SUBDIVISION IMPROVEMENTS PAYBACK AGREEMENT
BETWEEN
OGDEN CITY AND
STAN CHECKETTS PROPERTIES

OGDEN CITY CORPORATION, a Utah Municipal Corporation (hereinafter referred to as "the City") and **STAN CHECKETTS PROPERTIES, L.C.** (hereinafter referred to as "the Developer"), in exchange of the mutual covenants and promises herein stated and in reliance thereon, mutually agree as follows:

WHEREAS, the Developer is developing a subdivision to be known as Meadow Ridge No. 2 located at approximately 600 E. North Street, located within the corporate limits of the City; and

WHEREAS, the Developer must provide the utilities and infrastructure necessary for the development of such subdivision; and

WHEREAS, the improvements will directly benefit future development of those properties, not owned by the Developer, which are adjacent to the subdivision improvements, and, if such properties were being currently developed, all or a portion of the improvements would be required to be installed by, and at the cost of, the developers of such adjacent property as "project improvements," as defined under Section 11-36-102 of the Utah Code Annotated, 1953 as amended; and

WHEREAS, the Developer desires to be reimbursed for the costs associated with the portion of the improvements fronting the property not owned by the Developer; and

WHEREAS, it is the intent of this agreement to create a mechanism, in accordance with the provisions of Section 12.44.060 of the Ogden Municipal Code, or its successor provision, whereby the adjacent properties will reimburse the Developer for their proportionate share of the costs attributable to their property, which costs shall include only the cost of constructing a portion of the roadway pavement section, curb and gutter, the culinary water line, sanitary sewer line, and storm drain facilities; and

WHEREAS, this agreement is written primarily for the purpose of protecting the Developer, to insure that the Developer will be reimbursed.

NOW, THEREFORE, in consideration of the mutual covenants herein and the monetary consideration herein recited, the parties mutually agree as follows:

1.   The Developer shall install the subdivision improvements in the right-of-way of Jefferson Avenue beginning at the point of connection with North Street and ending at the southeast corner of Lot 28 within the subdivision, in accordance with the standards and specifications of the City and the approved improvement plans, dated March 15, 1999. The

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estimated amount of 59,398.00 (such estimate does not include the cost of curb, gutter and sidewalk along the west side of Jefferson Avenue, which cost are being borne entirely by the Develop). The maximum reimbursement portion of such costs for the project (the proportionate share of such costs which may be attributable to the other properties adjacent to the improvements) is $32,878.00 (hereinafter referred to as the "Costs").

2.   The subdivision improvements upon completion, inspection and approval, shall be accepted by the City and shall become the property of the City. The City shall be entitled to collect all connection and service fees and charges imposed by the City. The City shall not have any obligation to reimburse or pay over to the Developer any of these connection fees, service fees or other fees, except as specifically set forth herein.

3.   Determination of Actual Costs. The Developer shall submit receipts evidencing the actual costs for construction of the subdivision improvements within thirty (30) days of the City's approval and acceptance of the subdivision improvements. If the actual costs are less than the estimated costs, the Costs shall be adjusted in the applicable administrative order to reflect the lesser amount. If the Developer fails to submit such receipts within the required time period, this Agreement shall terminate and the administrative order rescinded.

4.   Reimbursement of Developer's Costs. Subject to the limitations and restrictions provided herein, the City shall reimburse the Costs in the following manner:

    a.   Connection to subdivision improvements by future third-parties. The City will collect from persons or entities, not a party to this agreement, who may connect to the street, water line, or sanitary sewer line ("future connection"), an in lieu project improvement fee, that may be calculated by taking the front footage length the City determines is benefitted by the project improvements and calculating the per front footage cost for each parcel benefitted by the connection.

    b.   Such collections shall be made by the City prior to any party connecting to the improvements, in accordance with Administrative Order No. 99-3 , adopted pursuant to Section 12.44.060 of the Ogden Municipal Code, or its successor provision. The City will not permit any third-party to connect to the improvements installed by the Developer without requiring the future developer to pay their proportionate share of the Costs as required under this Agreement.

    c.   Timing of Reimbursement. The City shall pay to the Developer within thirty (30) days of collection, those amounts collected under subparagraph a above.

    d.   Nothing in this section shall be construed to compel the City to annex an area into its boundaries.

5.   The City shall not participate in any way in the cost of installing the subdivision improvements, unless otherwise agreed in writing. If it is determined that the City may not legally assess and collect such Costs, as provided herein, the City shall have no legal responsibility to reimburse the Developer for any such Costs which cannot legally be collected

from third parties.

6.   <u>Limitation of Collection Period</u>. It is further agreed that the City will collect the Costs under paragraph 4 for a period of ten (10) years from the date of this Agreement or until such time as the Developer's Costs have been paid in full, whichever comes first. The Developer specifically agrees to accept the Costs in fact collected during this period as full and final payment under this Agreement. Further, the Developer agrees to hold the City harmless for any Costs which, for any reason, are not collected.

7.   <u>Assignment</u>. The Developer specifically agrees to accept the funds in fact collected during the collection period as full and final payment under this Agreement after the City has made an effort, in good faith, to collect such funds. Further, the Developer agrees to hold the City harmless for any Costs which for any reason, are not collected provided that the City has made a good faith effort to collect such Costs. In the event the City is unable to collect such Costs, the City shall, upon written request from the Developer, assign its right to collect such Costs to the Developer and the Developer may then take whatever legal action is necessary and appropriate to collect such Costs due and owing under the Agreement. Upon assignment of the right to collect the Developer agrees to indemnify and hold the City harmless in exercising the right to collect such Costs.

8.   The foregoing agreement constitutes the entire agreement of the parties. Modifications of this agreement must be approved, in writing, by each party.

9.   This Agreement is binding on and shall inure to the benefit of the executors, administrators, heirs, successors, and assigns of the parties.

10.   If any part of this Agreement is found to be invalid by a Court of competent jurisdiction, both parties shall be relieved from any and all responsibility under those provisions of this Agreement. Upon such a finding, all other provisions of this Agreement shall remain in force. If the Legislature of the State of Utah should pass a law which would invalidate any portion of this Agreement, both parties are released from further responsibility hereunder.
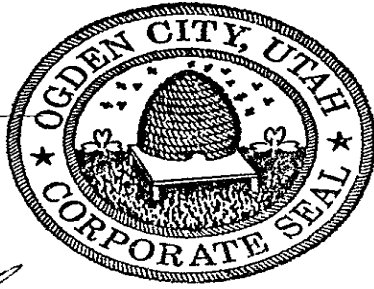
DATED this 2nd day of March, 1999.

OGDEN CITY, a Utah Municipal Corporation

Glenn J. Mecham, Mayor

ATTEST:

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Gloria J. Berrett
Gloria Berrett, City Recorder

APPROVED AS TO FORM:

[signature]
City Attorney

DEVELOPER:

STAN CHECKETTS PROPERTIES,   L.C.

By: _[signature]_

Title: _Owner_

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