

1-26-89

DEES INC
777 EAST 2100 SOUTH
SLC UT

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27 JANUARY 89 03:58 PM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
REC BY: D DANGERFIELD , DEPUTY

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FIRST AMERICAN TITLE
RJT 259216

MEMORANDUM OF EXCHANGE AGREEMENT

DEE'S, INC. and SMITH'S FOOD KING PROPERTIES, INC. hereby acknowledge and agree that they entered into an Exchange Agreement dated the 26th day of January, 1989, which Exchange Agreement included the following:

1. Dee's Property Transferred to Smith's: Dee's, Inc. agreed to transfer to Smith's Food King Properties, Inc. part of Phase I of the Canyon Center Shopping Center located at the northeast corner of 2000 East and 9400 South in Sandy, Utah, more particularly described on Exhibit "A" attached hereto.

2. Like Kind Property From Smith's to Dee's: Smith's Food King Properties, Inc. agreed to transfer to Dee's, Inc. like-kind property acceptable to Dee's, Inc.

3. Encumbrances: Smith's Food King Properties, Inc. takes the property described on Exhibit "A" attached hereto subject to:

- (a) Existing leases.
- (b) A Trust Deed in favor of Aetna Life and Casualty Insurance securing an obligation, which obligation Smith's Food King Properties, Inc. assumed in total.
- (c) Amended Grant of Easement and Covenants and Restrictions as they may be amended.
- (d) Cross-Easement Agreement with Shopko Stores, Inc. relating to adjoining property.

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4. Use Restrictions: The agreement included:

(a) Demolish Buildings. A restrictive use requiring Smith's Food King Properties, Inc. to demolish all buildings on the property except for the building of Smith's presently being used for a grocery store business. Such buildings are to be demolished as soon as possible, no later than the end of the existing leases with no further extensions.

(b) No Grocery Store on Adjoining Property. Dee's agreed to not operate or lease to others to operate a grocery store on the property retained by Dee's in Phase I of the shopping center unless Smith's or its successor discontinues the operation of a grocery store as principal business on the property described in Exhibit "A" for a period of 90 days or more.

(c) No Pharmacy on Adjoining Property. Dee's agrees that it shall not operate or lease to others to operate a pharmacy on the property retained by Dee's in Phase I of the shopping center unless Smith's or its successor discontinues the operation of a pharmacy on Smith's property described on Exhibit "A". A pharmacy is defined as the sale of drugs requiring a prescription and dispensed by a licensed pharmacist. The restriction shall not be determined to prevent

or prohibit any sale of non-prescriptive drugs or other items that may be sold by pharmacies.

5. Common Area Maintenance: The parties agree that they would each perform and pay for the maintenance of the common areas owned by them respectively and to cooperate in instances where the performance of the maintenance cannot be separated and each pay for the maintenance relating to their property.

6. Maintain Property in Clean Attractive Manner: Each party agreed to maintain its buildings and improvements in a good and attractive manner compatible with Phase I.

7. Option. As part of the agreement Dee's, Inc. retained an option to purchase the property described in Exhibit "A" in either of the following events:

(a) In the event Smith's or its successors or assigns fails for a period of thirty (30) days or more (for any reason other than timely repairs or restoration of fire or other damage which shall not exceed one hundred eighty (180) days) to actively conduct a grocery store business from the entire present grocery store building, or

(b) Attempts to change the use of the property on Exhibit "A" to some business other than a grocery store.

The option to purchase is for the fair market value as verified by a certified MAI appraiser approved by both parties. No value shall

be given to the buildings or improvements required to be demolished as provided in the agreement and the deduction shall be allowed in the value for the costs of demolishing such buildings if they have not been demolished prior to the exercise of the option.

8. Other Provisions: The Exchange Agreement has other and more detailed provisions. A copy of the Exchange Agreement is in the possession of Smith's Food King Properties, Inc. at 1550 South Redwood Road, Salt Lake City, Utah 84104 and at Dee's, Inc. at 777 East 2100 South, Salt Lake City, Utah 84106.

DATED this 26th day of January, 1989.

DEE'S, INC.

BY *Wesley C. Anderson*

SMITH'S FOOD KING PROPERTIES, INC.

By *Pat Welch, ext. sec.*

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

~~On the 26th day of January, 1989, personally appeared before me TOM WELCH, who being by me duly sworn did say that he, the said TOM WELCH is the Vice President, of SMITH'S FOOD KING PROPERTIES, 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 TOM WELCH duly acknowledged to me that~~

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said corporation executed the same and that the seal affixed is the seal of said corporation.

[Signature]
Notary Public

My commission expires:

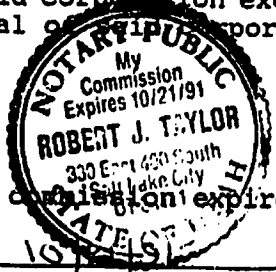
Residing at:

10/21/91

Salt Lake City

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

On the 20th day of January, 1989, personally appeared before me WESLEY C. ANDERSON, who being by me duly sworn did say that he, the said WESLEY C. ANDERSON is the President, of DEE'S, 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 WESLEY C. ANDERSON duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



[Signature]
Notary Public

My commission expires:

Residing at:

10/21/91

Salt Lake City

dees23.mea

State of UTAH)
County of Salt Lake) ss.

On the 20th day of January, 1989 personally appeared before me PETER H. BARTH, who being by me duly sworn did say, for himself, that he, the said PETER H. BARTH is the Assistant Secretary of SMITH'S FOOD KING PROPERTY, 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 PETER H. BARTH duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

[Signature]
NOTARY PUBLIC
Commission Expires : 10/21/91

NOTARY PUBLIC
Residing in Salt Lake City, Utah

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Exhibit "A"

1-26-87

SPECIAL WARRANTY DEED

DEE'S, INC., a corporation organized and existing under the laws of the State of Utah, with its principal office at 777 East 2100 South, Salt Lake City, Salt Lake County, State of Utah, Grantor, hereby CONVEYS AND WARRANTS against all claiming by, through or under it to SMITH'S FOOD KING PROPERTIES, INC., Grantee, of 1550 South Redwood Road, Salt Lake City, Utah 84104, for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the following described tract of land in Salt Lake County, State of Utah:

Part of the property commonly known as the Canyon Center Shopping Center, more particularly described as follows:

A part of the Southwest Quarter of Section 3, Township 3 South, Range 1 East, Salt Lake Base and Meridian, U. S. Survey:

Beginning at a point 53.00 feet North 0°21'28" East, and 106.00 feet North 89°56' East from the Southwest corner of said Section 3; running thence North 0°21'28" East 362.40 feet along the East line of 2000 East Street; thence North 89°56' East 149.23 feet; thence North 0°15'39" West 291.85 feet along the West line of an existing building; thence North 89°56' East 299.05 feet; thence South 0°08'55" East 654.25 feet along the East line of an existing building and building line extended; thence South 89°56' West 450.91 feet along a line parallel to and 53.00 feet perpendicularly distant Northerly from the Centerline of 9400 South Street to the point of beginning. Contains 5.740 Acres.

TOGETHER WITH an easement for footings and foundation, being described as follows: Beginning at a point 53.00 feet North 0°21'28" East; 106.00 feet North 89°56' East 362.40 feet North 0°21'28" East and 149.23 feet North 89°56' East from the Southwest Corner of Section 3, Township 3 South, Range 1 East; thence North 0°15'39" West 291.85 feet; thence South 89°56' West 2.00 feet; thence South 0°15'39" East 291.85 feet; thence North 89°56' East 2.00 feet to the point of beginning.

SUBJECT to taxes for the year 1989 and thereafter.

SUBJECT FURTHER to the obligation owed to Aetna Life Insurance Company and all other liens, easements, rights of way and restrictions of record and those observable

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upon the land including, but not limited to, existing leases.

SUBJECT FURTHER to the option in favor of Grantor to repurchase said property in the event that a grocery store business is not actively conducted from the entire present grocery store building, or there is an attempt to change to some business other than a grocery store on the property, all as provided in that certain Exchange Agreement dated January 26, 1989, between Grantor and Grantee. A Memorandum of the Exchange Agreement recorded the ____ day of January, 1989 as Entry Number ____ at Book ____ at Pages ____ through ____ in the Salt Lake County Recorder's Office.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the Grantor at a lawful meeting duly held and attended by a quorum.

IN WITNESS WHEREOF, the Grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 25th day of January, 1989.

DEE'S, INC.

Attest:

Maun G. Hirschi, Secretary By Wesley C. Anderson, President

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

On the 25th day of January, 1989, personally appeared before me WESLEY C. ANDERSON and MAUN G. HIRSCHI, who being by me duly sworn, did say, each for himself, that he, the said WESLEY C. ANDERSON is the president and he, the said MAUN G. HIRSCHI, is the secretary of DEE'S, 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 WESLEY C. ANDERSON and MAUN G. HIRSCHI each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of the said corporation.

My commission expires:

Notary Public
Residing at: