shall be solely in state district court for Washoe County, Nevada.

3.7 Days of Week. If any date for performance herein falls on a Saturday, Sunday or holiday, pursuant to the laws of the State, the time for such performance shall be extended to 5:00 p.m. on the next business day.

3.8 Written Amendments. Amendments, if any, shall be approved as provided in NRS 278.0205. Changes to development of the Property which are in substantial compliance with the overall Tentative Map shall not require an amendment hereto and may be requested by Landowner and approved by the Director of Community Development. The Director of Community Development shall also decide whether or not a proposed change is in substantial compliance with the overall Tentative Map. The Landowner may appeal an adverse decision by the Director of Community Development to the Board of County Commissioners by written notice filed with the Director of Community Development, if filed within twenty (20) days of receipt of the notice of the adverse decision. No oral statements or representations subsequent to the execution hereof by either party are binding on the other party, and neither party shall have the right to rely on such oral statements or representations.

3.9 Future Cooperation. Each party shall, at the request of the other, at any time, execute and deliver to the requesting party all such further instruments as may be reasonably necessary or appropriate in order to effectuate the purpose and intent of this Agreement.

3.10 Third Party Beneficiary Rights. This Agreement is not intended to create any third-party beneficiary rights in any person not a party hereto.

3.11 Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to review this Agreement with legal counsel independently. The parties have equal bargaining power and intend the plain meaning of the provisions herein. In the event of an ambiguity in or dispute regarding the interpretation of the Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist, or against the draftsmen.

3.12 Counterparts. This instrument may be executed in two or more counterparts, which, when taken together, shall constitute one and the same instrument. Any signature page of this instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto, but having attached to it one or more additional signature pages.

[Signatures appear on following page]



[Signature page to Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above last written below.

**LANDOWNER:**

**NEVADA STATE BANK, a  
Nevada corporation**

By: *Pier Martin*  
PIER MARTIN, Vice President

Date: 3/27/09

**COUNTY:**

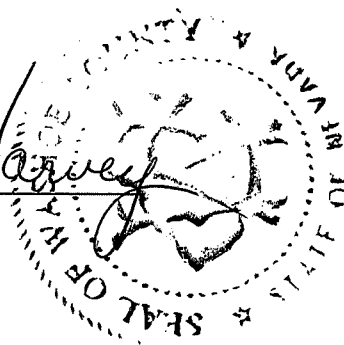
**COUNTY OF WASHOE, a political  
subdivision of the State of Nevada, by its  
BOARD OF WASHOE COUNTY  
COMMISSIONERS**

By: *David Humke*  
DAVID HUMKE, Chairman

Date: 4/28/09

**ATTEST:**

*Amy Harvey*  
AMY HARVEY, County Clerk



State of Nevada

County of Clark

This instrument was acknowledged before me on March 27, 2009, by Pier Martin, Vice President of NEVADA STATE BANK, a Nevada corporation.

*Danielle Delgado*  
Notary Public

My commission expires: November 26, 2012



**EXHIBIT "A"**

DESCRIPTION  
SUN MESA PHASE 3 & PHASE 4

All that certain real property situate in the County of Washoe, State of Nevada, within Section 20, Township 20 North, Range 20 East, M.D.M., more particularly described as follows:

Parcel D as shown on the Official Plat of Sun Mesa – Phase 2, recorded on May 16, 2007 as Subdivision Tract Map 4780, Document No. 3533088, Official Records of Washoe County, Nevada.

Containing 36.969 acres, more or less.