

SETTLEMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into this 22nd day of September 1988 by and among CLYDE L. OLSEN and ILENE OLSEN (collectively the "Olsens"); NEW PLUM TREE, a Utah General Partnership ("Developer"); and PROVO CITY CORPORATION, a Municipal Corporation organized under the laws of the State of Utah ("City").

RECITALS:

A. Shopping Center. Developer is the developer of the remaining portions of a shopping center (the "Shopping Center") that is located in the City of Provo, County of Utah, State of Utah, and particularly described as a portion of the following:

Beginning at a fence corner which is North 1892.71 feet and West 1082.46 feet (based upon the Utah State Plane Coordinate System bearings of section lines) from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 0° 34' 22" East along a fence line on the East side of a Utah State Road Commission access or service road, 423.12 feet to a fence corner; thence North 43° 13' 18" East along a fence line 63.21 feet; thence North 87° 58' 07" East along a fence line 5.63 feet; thence North 1° 32' 23" West 18.71 feet; thence North 88° 27' 37" East along the North deeded line of the grantor's property, 395.99 feet; thence South 38° 18' 55" East 607.01 feet; thence South 88° 26' West along a fence line 825 feet to the point of beginning;

and that is known as the "Plum Tree Shopping Center." Developer is constructing a theater building (the "Cinema Building") in the northwest portion of the Shopping Center. A drawing (the "Partial Site Plan") of the northwest portion of the Shopping Center is attached hereto as Exhibit A and is incorporated herein by reference.

B. Phase III. Developer does not presently own a parcel of ground ("Phase III") that lies to the west of the Cinema Building; that contains approximately two and one-half acres; and that is known as Phase III of the Shopping Center. Phase III is presently owned by Granada, Inc., a Utah Corporation, subject to the interest of Peter W. Billings, Jr., bankruptcy trustee (the "Granada Trustee") of the estate of Granada, Inc., debtor, under chapter 11 of the United States Bankruptcy Code (Case No. 87C-00693, District of Utah, Central Division).

C. Private Drive. As the owner of fee simple title to portions of the Shopping Center, Developer claims certain rights of easement in a parcel of land ("Private Drive") situated in the

City of Orem, County of Utah, State of Utah, that is adjacent to the northernmost boundary of the Shopping Center; and is identified on Exhibit B, attached hereto and incorporated herein by this reference.

D. Olsen Property. Olsens own a residence (the "Olsen Property") that faces south across the ("Private Drive") toward the Cinema Building. Said property is particularly described as follows:

Beginning at a point which is South 37.5 feet, and East 1646.77 feet from the West Quarter Corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence East 358.82 feet to Spring Creek Centerline; thence South 14' 32-1/2' East 59.38 feet along Spring Creek; thence South 29' 53' East 102.90 feet along Spring Creek; thence South 88' 07' West 423.15 feet; thence North 0' 44-1/2' West 160.66 feet to the point of beginning. Containing 1.61 acres more or less. Also a 33 foot right-of-way which is used by others and is described as follows: Beginning at a point on the East side of the County Road which is South 191.50 feet and East 1349.40 feet from the West Quarter corner to Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 88' 07' East 713.43 feet; thence South 29' 53' East 37.44 feet; thence South 88' 07' West 732.10 feet; thence North 33 feet to the point of beginning.

E. Olsen Fence. Olsens and the City of Orem have installed, or caused to be installed, chain-link fencing (the "Olsen Fence") between points H and F, and between points F and E, all as shown on the Partial Site Plan. The Olsen Fence is located on property owned by the Olsens and the City of Orem.

F. Disputes. Olsens have raised with City and Developer certain issues (collectively the "Shopping Center Disputes") with respect to the use of the Private Drive for access to the Shopping Center, fencing and landscaping along the northernmost boundary of the Shopping Center and certain other issues.

G. Intent of Parties. The parties desire to resolve their differences by entering into this Agreement.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Fencing. Olsen's hereby reserve the right to remove, at any time in the future, any portion of the Olsen

Fence. Otherwise, the Olsen fence shall not be removed. Olsens may, at any time in the future, extend the Olsen Fence from point E to Point D, and from point D to point C as shown on the Partial Site Plan. Developer shall, within thirty (30) days following the date of this Agreement, install, at its expense, chain-link fencing between points A and I on the Partial Site Plan. Additionally, Developer shall install a three (3) foot chain-link gate thereon at a point to be mutually agreed upon by Developer and Olsens. ~~Notwithstanding any provisions to the contrary contained herein, Olsens shall have the sole right of access through said gate and they are hereby granted by Developer a perpetual easement for purposes of ingress and egress through said gate to the Shopping Center. Said easement is for the benefit of and appurtenant to the Olsen Property. Otherwise, said gate shall be locked at all times. Olsens shall provide a lock to be installed on the gate and shall retain all keys thereto. No additional locks shall be installed on the gate.~~ *RB*
 All fencing installed shall be of the same height, type, quality and standard of installation that will match the existing fence along the northern border of the Shopping Center, which is east of point A as shown on the Partial Site Plan, and which lies between the Shopping Center and certain property that is owned by Brigham Young University. *6/10*

2. Landscaped Area North of Cinema Building. Within ten (10) days following Developer's installation of a fence between points A and C, as shown on the Partial Site Plan, and following completion of construction of the Cinema Building, Developer shall mound soil and install landscaping on that portion of the Shopping Center (the "Landscaped Area") that lies between points A and C, as shown on the Partial Site Plan, and between the fence and the curb or asphaltting at the rear of the Cinema Building. The landscaping shall comply with the following conditions:

2.1. City Requirements. Such landscaping shall comply with any landscaping design requirements that are reasonably required by City.

2.2. Installation of Sod and Top Soil. Developer shall, at its own expense, cover the entire Landscaped Area with at least six (6) inches of top soil. Developer shall, at its own expense, cover the top soil with sod: *Hydro Sealing* *6/10* (1)

2.3. Sprinkling System. Developer shall, at its own expense, install a sprinkling system of sufficient size and capacity to adequately irrigate the entire Landscaped Area.

2.4. Original Trees and Shrubs. As part of landscaping the Landscaped Area, Developer shall install trees and shrubs that are selected and paid for by the Olsens and that are reasonably compatible with Developer's overall landscape

design of the Shopping Center. Such trees and shrubs shall be located at points in the Landscaped Area that are reasonably designated by the Olsens and that are compatible with the overall landscape design.

2.5. Ongoing Maintenance. Developer, and its successors and assigns, shall maintain the Landscaped Area in accordance with standards that are required by the "Common Area Maintenance Agreement" (the "Maintenance Agreement"), a copy of which is attached hereto as Exhibit C and incorporated herein by reference, that governs the maintenance of common areas of the entire Shopping Center, as such Maintenance Agreement now exists, or as it may be amended from time to time. Such maintenance includes fertilizing, watering, mowing, trimming, and other maintenance. Notwithstanding the foregoing, Developer shall not be obligated to replace any trees and shrubs in the Landscaped Area supplied by the Olsens which die, through no fault of Developer, within the first year following the installation thereof. However, Developer, as part of its maintenance obligation under the Maintenance Agreement, shall replace all trees and shrubs that die, as a result of Developer's acts or omissions, within the first year following the installation thereof. In any event, Developer shall replace all trees and shrubs which die, whether or not occasioned by Developer's acts or failure to act, after the first year following the installation thereof.

3. Additional Landscaping, Fencing, and Lighting. If Developer acquires fee simple title to Phase III, or acquires an interest therein pursuant to a land lease or otherwise, then Developer, if and when it develops Phase III, shall install, or cause to be installed, landscaping, fencing, and lighting between points C and G and between points G and H, as shown on the Partial Site Plan, in a manner that is similar to the landscaping and lighting the Developer is required to place in and adjacent to the Landscaped Area.

4. Other Maintenance and Lighting. Developer shall comply with all reasonable City ordinances and requirements relating to maintenance of the Cinema Building and lighting of common areas in the Shopping Center. Notwithstanding, Developer agrees to maintain the north exterior wall of the Cinema Building in the same manner as the remaining exterior walls (including painting, which shall be the same color as the remaining exterior walls). All lighting fixtures installed by Developer on buildings and in the parking areas shall be of the "non-glare" type such as are currently installed in the parking areas of the Shopping Center.

5. Access to Carterville Road, Private Drive, and Orem City Property. Developer hereby surrenders, quitclaims and terminates for itself, its successors in interest, and its

invitees all access rights that it presently has, or may acquire in the future, in the Private Drive, identified in Exhibit B, attached hereto, the Orem City Property, identified in Exhibit B, attached hereto, and Carterville Road, identified in Exhibit B, attached hereto. The plan approved by the Provo City Planning Commission for the Shopping Center in the SC-3 (Regional Shopping Center) zone, limits the points of access into the Shopping Center to University Parkway and 2230 North Street. City will limit all current and future ingress and egress into the Shopping Center to University Parkway and 2230 North Street and shall not allow access to Carterville Road.

6. Mutual Release. The parties hereby release each other, their predecessors-in-interest, successors and assigns, and their respective officers, partners, agents, independent contractors and employees from any and all claims, causes of action, costs and expenses of every kind and nature whatsoever, whether known or unknown, anticipated and unanticipated, past and present, that arise either directly or indirectly from or that are related in any manner to the Shopping Center Disputes, Developer's present compliance with zoning ordinances with respect to the Shopping Center and access rights to the Shopping Center from Carterville Road; provided, however, that nothing that is contained in this release shall restrict the parties' rights to enforce the provisions of this Agreement.

7. Binding Affect. The covenants and agreements made herein shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, personal representatives, successors, and assigns, and such covenants and agreements shall survive the exercise of all or any part of this Agreement. All of the limitations, restrictions, and covenants contained herein shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Shopping Center or any part thereof.

8. Complete Agreement. All understandings and agreements heretofore had between the parties hereto are merged into this Agreement which alone fully and completely expresses their agreement. No change may be made in this Agreement except by an instrument in writing, duly executed with the same formalities as this Agreement.

9. Applicable Law. This Agreement shall be governed by and construed in the laws of the State of Utah.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

11. Savings Clause. If any provision of this Agreement

shall be unenforceable, the remaining provisions shall nevertheless be carried into effect.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Clyde L. Olsen
CLYDE L. OLSEN

Ilene Olsen
ILENE OLSEN

NEW PLUM TREE, A Utah General Partnership

By: *Richard A. Haws*
RICHARD A. HAWS, Managing General Partner

PROVO CITY CORPORATION, A Utah Municipal Corporation

By: *Joseph A. Jenkins*
JOSEPH A. JENKINS, Mayor

Attest: *Marilyn Parry*
MARILYN PARRY, Recorder

STATE OF UTAH)
):ss.
COUNTY OF UTAH)

On September 20, 1938, personally appeared before me CLYDE L. OLSEN and ILENE OLSEN, signers of the foregoing agreement, who duly acknowledged to me that they executed the same.

Carol A. Julian
NOTARY PUBLIC



My Commission Expires: August 19, 1990
Residing At: Orem, Utah

STATE OF UTAH)
)
) :ss.
COUNTY OF UTAH)

On September 21, 1988, personally appeared before me RICHARD A. MAWS, who duly acknowledged to me that he executed the foregoing SETTLEMENT AGREEMENT as the managing general partner in, and behalf of NEW PLUM TREE, a Utah General Partnership.

Margaret K. Blain
NOTARY PUBLIC

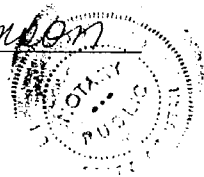


My Commission Expires: 5-89
Residing At: Salt Lake City, Utah

STATE OF UTAH)
)
) :ss.
COUNTY OF UTAH)

On September 22, 1988, personally appeared before me JOSEPH A. JENKINS, who being by me duly sworn, did say that he is the Mayor of Provo City Corporation, and that the foregoing SETTLEMENT AGREEMENT was signed on behalf of said Municipal Corporation by duly and active statutes, ordinances, or resolutions.

Lisa Johnson
NOTARY PUBLIC



My Commission Expires: 1-14-89
Residing At: Provo, Utah

EXHIBIT A

ENT 31109 BK 2549 PG 634

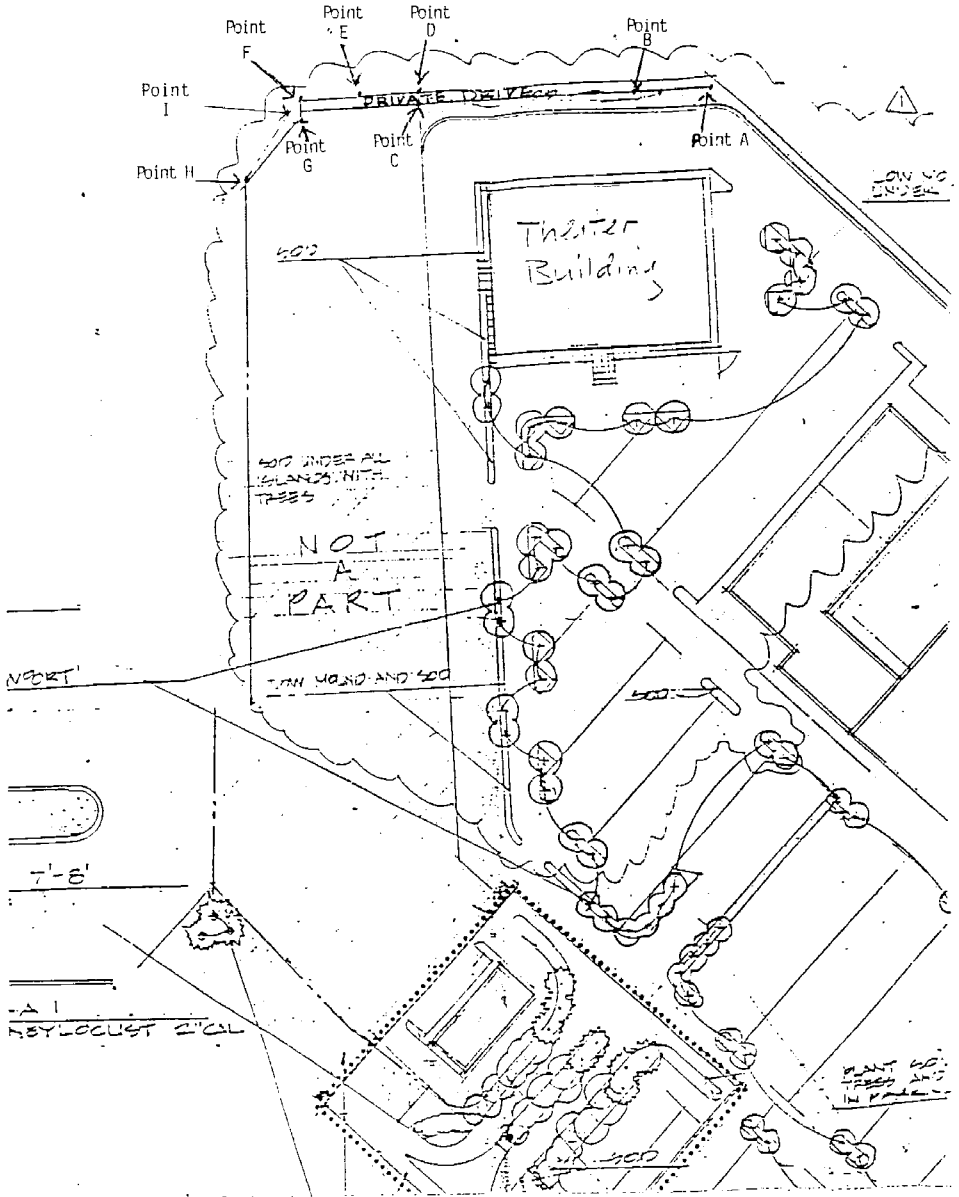


EXHIBIT B

ENT 31109 BK 2549 PG 635

UTAH COUNTY PLAT
NE-SW section 25 township 6 south, range 2 east
scale 1" = 100'

