

PLATTED VERIFIED
ENTERED MICROFILMED

E# 1274000 BK1702 PG1208
DOUG CROFTS, WEBER COUNTY RECORDER
10 FEB-94 857 AM FEE \$41.00 DEP LF
REC FOR: TITLE.WEST

CROSS EASEMENT AGREEMENT

This Cross Easement Agreement is entered into this 26th day of October, 1993, between ROY CITY CENTRE REALTY LIMITED, a Utah limited partnership ("RCC"), ALBERTSONS, INC., a Delaware corporation ("Albertsons"), and PIZZA HUT OF UTAH, INC., a Utah corporation ("Pizza Hut").

98-102-0016-9

WHEREAS, RCC owns parcels 1, 3, 4, 5, 6, 7, and 8 of Roy City Centre as described in the plat map recorded in the Weber County Recorder's Office on March 4, 1992 in book 33, page 89, entry number 1169234 (hereinafter "RCC Property"), which is located in the City of Roy, Weber County, Utah. Attached as Exhibit "A" is a copy of a portion of the recorded plat depicting the parcels of real property referred to herein; and

WHEREAS, Albertsons owns parcel 2 of Roy City Centre as described in the plat map recorded in the Office of the Weber County Recorder's Office on March 4, 1992 in book 33, page 89, entry number 1169234 (hereinafter "Albertsons Property"), which is located in the City of Roy, Weber County, Utah; and

WHEREAS, Pizza Hut owns the real property described in the attached Exhibit "B" (hereinafter "Pizza Hut Property"), which is located in the City of Roy, Weber County, Utah; and

WHEREAS, Pizza Hut is the successor in interest of Pizza Hut of Edmond, Inc., an Oklahoma corporation; and

WHEREAS, the location of the respective parcels of property and their relationship to one another are depicted on the site plan attached as Exhibit "C"; and

WHEREAS, RCC has developed a shopping center known as the Roy City

Handwritten initials or signature.

Shopping Center ("Shopping Center"), which is shown on Exhibit "C"; and

WHEREAS, Pizza Hut shall not be part of the Shopping Center, but requires additional parking space in order to use the Pizza Hut Property as a restaurant; and

WHEREAS, there is currently located on the Pizza Hut Property a sign (see location depicted on Exhibit "C"), which RCC desires to use in conjunction with the Shopping Center; and

WHEREAS, the parties desire to enter into this Cross Easement Agreement to set forth their respective rights and obligations relating to the access, ingress and egress, use and maintenance, cleaning, repair and insurance of the respective parcels of property.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the recitals above incorporated herein by this reference, the parties agree as follows:

1. RCC hereby grants and conveys to Pizza Hut the right to use the 35 parking spaces identified on Exhibit "C" and a non-exclusive easement for ingress and egress by vehicular and pedestrian traffic, over and across that portion of the common area of the Shopping Center located upon the RCC Property, except for those areas devoted to service facilities or drive up or drive through customer service facilities, for the benefit of the Pizza Hut Property and its owners, and owners' tenants, occupants, customers, guests, patrons, clients, invitees, licensees and employees of the owner and businesses located on the Pizza Hut Property for the uses described herein.

2. Albertsons hereby conveys and grants to Pizza Hut a non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across that

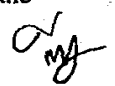
portion of the common area of the Shopping Center located upon the Albertsons Property, except for those areas devoted to service facilities or drive up or drive through customer service facilities, for the benefit of the Pizza Hut Property and its owners, owners' tenants, occupants, customers, guests, patrons, clients, invitees, licensees and employees of the owner and businesses located on the property for the uses described herein.

3. Pizza Hut hereby conveys and grants to RCC a non-exclusive easement for access across, to and upon the Pizza Hut Property, and use thereof, for the purpose of demolishing, reconstructing, maintaining, altering and repairing, and the exclusive right to use the pylon sign located on the southeast corner of the Pizza Hut Property as shown on Exhibit "C". Pizza Hut hereby confers a benefit on the RCC Property and its owners, owners' invitees, licensees, and employees for the uses described herein. RCC agrees to indemnify Pizza Hut for and against any loss and/or claims which are incurred or arising through RCC's demolition, reconstruction, alteration and maintenance of the pylon sign. Demolition of the pylon sign itself shall not be deemed a loss.

4. Pizza Hut shall pay monthly a pro rata share of the yearly maintenance costs of the Shopping Center as estimated by RCC. The monthly payment shall be due on the first day of each month. Pizza Hut's proportional (pro rata) share of the total actual direct common area expenses for any year shall be that ratio which the actual Pizza Hut building area bears to the total actual building areas constructed on the Shopping Center. The pro rata share of common area maintenance costs payable by the owners of all parcels in the Shopping Center shall be adjusted accordingly. In January of each year following the execution of this Agreement, RCC shall calculate actual Shopping Center operating and maintenance costs

incurred during the prior year. If Pizza Hut's pro rata share of actual common area maintenance costs are greater than those paid during the year by Pizza Hut, Pizza Hut shall pay to RCC its proportionate share of any excess costs within twenty (20) days after billing by RCC. If Pizza Hut's pro rata share of actual costs are less than those paid by Pizza Hut, RCC shall reimburse Pizza Hut its proportionate share of such overpayment within forty-five (45) days after the end of the calendar year. For purposes of this Agreement, Shopping Center maintenance means the total actual direct cost and expense incurred in operating, managing, administering, maintaining, equipping, policing, protecting, lighting, repairing and replacing the Shopping Center common area, including, but not limited to, the landscaping, real estate taxes and assessments, public liability insurance, repairs, line painting, lighting, sanitary control, surface water draining, snow removal, and repair and maintenance of asphalt. The common area maintenance expenses shall not include: the cost of capital improvements not involving maintenance, repair or replacement of existing common area facilities; expenses for repairs, replacements and general maintenance paid by proceeds from insurance or solely by third parties; alterations attributable solely to tenants or owners other than Pizza Hut; principal and interest payments made on mortgages or other loans; depreciation; insurance premiums other than for hazard and public liability insurance; and leasing commissions. Pizza Hut shall have the right, at its sole cost and expense, once per calendar year, to cause an audit of the Shopping Center maintenance expenses covering the common area.

5. Pizza Hut hereby waives, releases and terminates all prior rights or interests it has to use any portion of the RCC Property and/or the Albertsons Property, including any right or interest pursuant to a Reciprocal Parking Easement Agreement identified in the



Warranty Deed dated the 30th day of December, 1974, between AFCO Enterprises, Inc., as Grantor, and Pizza Hut of Edmond, Inc., an Oklahoma corporation, as Grantee, recorded on December 31, 1974, entry No. 629461, page 250, book 1074 in the records of the Weber County Recorder.

6. RCC hereby consents and authorizes Pizza Hut to retain the storage area located to the south of the Pizza Hut Property and identified on Exhibit "C", and continue to use said storage area which is located on the RCC Property, subject to the provisions hereof. No other structure of any kind will be allowed except upon the prior written acceptance from RCC and Albertsons. Pizza Hut shall allow Blockbuster Video to use the dumpster in the storage area to dispose of its trash. RCC shall connect Pizza Hut to the Shopping Center landscape watering system and shall maintain or cause to be maintained Pizza Hut's landscaping and parking areas, including snow removal, in a good and clean condition consistent with the maintenance of the Shopping Center. Pizza Hut agrees to appropriately fence or screen the storage area and maintain the storage area in a clean and orderly condition, and to remove all papers, filth, debris and refuse and keep the area thoroughly swept to keep it in such condition. Any costs associated with the maintenance of the storage area, as now located on the RCC Property, shall be the sole responsibility of Pizza Hut. RCC shall be responsible for the removal and disposal of the contents of the garbage dumpster and shall cause the trash in the dumpster to be disposed of at regular intervals as deemed necessary to help maintain the storage area in a clean and neat condition. RCC shall monitor the activities of Blockbuster Video in its use of the dumpster and ensure that Blockbuster Video uses the dumpster in a reasonable manner so that Pizza Hut is not unfairly burdened as a result of Blockbuster's use of the dumpster. Pizza Hut agrees to

immediately reimburse RCC for any expenditures which RCC is required to make as owner of the RCC Property relating to repair, and maintenance of the storage area, only if Pizza Hut fails to perform such maintenance or repair after ten (10) days prior written notice to Pizza Hut pursuant to Article 13 hereof.

7. It is intended that the easements conveyed and granted herein are severable rights and are to run with the land to be appurtenant to the respective parcels benefitted by each such easement and inure to the benefit of each respective parcel of property and the successors and assigns of each such owner of each parcel.

8. RCC and Pizza Hut each agree to maintain property damage and general liability policies of insurance in reasonable amounts for their respective parcels of property.

9. RCC and Albertsons respectively agree and shall hold Pizza Hut harmless from any claims or causes of action resulting from any accidents and/or damage which occur on its own respective property, unless such accident or damage was caused by the acts of the other property owner or its agents, invitees, employees or customers.

10. Pizza Hut agrees and shall hold RCC and Albertson's harmless from any claims or causes of action resulting from any accident and/or damage which occurs on its own respective property, unless such accident or damage was caused by the acts of the other property owners or their agents, invitees, employees or customers.

11. This Cross Easement Agreement shall terminate automatically sixty-two (62) years from the date of recording.

12. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Cross Easement Agreement, the prevailing party

in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding, its reasonable costs or attorneys fees (including its reasonable costs and attorneys fees on any appeal).

13. Any notice or demand required or permitted hereunder and/or by law, shall be in writing, shall be posted in the United States mail (registered or certified, return receipt requested, postage prepaid), or sent by receipted overnight delivery service. All notices or demands shall be addressed to the parties hereto as follows:

If to RCC: Roy City Centre Realty Limited
2677 E. Parleys Way
Salt Lake City, UT 84109
Attn: John Gaskill/W. Richards Woodbury

If to Pizza Hut: Pizza Hut of Utah, Inc.
9111 E. Douglas
Wichita, KS 67207
Attn: Law Department

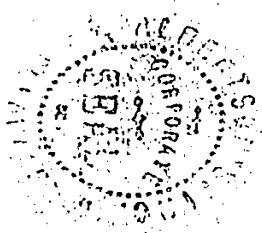
If to Albertsons: Albertsons, Inc.
Attn: Legal Dept.
250 Parkcenter Blvd.
Box 20
Boise, ID 83726

ROY CITY CENTRE REALTY LIMITED,
a Utah limited partnership,

By Woodbury Amsource, Inc., its
Managing General Partner

By 
John R. Gaskill
Its: President

By W. Richards Woodbury
W. Richards Woodbury
Its: Vice President



ALBERTSONS, INC., a Delaware Corporation

By Juan H. Amador
Its: VICE PRESIDENT, REAL ESTATE LAW

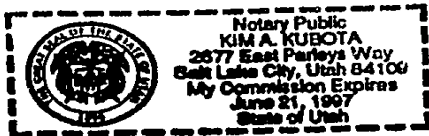
PIZZA HUT OF UTAH, INC., a Utah corporation

By Teresa J. Roll
Its: President

ACKNOWLEDGMENT

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

On the 29th day of October, 1993, personally appeared before me JOHN R. GASKILL and W. RICHARDS WOODBURY, who being by me duly sworn did each for himself say that he is the President and Vice President respectively of WOODBURY AMSOURCE, INC. and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said John R. Gaskill and W. Richards Woodbury duly acknowledged to me that said corporation executed the same.



Kim A. Kubota
Notary Public

ACKNOWLEDGMENT

STATE OF IDAHO)
)
) : ss.
)
COUNTY OF ADA)

On the 21st day of ^{December} October, 1993, personally appeared before me WILLIAM H. ARNOLD, who being by me duly sworn did say, that he is the ^{VICE PRESIDENT,} ~~REAL ESTATE LAW~~ of ALBERTSONS, INC., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said WILLIAM H. ARNOLD duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



Josephine M. McDonald
Notary Public
Residing at: Manpa, Idaho

My commission expires: 2001-99

Handwritten initials

ACKNOWLEDGMENT

STATE OF KANSAS)
 : SS.
COUNTY OF SEDGWICK)

On the 26 day of October, 1993, personally appeared before me Teresa J. Roll, who being by me duly sworn did say, that he is the President of PIZZA HUT OF UTAH, INC., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said Teresa J. Roll duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

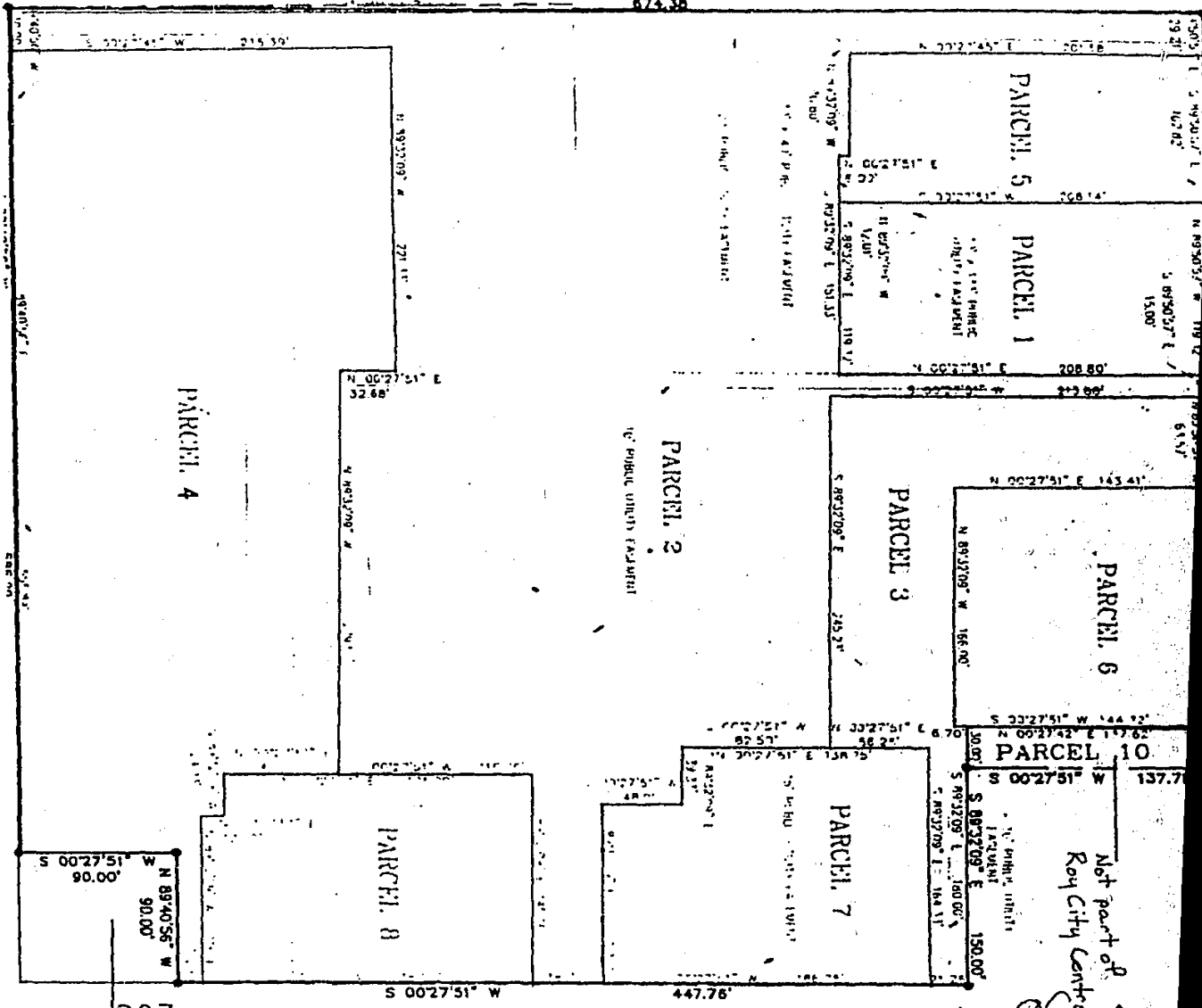
Elizabeth M. Salyer
Notary Public
Residing at: Sedgwick County, Kansas

My commission expires: August 15, 1997



Roy City
Centre

674.38



NOT PART
OF ROY CITY
CENTRE
Pizza
Hut
Property

Not part of
Roy City Centre
[Signature]

EXHIBIT A

PARCEL 12
PIZZA HUT
NOT A PART OF SHOPPING CENTER

Beginning at a point on the south right-of-way line of 5600 South Street, said point being South $00^{\circ} 27'51''$ West along the section line 626.19 feet and North $89^{\circ} 32'09''$ West 50.00 feet from the Northeast Corner of Section 23, Township 5 North, Range 2 West, Salt Lake Base and Meridian and running;

Thence, along the westerly right-of-way line of 1900 West Street, South $00^{\circ} 27'51''$ West 90.00 feet;
Thence, along the northerly right-of-way line of 5700 South Street, North $89^{\circ} 40'56''$ West 90.00 feet;
Thence, North $00^{\circ} 27'51''$ East 90.00 feet;
Thence, South $89^{\circ} 40'56''$ East 90.00 feet to the point of beginning.

Area equals 8,100 sq. ft. (0.1860 acres).

Basis of bearing: Section line from the Northeast Corner to the East Corner South $00^{\circ} 27'51''$ West.

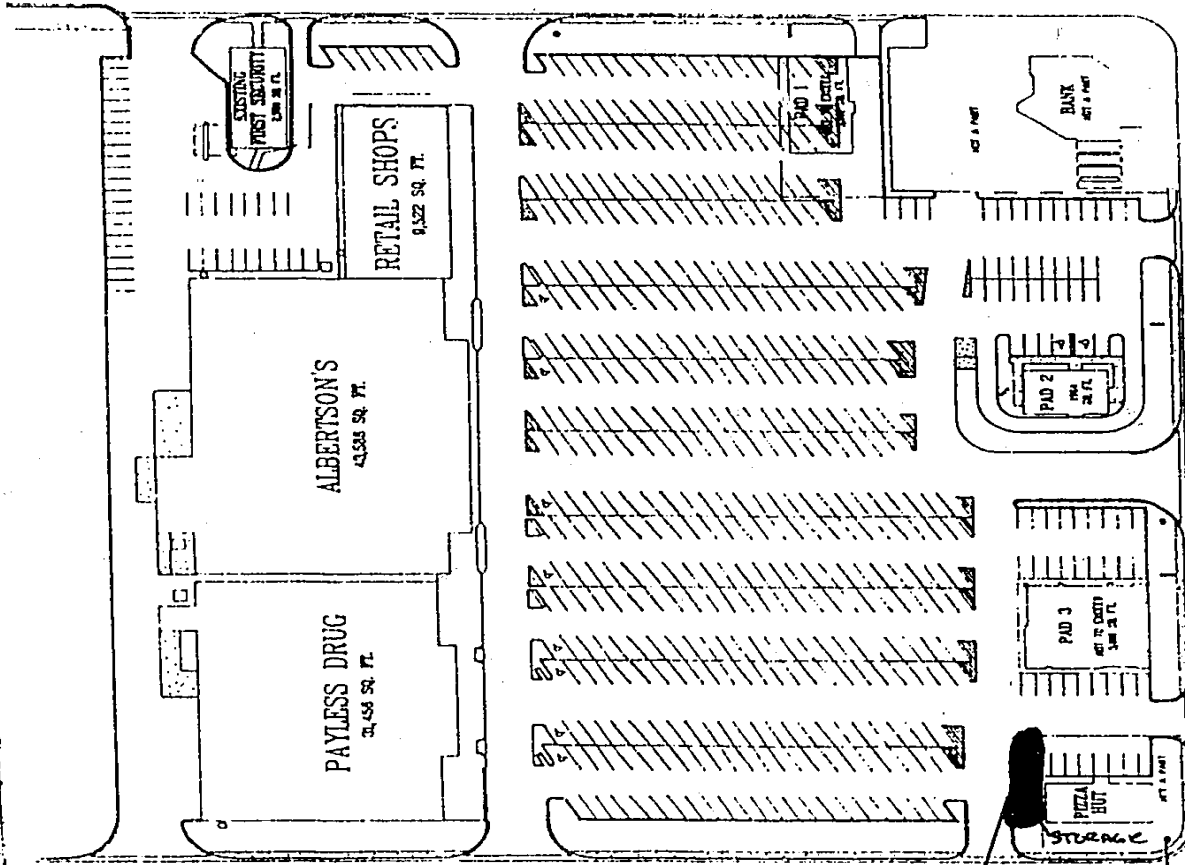
Orign

LSW/rg/#48/Parcel12.Des
April 1, 1991

EXHIBIT B

E+ 1274000 EK1702 P41220

5600 SOUTH STREET



19 TH WEST STREET

ROY CITY CENTRE

5700 SOUTH STREET

EXHIBIT C

Parking Spaces

Rylon Sign