

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (herein called this "**Agreement**") is made and entered into this \_\_\_\_ day of **December, 2014**, by and between **FLOWERS BAKING CO. OF WATERLOO, LLC**, an Iowa limited liability company (herein called "**Seller**"); and **THE CITY OF WATERLOO**, an Iowa municipal corporation (herein called "**Buyer**").

### WITNESSETH:

1. **Agreement to Sell and Purchase.** For and in consideration of the Earnest Money, to be paid by Buyer to Escrow Agent, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, the following:

(a) All those certain lots, tracts or parcels of improved real estate more particularly described on **Exhibit "A"** attached hereto and having an address of 325 Commercial Avenue, Waterloo, Iowa 50701, together with all plants, shrubs and trees located thereon, and together with all rights, ways and easements appurtenant thereto, including, without limitation, all of Seller's right, title and interest in and to the land underlying and the air space overlying any public or private ways or streets crossing or abutting said real estate (herein collectively called the "**Land**");

(b) All buildings, structures and other improvements of any and every nature located on the Land (herein collectively called the "**Improvements**"); and

(c) All of the right, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the owner of the Property, in and to (i) any impact fee credits with, or impact fee payments to, any county or municipality in which the Land is located arising from any construction of improvements, or dedication or contribution of property, by Seller, or its predecessor in title or interest, related to the Land, (ii) any development rights, allocations of development density or other similar rights allocated to or attributable to the Land or the Improvements, and (iii) any utility capacity allocated to or attributable to the Land or the Improvements, whether the matters described in the preceding **clauses (i), (ii) and (iii)** arise under or pursuant to governmental requirements, administrative or formal action by governmental authorities, or agreement with governmental authorities or third parties (herein called the "**Entitlements**").

All of the matters described in this **paragraph 1** are herein sometimes collectively called the "**Property**". The definition of Property specifically excludes any and all items of personal property, whether or not they may be affixed to the Improvements, and Seller shall have the right to remove all such items of personal property from the Improvements prior to Closing, provided that the building remains secure at all times against entry by unauthorized persons.

2. **Purchase Price; Method of Payment.** The purchase price for the Property (herein called the "**Purchase Price**"), shall be **FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00)**. The Purchase Price shall be paid by Buyer to Seller on the Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by Seller.

3. **Earnest Money.**

(a) On or before the date **three (3) business days** after full execution of this Agreement by Seller and Buyer, Buyer shall deliver to **First American Title Insurance Company**, Six Concourse Parkway, Suite 2000, Atlanta, Georgia 30328, Attn: Brenda Sollenberger as escrow agent (herein called "**Escrow Agent**") the sum of **TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00)** (which sum, together with all interest actually earned thereon during the term of this Agreement, is herein called the "**Earnest Money**"). In the event Buyer does not elect to terminate this Agreement pursuant to **paragraph 5(b)**, the Earnest Money shall be non-refundable to Buyer after the Due Diligence Date except in the event of a default of Seller as set forth in **paragraph 13(b)** or as otherwise set forth in **paragraphs 12(b), 14(a) and 15(a)**.

(b) If Buyer shall fail to timely deliver the Earnest Money to Escrow Agent, then this Agreement shall, at the option of Seller by written notice to Buyer, terminate, whereupon all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void.

(c) Throughout the term of this Agreement, Escrow Agent shall hold and disburse the Earnest Money in accordance with the terms and conditions of this Agreement, including, without limitation, the terms and conditions set forth on **Exhibit "C"** attached hereto.

(d) On the Closing Date, the Earnest Money will be applied as part payment of the Purchase Price.

4. **Closing.** The closing of the purchase and sale of the Property (herein called "**Closing**"), shall be conducted via mail through Escrow Agent on **a date that is mutually agreeable to Buyer and Seller, but no later than thirty (30) days after the Due Diligence Date** (herein called the "**Closing Date**").

5. **Access and Inspection; Delivery of Documents and Information by Seller; Examination by Buyer.**

(a) Between the date of this Agreement and the Closing Date, Buyer and Buyer's agents, employees, contractors, representatives and other designees (herein collectively called "**Buyer's Designees**") shall have the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, and making surveys, environmental assessments, and any other investigations and inspections as Buyer may reasonably require to assess the condition of the Property; **provided, however,** that such activities by or on behalf of Buyer on the Property shall not materially damage the Property; and **provided further, however,** that Buyer shall indemnify and hold Seller harmless from and against any and all claims for injury to person or damage to property, to the extent directly resulting from the activities of Buyer or Buyer's agents or designees on the Property, **excluding, however,** claims arising out of the discovery of any Pollutants resulting from Buyer's investigations (unless the Pollutants are introduced onto the Property by Buyer or Buyer's agents, employees, consultants or contractors). "**Pollutants**" means any material or substance which, by reason of quantity, concentration, composition, or characteristic, is regulated under any federal, state or local environmental or common law, rule, regulation, ordinance or requirement, as may be amended, replaced or superseded. Notwithstanding the foregoing, Buyer shall not perform any Phase II environmental testing on the Property without Seller's prior written consent. If Buyer determines that Phase II testing is necessary, Buyer shall submit to Seller,

for review and approval, a summary of the (i) scope of work and (ii) location(s) of the testing from Buyer's environmental consultant.

(b) Buyer shall have until **the date that is thirty (30) days after the Effective Date of this Agreement** (herein called the "**Due Diligence Date**") in which to initially examine and investigate the Property, and to determine whether the Property is suitable and satisfactory to Buyer. If Seller consents to Phase II environmental testing, then the Due Diligence Date shall be extended to a mutually agreeable date that allows sufficient time for such testing and for the production and review of related reports. In the event that Buyer shall determine, in Buyer's sole and absolute judgment and discretion, that the Property is in any manner unsuitable or unsatisfactory to Buyer, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller on or before the **Due Diligence Date**, in which event **ONE HUNDRED AND NO/100THS DOLLARS (\$100.00)** of the Earnest Money shall be delivered to Seller as consideration for Seller's execution of and entry into this Agreement, the balance of the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void and neither Party hereto shall have any or other further claim against the other arising out of or related to this Agreement.

(c) On or before the date **five (5) days after the Effective Date of this Agreement**, Seller shall deliver to Buyer documents and information in Seller's possession with respect to the Property, including but not limited to those pertaining to investigating, testing for, or remediating any Pollutants (herein called the "**Due Diligence Materials**"). The Due Diligence Materials will be provided to Buyer without any representation or warranty of any kind or nature whatsoever and are merely provided to Buyer for Buyer's informational purposes. Until Closing, Buyer and Buyer's Designees shall maintain all Due Diligence Materials as confidential information. Seller acknowledges that Buyer is an Iowa municipality and is subject to the provisions of the Iowa open records law, Chapter 22 of the Code of Iowa, and that Buyer makes no representation about the applicability or enforceability of any exception against disclosure that would permit the Due Diligence Materials to be treated as confidential records under such law. If the purchase and sale of the Property is not consummated in accordance with this Agreement, regardless of the reason or the party at fault, Buyer shall immediately re-deliver to Seller all copies of the Due Diligence Materials, whether such copies were actually delivered by Seller or are duplicate copies made by Buyer or Buyer's Designees. No termination of this Agreement by Buyer pursuant to any provision of this Agreement permitting termination by Buyer shall be deemed effective unless and until Buyer shall have delivered to Seller all copies of all Due Diligence Materials, as required by this **paragraph 5(c)**, unless otherwise agreed by Seller.

## **6. Prorations and Adjustments to Purchase Price.**

(a) The following prorations and adjustments shall be made between Buyer and Seller at Closing, or thereafter if Buyer and Seller shall agree, all with respect to the cash portion of the Purchase Price: (i) all city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property (herein called the "**Taxes**"), with respect to the year in which Closing occurs shall be prorated as of the Closing Date using the mid-month proration convention described in Iowa Code § 427.2. Prorated taxes payable in the next fiscal year after the Closing Date shall be calculated from the first day of July prior to possession to the date of possession based upon the last known actual net real estate taxes payable according to public records. In the event that, after the Closing Date, any additional Taxes are levied, imposed upon or assessed against the Property for periods prior to the Closing Date, Buyer shall give Seller written notice of such Taxes, and Seller shall be responsible for payment of such additional Taxes in full within the time fixed for payment thereof and

before the same become delinquent; (ii) all utility charges for the Property shall be prorated as of the Closing Date; and (iii) any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date. Seller shall also pay in full any special assessments that have been certified as liens against the Property.

(b) In the event that the amount of any item to be prorated is not determinable at the time of Closing, such proration shall be made on the basis of the best available information, and the parties shall re-prorate such item promptly upon receipt of the applicable bills therefor and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount used as a basis for the proration at Closing and the actual amount subject to proration. In the event any prorated item is due and payable at the time of Closing, the same shall be paid at Closing. If any prorated item is not paid at Closing, Seller shall deliver to Buyer the bills therefor promptly upon receipt thereof and Buyer shall be responsible for the payment in full thereof within the time fixed for payment thereof and before the same shall become delinquent. In making the prorations required by this paragraph, the economic burdens and benefits of ownership of the Property for the Closing Date shall be allocated to Seller.

(c) Notwithstanding any other provision of this Agreement to the contrary, Buyer shall have the right to deduct from the Purchase Price, and pay on behalf of Seller, all outstanding Taxes for years prior to 2014.

7. **Title.** Seller covenants to convey to Buyer at Closing good and marketable fee simple title in and to the Property. Seller will purchase for Buyer an abstract of title from Black Hawk County Abstract Company, updated to a date within thirty (30) days of Closing.

8. **Survey.** Buyer shall have the right to cause a survey of the Property to be prepared by a surveyor registered and licensed in the State of Iowa and designated by Buyer, which survey shall depict such information as Buyer shall require. Upon completion of a plat of the survey, Buyer shall furnish Seller with a copy thereof. The Deed to be delivered by Seller at Closing will contain Seller's vesting legal description; however, if requested by Buyer, at Closing Seller will also deliver to Buyer a Quitclaim Deed containing the survey legal description.

9. **Proceedings at Closing.** On the Closing Date, the Closing shall take place as follows:

(a) Seller shall deliver to Buyer or the Title Company the following documents and instruments, duly executed by or on behalf of Seller: (i) a Limited Warranty Deed acceptable to the Title Company in recordable form conveying the Land and Improvements subject to the Deed Restriction set forth in **paragraph 21** hereof (herein called the "**Deed**"); (ii) a Bill of Sale Assignment transferring and assigning the Entitlements (herein called the "**Bill of Sale**"); (iii) a Seller's Affidavit with respect to the Property; (iv) a Certificate and Affidavit of Non-Foreign Status; (v) a completed 1099-S request for taxpayer identification number and certification, and acknowledgment, (vi) a Quitclaim Deed, if requested by Buyer as set forth in **paragraph 8** above, (vii) a Real Estate Declaration of Value; (viii) a Groundwater Hazard Statement; and (ix) a Closing Statement.

(b) Buyer and Seller shall each deliver to the other, evidence in form and substance reasonably satisfactory to Buyer, Seller, and the Title Company that Buyer and Seller each have the power and authority to execute and enter into this Agreement and to consummate the purchase and sale of the Property.

(c) Buyer shall (i) pay the remainder of the Purchase Price to Seller in accordance with the provisions of this Agreement (ii) deliver to Seller or the Title Company a counterpart signature to the Bill of Sale and the Closing Statement.

**10. Costs of Closing.** Seller shall pay the State of Iowa real estate revenue tax payable on the transfer of the Property and the cost of Buyer's title abstract pursuant to **paragraph 7** hereof. Buyer shall pay all recording costs and the cost of any survey obtained pursuant to **paragraph 8** hereof. Seller and Buyer shall each pay one-half (1/2) of the Escrow Agent's fee and their own attorneys' fees, provided that Buyer's share of the Escrow Agent's fee shall not exceed \$2,000.00.

**11. Representation and Warranties; Disclaimers.**

(a) SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, AND SELLER SHALL NOT, BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH CLOSING, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS, SELLER MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO: (I) MATTERS OF TITLE (OTHER THAN SELLER'S LIMITED WARRANTY OF TITLE SET FORTH IN THE DEED AT CLOSING), (II) ZONING, (III) TAX CONSEQUENCES, (IV) PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, WITHOUT LIMITATION, LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR TOXIC, HAZARDOUS OR REGULATED SUBSTANCE AND FURTHER INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE AND COMPENSATION AND LIABILITY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, THE CLEAN WATER ACT, THE SOLID WASTE DISPOSAL ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE OIL POLLUTION ACT, THE FEDERAL CLEAN AIR ACT, AND THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT, EACH AS MAY BE AMENDED FROM TIME TO TIME, AND INCLUDING ANY AND ALL REGULATIONS, RULES OR POLICIES PROMULGATED THEREUNDER (HEREIN COLLECTIVELY CALLED THE "ENVIRONMENTAL LAWS"), (V) VALUATION, (VI) GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (VII) THE USE, INCOME POTENTIAL, EXPENSES, OPERATION OR CHARACTERISTICS OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC PURPOSE OR FOR A PARTICULAR PURPOSE, OR GOOD OR WORKMANLIKE CONSTRUCTION, (VIII) THE NATURE, MANNER, CONSTRUCTION, CONDITION, STATE OF REPAIR OR LACK OF REPAIR OF ANY OF THE IMPROVEMENTS, ON THE SURFACE OR SUBSURFACE THEREOF WHETHER OR NOT OBVIOUS, VISIBLE OR APPARENT, (IX) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE PROPERTY, (X) THE SOIL CONDITIONS, DRAINAGE, FLOODING CHARACTERISTICS, UTILITIES OR OTHER CONDITIONS EXISTING IN, ON OR UNDER THE PROPERTY, AND (XI) THE PRESENCE OR EXISTENCE OF MOLD OR OTHER ORGANISMS, LEAD BASED PAINT OR WATER PENETRATION IN OR ABOUT THE IMPROVEMENTS (HEREIN COLLECTIVELY CALLED THE "DISCLAIMED MATTERS"). BUYER AGREES THAT, WITH RESPECT TO THE PROPERTY, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR

INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER. BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITION THEREOF) AND RELY UPON SAME AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, THE DISCLAIMED MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. SUCH INSPECTIONS AND INVESTIGATIONS OF BUYER SHALL BE DEEMED TO INCLUDE AN ENVIRONMENTAL AUDIT OF THE PROPERTY, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE PROPERTY, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION OF THE PROPERTY WOULD SHOW, PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS OF THE CITY, COUNTY AND STATE WHERE THE PROPERTY IS LOCATED AND THE VALUE AND MARKETABILITY OF THE PROPERTY. SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER OR ANY THIRD PARTY. WITHOUT IN ANY WAY LIMITING ANY PROVISION OF THIS **PARAGRAPH 11**, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST SELLER WITH RESPECT TO:

- (i) THE DISCLAIMED MATTERS;
- (ii) THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT;
- (iii) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY WITH REGARD TO ANY ENVIRONMENTAL LAWS; AND
- (iv) ANY OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO THE PROPERTY.

(b) Seller hereby makes the following representations, warranties and covenants for the benefit of Buyer as of the date hereof and the Closing Date:

- (i) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Iowa and Seller has the lawful right, power, authority and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement;
- (ii) Seller has "good and marketable fee simple title" as defined herein, to the Property, subject to liens that will be paid in full, satisfied and canceled at Closing;
- (iii) To Seller's actual knowledge, there are no actions, suits or proceedings pending or threatened against Seller which affect title to the Property or which question the validity or enforceability of this Agreement, in any court or before any governmental authority;

As used in this **paragraph 11**, the phrase "**Seller's actual knowledge**" shall refer to the actual knowledge, without investigation, of **A. Ryals McMullian, Jr. and Jerry Hancock**.

**12. Conditions of Buyer's Obligations.**

(a) Buyer's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived in writing by Buyer, in whole or in part, on or as of the Closing Date:

(i) Seller shall have fully and completely kept, observed, performed, satisfied and complied with all terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller before, on or as of the Closing Date; and

(ii) Buyer shall be in a position to obtain an owner's policy of title insurance in accordance with the provisions of **paragraph 7**.

(b) If any of the foregoing conditions have not been satisfied or performed or waived in writing by Buyer on or as of the Closing Date, Buyer shall have the right, at Buyer's option, either: (i) to terminate this Agreement by giving written notice to Seller on or before the Closing Date, in which event all rights and obligations of Seller and Buyer under this Agreement shall expire, this Agreement shall become null and void, and the Earnest Money shall be refunded to Buyer promptly upon request; or (ii) if such failure of condition constitutes a default by Seller under this Agreement, to exercise such rights and remedies as may be provided for in **paragraph 13** of this Agreement.

### **13. Remedies.**

(a) If the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Buyer under this Agreement, the Earnest Money shall be delivered to and retained by Seller as Seller's full liquidated damages for such default. The parties acknowledge that Seller's actual damages in the event of a default by Buyer will be difficult to ascertain, that such liquidated damages represent the parties' best estimate of such damages, and that Seller and Buyer believe such liquidated damages are a reasonable estimate of such damages. The parties expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages, in the event of a default by Buyer. Such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Buyer, and Seller hereby waives and releases any right to sue Buyer for specific performance of this Agreement or to prove that Seller's actual damages exceed the amount which is herein provided to Seller as full liquidated damages; **provided, however**, that the foregoing liquidated damages shall not apply to any duty, obligation, liability or responsibility which Buyer may have under the indemnification provisions of **paragraphs 5 and 17** of this Agreement.

(b) If the purchase and sale of the Property is not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement, Buyer may exercise such rights and remedies as may be provided for in this Agreement or as may be provided for or allowed by law, including but not limited to specific performance of this Agreement. Seller hereby acknowledges that Buyer's remedies in the event of the occurrence of a default by Seller shall specifically include, without limitation, the right to seek, prove and recover (to the extent proven) monetary damages from Seller in an amount equal to all actual, reasonable out-of-pocket costs and expenses paid or incurred by Buyer in connection with its execution of and entry into this Agreement and its proposed acquisition of the Property, including, without limitation, (A) reasonable attorney's fees and disbursements in connection with the negotiation and execution of this Agreement, the examination of title to the Property, and any other legal matter

undertaken by Buyer pertaining to the Property and (B) any examinations, investigations, tests and inspections, reasonably undertaken by Buyer with respect to the Property.

**14. Damage or Destruction.**

(a) If any portion of the Improvements is damaged or destroyed by casualty prior to Closing, Seller shall give Buyer prompt written notice thereof. If any portion of the Improvements is damaged or destroyed by casualty on or before the Due Diligence Date, and Buyer has notice of the same and notwithstanding such notice Buyer does not elect to terminate this Agreement pursuant to **paragraph 5** hereof, then Buyer shall have no right to terminate this Agreement by reason of such damage or destruction. If any portion of the Improvements is damaged or destroyed by casualty after the Due Diligence Date and prior to Closing, and the cost of repair of such damage or destruction is reasonably estimated to exceed Forty Thousand and No/100th Dollars (\$40,000.00), Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice to Seller on or before the date **ten (10) days** after the date upon which Seller gives Buyer written notice of such casualty, in which event the Earnest Money shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. In the event of lesser damage or destruction after the Due Diligence Date, Buyer shall have no right to terminate this Agreement by reason of such damage or destruction.

(b) If any portion of the Improvements is damaged or destroyed by casualty prior to Closing and Buyer does not elect to terminate this Agreement in accordance with any termination right, this Agreement shall remain in full force and effect and the parties shall proceed to Closing without any reduction or adjustment in the Purchase Price, except that at Closing:

(i) the Purchase Price shall be reduced by (x) Seller's deductible, and (y) the total of any insurance proceeds actually received by Seller on or before the Closing Date with respect to such casualty and not expended by Seller prior to Closing for the repair or restoration of the Improvements; and

(ii) at Closing, Seller shall assign to Buyer all rights of Seller in and to any insurance proceeds payable thereafter by reason of such casualty.

**15. Condemnation.**

(a) In the event of commencement of eminent domain proceedings respecting any portion of the Property prior to Closing or *bona fide* threat thereof, Seller shall give Buyer prompt written notice of the same. If all or any part of the Property is taken by eminent domain proceedings, or if there is the commencement or *bona fide* threat of the commencement of any such proceedings, on or before the Due Diligence Date, and Buyer has notice of the same and notwithstanding such notice Buyer does not elect to terminate this Agreement pursuant to **paragraph 5** hereof, Buyer shall have no right to terminate this Agreement by reason of such taking. If all or any material part of the Property is taken by eminent domain proceedings after the Due Diligence Date, and prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice to Seller on or before the date **ten (10) days** after the date upon which Seller gives Buyer written notice of such taking, in which event the Earnest Money shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. In the event of a taking of less than all or a material part of the Property after the Due Diligence Date, Buyer shall have no right to terminate this Agreement by reason of such taking.



(b) If all or any part of the Property is taken by eminent domain proceedings prior to Closing and Buyer does not elect to terminate this Agreement in accordance with any termination right, this Agreement shall remain in full force and effect and the parties shall proceed to Closing without any reduction or adjustment in the Purchase Price, except that at Closing:

(i) the Purchase Price shall be reduced by the total of any awards or other proceeds actually received by Seller on or before the Closing Date with respect to any taking and not expended by Seller prior to Closing for the repair or restoration of the Property; and

(ii) at Closing, Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds payable thereafter by reason of such taking.

(c) For the purposes of this **paragraph 15**, a taking shall be deemed to be of a "material" part of the Property only if such taking involves either:

(i) the taking of any of the existing parking spaces on the Land or any taking that interferes with the Property's access; or

(ii) the taking of any of the Improvements.

**16. Confidentiality Obligation.** Buyer shall not provide any written or verbal updates, draft or final reports, copies of any soil or groundwater data, photographs, figures, or any other information or materials whatsoever related to any environmental investigation of the Property to any third-party, other than Buyer's lenders, attorneys, agents, consultants and affiliated-entities, unless agreed to in writing by Seller. Buyer shall provide a copy of any such information or materials to Seller only upon the written request of Seller. Buyer shall protect from disclosure all information related to the environmental investigation of the Property to the greatest extent permitted by law, and shall consult with Seller prior to the release of any information which Buyer believes it is required by law to disclose. Seller acknowledges that Buyer is an Iowa municipality and is subject to the provisions of the Iowa open records law, Chapter 22 of the Code of Iowa, and that Buyer makes no representation about the applicability or enforceability of any exception against disclosure that would permit the Due Diligence Materials to be treated as confidential records under such law. The provisions of this **paragraph 16** shall survive the consummation of the purchase and sale of the Property as contemplated hereunder or any termination or cancellation of this Agreement.

**17. Broker and Commission.** All negotiations relative to this Agreement and the purchase and sale of the Property as contemplated by and provided for in this Agreement have been conducted by and between Seller and Buyer without the intervention of any person or other party as agent or broker. Seller and Buyer warrant and represent to each other that Seller and Buyer have not entered into any agreement or arrangement and have not received services from any broker or broker's employees or independent contractors which would give rise to any claim of lien or lien against the Property and there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the Property by reason of their respective dealings, negotiations or communications. Seller and Buyer shall and do each hereby indemnify, defend and hold harmless each of the others from and against any and all liabilities, damages, losses, costs and expenses (including attorneys' fees and expenses) in any manner arising out of, by reason of or in connection with the claims, demands, actions and judgments of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of their respective dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property.

**18. Limitation on Seller Liability.** ANY PARTY SEEKING TO ENFORCE ANY DUTY, OBLIGATION, LIABILITY OR RESPONSIBILITY OF SELLER ARISING UNDER THIS AGREEMENT SHALL RELY ON AND LOOK SOLELY TO THE PROPERTY AND THE PROCEEDS THEREOF. SELLER SHALL HAVE NO LIABILITY FOR THE PERFORMANCE OF ANY DUTIES OR OBLIGATIONS OF SELLER UNDER THIS AGREEMENT BEYOND ITS INTEREST IN THE PROPERTY AND THE PROCEEDS THEREOF. BUYER WILL NOT SEEK TO ENFORCE ANY JUDGMENT OBTAINED BY BUYER AGAINST SELLER AGAINST ANY PROPERTY OF SELLER OTHER THAN ITS INTEREST IN THE PROPERTY AND THE PROCEEDS THEREOF, AND BUYER SHALL LOOK SOLELY TO, AND RELY SOLELY ON, ITS INTEREST IN THE PROPERTY AND THE PROCEEDS THEREOF FOR ENFORCEMENT AND SATISFACTION THEREOF.

**19. Survival.** The provisions of **paragraphs 5(a), 6, 11, 16, 17, 18, 20, and 22** of this Agreement shall survive the consummation of the purchase and sale of the Property as contemplated hereunder. Notwithstanding anything to the contrary set forth in this Agreement, the provisions of **paragraphs 5(a), 5(c), 16, 17, 18, 20, and 22** of this Agreement shall also survive any termination of this Agreement in accordance with its terms. Except as expressly set forth in this **paragraph 19**, this Agreement shall not survive the consummation of the purchase and sale of the Property on the Closing Date, the delivery of the Deed and the payment of the Purchase Price.

**20. ERISA Compliance.** Buyer is not, and is not acting on behalf of: (i) a "plan", as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as amended (herein called "ERISA"), that is subject to Title I of ERISA; (ii) a "plan", as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing being herein collectively called a "Plan"); (iii) an entity whose assets include "plan assets" under Department of Labor Regulation 2510.3-101 and Section 3(42) of ERISA by reason of one or more Plan's investment in such entity; or (iv) a "plan", as defined in Section 3(3) of ERISA that is not subject to Title I of ERISA. Buyer does not have, and is not acting on behalf of an entity which has, a "party in interest" (as defined in Section 3(14) of ERISA) relationship to Seller or any comparable relationship under state law to Seller. Buyer represents and covenants that the transaction contemplated by this Agreement (and any underlying obligations contemplated by this Agreement) does not and shall not constitute a prohibited transaction by Buyer under ERISA or a comparable violation of state law. Buyer shall, and does hereby, indemnify, defend and hold harmless each of the Seller Parties from and against any and all liabilities, damages, losses, costs and expenses (including attorneys' fees and expenses) in any manner arising out of, by reason of or in connection with any claims, demands, actions and judgments arising out of, by reason of or in connection with the untruth of any of the statements, representations and warranties of Buyer set forth in this **paragraph 20**.

**21. Deed Restriction.** The Deed delivered at Closing from Seller to Buyer will contain the deed restriction set forth on **Exhibit "B"** attached hereto (the "**Deed Restriction**").

**22. General Provisions.**

**(a) Notices.** Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below their respective executions hereof, or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below their

respective executions hereof, or to such other numbers as are specified by written notice given in accordance herewith, or shall be transmitted by electronic mail to the electronic mail addresses for each party set forth below their respective executions hereof, or to such other electronic mail addresses as are specified by written notice given in accordance herewith. All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; those given by facsimile shall be deemed given on the date of facsimile transmittal; and those given by electronic mail shall be deemed given on the date of electronic mail transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address, facsimile number or electronic mail address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, on the date of electronic mail transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

(b) **Facsimile as Writing.** The parties expressly acknowledge and agree that, notwithstanding any statutory or decisional law to the contrary, the printed product of a facsimile or electronic transmittal shall be deemed to be "written" and a "writing" for all purposes of this Agreement.

(c) **Assignment.** This Agreement may be assigned at Closing by Buyer to a single purpose entity controlled by Buyer without the prior written consent of Seller, but any such assignment shall not release the assignor from its obligations under this Agreement. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Buyer and Seller and their respective legal representatives, successors and permitted assigns.

(d) **Headings.** The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

(e) **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

(f) **Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

(g) **Pronouns.** Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

(h) **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition

or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(i) **Non-Waiver.** Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

(j) **Rights Cumulative.** All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

(k) **Time of Essence; Dates.** Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "**Effective Date**" shall be deemed to refer to the later of the date of Buyer's or Seller's execution of this Agreement, as indicated below their executions hereon.

(l) **Applicable Law.** This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Iowa.

(m) **Entire Agreement; Modification.** This Agreement supersedes all prior discussions and agreements among Seller and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement contains the sole and entire understanding among Seller and Buyer with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Seller and Buyer.

(n) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

(o) **Attorney's Fees.** In the event of any litigation between Buyer and Seller arising under or in connection with this Agreement, the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees, expenses and disbursements) incurred by the prevailing party.

(p) **Authority.** Each party hereto warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.

(q) **Counsel.** Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review, and understand the provisions of this Agreement.

(r) **No Construction Against Preparer.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

(s) **No Recording.** In no event shall this Agreement or any memorandum hereof be recorded by Buyer in any public records, and any such recordation or attempted recordation shall constitute a breach of this Agreement by Buyer.

(t) **ADA Disclosure.** Buyer acknowledges that the Project may be subject to the federal Americans With Disabilities Act (herein called the "ADA") and the federal Fair Housing Act (herein called the "FHA"). The ADA requires, among other matters, that tenants and/or owners of "public accommodations" remove barriers in order to make the Property accessible to disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons. Without limiting the generality of any provision of this Agreement, Seller makes no warranty, representation or guarantee of any type or kind with respect to the Project's compliance with the ADA or the FHA (or any similar state or local law), and Seller expressly disclaims any such representation. Buyer agrees that, at all times from and after Closing, Buyer shall and does hereby indemnify and hold each of the Seller Parties harmless from and against all liabilities, damages, losses, claims, causes of action, suits, demands, charges, complaints, costs and expenses (including attorneys' fees and costs associated with defending any action in the manner of Seller's choosing), which Seller may suffer, incur or be obligated to perform as a result of any alleged or actual noncompliance of the Project with the ADA or the FHA (or any similar state or local law).

(u) **Prohibited Person.** For purposes of this Agreement, a "Prohibited Person" means any of the following: (i) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) (herein called the "Executive Order"); (ii) a person or entity owned or controlled by, or acting for or on behalf of any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity that is named as a "specifically designated national" or "blocked person" on the most current list published by the U.S. Treasury Department's Office of Foreign Assets Control (herein called "OFAC") at its official website, <http://www.treas.gov/offices/enforcement/ofac>; (iv) a person or entity that is otherwise the target of any economic sanctions program currently administered by OFAC; or (v) a person or entity that is affiliated with any person or entity identified in the foregoing clauses (i), (ii), (iii), or (iv). Buyer represents and warrants to Seller, knowing that Seller is relying on such representation and warranty, that Buyer is not a Prohibited Person.

(v) **Jury Waiver.** BUYER AND SELLER DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE DOCUMENTS DELIVERED BY BUYER AT CLOSING OR SELLER AT CLOSING, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ANY ACTIONS OF EITHER SELLER OR BUYER ARISING OUT OF OR RELATED IN ANY MANNER WITH THIS AGREEMENT OR THE PROPERTY (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL


THIS AGREEMENT AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR SELLER AND BUYER TO ENTER INTO AND ACCEPT THIS AGREEMENT AND THE DOCUMENTS DELIVERED BY BUYER AT CLOSING AND SHALL SURVIVE THE CLOSING OR THE TERMINATION OF THIS AGREEMENT

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute and deliver this Agreement, under seal, all as of the day and year first written above.

**SELLER:**

**FLOWERS BAKING CO. OF WATERLOO, LLC**, an Iowa limited liability company

By:   
Name: KARL H LAUDON  
Title: TREASURER

Date of Seller's Execution:

December 4, 2014

Initial address for notices:

Flowers Baking Co. of Waterloo, LLC  
c/o Flowers Foods, Inc.  
1919 Flowers Circle  
Thomasville, Georgia 31757  
Attention: A. Ryals McMullian, Jr.  
Telephone Number: (229) 227-2393  
Telecopy Number: (229) 225-5426  
Email: [ryals.mcmullian@flocorp.com](mailto:ryals.mcmullian@flocorp.com)

With a copy to:

Kilpatrick Townsend & Stockton LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309-4530  
Attention: Elizabeth Willis Quinn  
Telephone Number: (404) 745-2465  
Telecopy Number: (404) 935-0507  
Email: [bquinn@kilpatricktownsend.com](mailto:bquinn@kilpatricktownsend.com)

**BUYER:**

**THE CITY OF WATERLOO**, an Iowa municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Buyer's Execution:

December \_\_, 2014

Initial address for notices:

City of Waterloo, Iowa  
715 Mulberry Street  
Waterloo, IA 50703  
Attention: Noel Anderson  
Telephone Number: (319) 291-4366 Telecopy  
Number: (319) 291-4262  
Email: [noel.anderson@waterloo-ia.org](mailto:noel.anderson@waterloo-ia.org)

With a copy to:

Christopher S. Wendland  
Clark, Butler, Walsh & Hamann  
315 E. 5<sup>th</sup> Street  
Waterloo, IA 50703  
Telephone Number: (319) 234-5701  
Telecopy Number: (319) 234-3011  
Email: [chris.wendland@cbwhlaw.com](mailto:chris.wendland@cbwhlaw.com)



**ESCROW AGENT ACKNOWLEDGMENT**

Escrow acknowledges receipt of the Earnest Money, and agrees to comply with the terms and conditions of this Contract which are applicable to Escrow.

**ESCROW AGENT:**

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: December \_\_, 2014

**EXHIBIT "A"**

Legal Description

Real property in the City of Waterloo, County of Black Hawk, State of Iowa, described as follows:

Lots Nos. 6, 7, 8 9 and 10 In Block No. 2 In the Original Plat, on the West Side of Cedar River, In the City of Waterloo, Black hawk County, Iowa.

APN: 8913-26-227-001 and 35-0010821 and 8913-26-227-002

## **EXHIBIT "B"**

### **Deed Restriction**

The Property may not be used for the production of (i) fresh, bagged, sliced bread, buns, rolls, sandwich thins, thin buns, bagels, English muffins, flat bread sold as traditional pita bread and other fresh bread products (collectively, the "Bread Products"); (ii) frozen fully baked or par baked Bread Products; or (iii) single-serve or multi-pack sweet cake products, including donuts, Swiss rolls, honeybuns, cinnamon rolls and other like cake products.

## **EXHIBIT "C"**

### **Escrow Provisions**

1. In performing any of its duties hereunder, Escrow Agent shall not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of counsel given with respect to any questions relating to duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any documents, including any written notice of instruction provided for in this Agreement, not only as to its execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to be signed or presented by a proper person or persons and to conform with the provisions of this Agreement.
2. Notwithstanding anything in this Agreement to the contrary, in the event of a dispute between any of the parties hereto, Escrow Agent shall tender unto the registry or custody of any court of competent jurisdiction sitting in the State of Georgia, all money in its hands held under the terms of this Agreement, together with such legal pleading as is appropriate and thereupon be discharged.
3. Buyer and Seller covenant and agree that in performing any of its duties under this Agreement, Escrow Agent shall not be liable for any loss, costs or damage which it may incur in the capacity of Escrow Agent, except for any loss, costs or damage arising out of its gross negligence or willful misconduct.