Gary B111 B11	LL OF SALE VOL <u>M90</u> Page 8271
KNOW ALL MEN BY THESE PRESENT:	S, That
GARY DILL	
to the seller paid, the receipt whereof hereby is acknow	cents Dollars (\$35,000.00 wledged, hereby does grant, bargain, sell, transfer and deliver u
JAMES L. SMITH and DONNA R. S	MITH
hereinafter called the buyer, the following described	l personal property now located Klamath Falls, OR 97601
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<u> 특별 이상</u> 에서는 물질에 가장하는 것을 가장하는 것을 수 있다. 이상 가장	Notary Public for C		
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#### CONTRACT OF SALE

THIS AGREEMENT made this /// f day of February, 1988, between Gary Dill, dba GARY'S BAKERY, hereinafter referred to as "Seller" and James L. Smith and Donna R. Smith, hereinafter referred to as "Buyers":

#### WITNESSETH:

IN CONSIDERATION of the mutual convenants and promises of the parties hereto, Seller and Buyers covenant and agree as follows:

#### SECTION ONE

#### SALE OF BUSINESS

Seller agrees to sell and Buyers agree to purchase, fee from all liabilities and encumbrances, the bakery business now owned and operated by Seller at its location at 835 Main Street, City of Klamath Falls, County of Klamath, State of Oregon, including the right to conduct business under the name and style of GARY'S BAKERY, the good will of the business as a going concern, all of the equipment described in Exhibit "A" attached hereto and by this reference made a part hereof, all of the Seller's rights under Seller's contracts, licenses and agreements, and all other assets and property owned, including any and all existing contracts and the existing telephone number, and used by Seller in connection with such business other than is specifically excluded herein. This sale does not include the cash on hand or in banks at the day of closing or such other property not listed on Exhibit "A".

#### SECTION TWO

#### Purchase Price

The purchase price of the business of Gary's Bakery as represented above shall be sold for the price of \$35,000.00. As full payment for the transfer of the assets by Seller, the Buyers have agreed to sign a Promissory Note to the Seller the sum of \$10,000.00 as a down payment with the first payment of \$100.00 to commence on March 18, 1988 with a like payment of \$100.00 per month until paid

in full, including interest at the rate of six percent (6%) per annum, with the balance of \$25,000.00 to be financed through South Valley State Bank at the time of signing this Agreement.

# SECTION THREE

### Time of Closing

The closing shall take place at the office of the Buyers, 835 Main Street, Klamath Falls, OR 97601, County of Klamath, on or before the \_\_\_\_\_ day of February, 1988. Upon payment of the \$25,000.00 to Seller, Seller shall deliver to Buyers such instruments of transfer as are necessary to transfer to Buyers the business and the property referred to in Section One. Such instruments of transfer shall effectively transfer to Buyers full title of the business and property referred to in Section One, free of all liens and encumbrances.

# SECTION FOUR

# Covenant Not to Compete

Seller shall not engage in a business similar to that involved in this transaction in any capacity, directly or indirectly within Klamath County for a period of three (3) years from the date of closing of this Agreement. For purchases of this Agreement, "business similar to that involved in this transaction" includes within its scope involvement in any wholesale delivery business.

### SECTION FIVE

# Operation of the Business Pending Closing

From the execution of this Agreement to the time of closing, the Seller shall continue to operate the business covered by this Agreement in a manner that is consistent with good business practices. All profits or losses generated during such operation between the date of execution of this Agreement at the time of closing shall belong to the Seller.

#### SECTION SIX

# Representations of Seller

Seller represents and warrants that:

a. He is duly qualified under the laws of the State of Oregon to carry on the business now owned and conducted within Klamath County.

b. He is the owner of and has good and marketable title to the property referred to in Section One, free of all restrictions on transfer or assignment and of all encumbrances.

c. He has to his knowledge operated the business in accordance with all laws, ordinances and rules relating to the business.

d. No proceedings, judgments or liens are now pending or threatened against him or against the business.

e. He will, up to the date of closing, operate his business in the usual and ordinary manner and will not enter into any contracts except as may be required in the regular course of business.

f. He will duly comply with the provisions of Uniform Commercial Code of the State of Oregon, dealing with bulk transfers.

### SECTION SEVEN

### Indemnification

Seller shall indemnify Buyers against any and all claims, demands, losses and liabilities respecting the business or otherwise, including interest, penalties and reasonable attorney's fees, that Buyers shall incur or suffer by reason of Seller's breach of any representation, warranty, covenant, promise or agreement covered by this Agreement or in any exhibit, schedule or other instrument attached hereto or furnished, or to be furnished, by Seller under this Agreement.

# SECTION EIGHT

### Bill of Sale

Seller agrees to execute and deliver to Buyers at closing or such other date as may be fixed, a proper Bill of Sale conveying to the Buyers all of the goods, merchandise, chattels and other personal properties covered by this Agreement.

### SECTION NINE

# Condition of the Equipment and Inventory

The Seller represents to the Buyers that the equipment and inventory are in good condition and that there are no hidden defects in the equipment or inventory, that have not been disclosed to the Buyers.

# SECTION TEN

# Attorney's Fees

In the event that legal proceedings are instituted by either party or enforce any of the provisions of this Agreement, then in addition to such costs as may be awarded by the Court, the prevailing party in such proceedings shall be entitled to recover from the other party, such amounts as the Court shall deem reasonable as attorney's fees in connection with such proceedings.

### SECTION ELEVEN

# Attorney's Fees and Representation

The parties recognize that this Agreement has been prepared by Mel Kosta as attorney for the Buyers. The Seller is advised to seek independent legal counsel in connection with his rights and responsibilities under this Agreement. Each of the parties shall pay their own attorney fees in connection with this transaction.

DATED this \_\_\_\_\_\_ day of February, 1988 in Klamath Falls, Oregon.

GARY'S BAKERY

Voma P. Smith Buyers James & Smith

8276

CONTRACT OF SALE -4-STATE OF OREGON: COUNTY OF KLAMATH: ss. 2nd the Gary Dill M90 Filed for record at request of \_\_\_\_\_\_ Gary DIII\_\_\_\_\_\_ of \_\_\_\_\_A.D., 19 90 at 11:46\_\_\_\_ o'clock \_\_\_\_\_ AM., and duly recorded in Vol. on Page . of \_\_\_\_\_\_Miscellaneous County Clerk Evelyn Biehn mulandere Paul By FEE \$30.00