

FRANCHISE DISCLOSURE DOCUMENT  
1-800-FLOWERS.COM FRANCHISE CO., INC.



A Delaware Corporation  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
(516) 237-6000

Email: [franchise@1800flowers.com](mailto:franchise@1800flowers.com)  
[www.1800flowers.com](http://www.1800flowers.com)

1-800-Flowers.Com Franchise Co., Inc. offers franchises for retail flower shops that offer flowers, plants, fresh fruit products, including fresh cut fruit bouquets and related products, cookies, candy, gift baskets, gift items, novelty items, personalized gift and novelty items and related products and services to the general public. We offer the rights for 3 different franchises in this Disclosure Document:

**Standard Franchise Program.** Under the Standard Franchise Program, you will sign a Franchise Agreement to operate one 1-800-Flowers.Com Standard Franchised Unit at a single location. The total investment necessary to begin operation of one 1-800-Flowers.Com Standard Franchised Unit is \$258,500 to \$774,500. This includes \$43,500 to \$69,000 that must be paid to us and/or an affiliate.

**Co-Brand Franchise Program.** Under the Co-Brand Franchise Program, you will sign a Franchise Agreement and a Co-Brand Franchise Addendum to co-brand your existing independent retail flower shop to a 1-800-Flowers.Com Co-Branded Franchised Unit. The total investment necessary to begin operation of a 1-800-Flowers.Com Co-Branded Franchised Unit is \$57,000 to \$156,750. This includes \$21,000 to \$21,500 that must be paid to us and/or an affiliate.

**Fruit Bouquets Program.** Under the Fruit Bouquets Program, we will grant you the right to offer and sell fruit bouquets and related products from your Standard Franchised Unit or Co-Branded Franchised Unit. The total initial investment necessary to begin operations is \$18,500 to \$53,500. This includes \$0 to \$7,500 that must be paid to us and/or an affiliate. A Fruit Bouquets Business may only be added into a Standard Franchised Unit or a Co-Branded Franchised Unit.

This Disclosure Document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read the Disclosure Document and all accompanying agreements carefully. You must receive this Disclosure Document at least 14 calendar days before you sign a binding agreement with, or make any payments to the Franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact our Senior Vice President - Franchising, Vincent J. McVeigh, Two Jericho Plaza, Suite 200, Jericho, New York 11753, (516) 237-6000.

The terms of your contract will govern your franchise relationship. Don't rely on the Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. Information about comparisons of franchisors is available. More information on franchising, such as "A Consumer's Guide to Buying a Franchise", which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by

writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC's home page at [www.ftc.gov](http://www.ftc.gov) for additional information. There may also be laws on franchising in your state.

Call your state agency listed on **Exhibit R** or visit your public library for other sources of information on franchising.

**ISSUANCE DATE: OCTOBER 15, 2021.**

## How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibits O and P.
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to provide support to my business?</b>	Item 21 or Exhibit Q includes financial statements. Review these statements carefully.
<b>Is the franchise system stable, growing, or shrinking?</b>	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
<b>Will my business be the only 1-800-Flowers business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a 1-800-Flowers franchisee?</b>	Item 20 or Exhibits O and P list current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## **What You Need To Know About Franchising Generally**

**Continuing responsibility to pay fees.** You may have to pay royalties and other fees even if you are losing money.

**Business model can change.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

**Supplier restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

**Operating restrictions.** The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

**Competition from franchisor.** Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

**Renewal.** Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

**When your franchise ends.** The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

### **Some States Require Registration**

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit R.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.



## **Special Risks to Consider About *This Franchise***

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The Franchise Agreement requires you to resolve disputes with the franchisor by litigation or arbitration only in New York. Out-of-state litigation or arbitration may force you to accept a less favorable settlement for disputes. It may also cost you more to litigate or arbitrate with the franchisor in New York than in your own state.
2. **Spousal Liability:** The franchisee's spouse may in some circumstances be required to sign a personal guarantee making the spouse jointly and severally liable for the obligations of the franchisee under the franchise agreement, which also places the spouse's personal and marital assets at risk. You may want to consider this when making a decision to purchase this franchise opportunity.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT  
TABLE OF CONTENTS**

<b>Item</b>	<b>Description</b>	<b>Page</b>
ITEM 1	THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES .....	1
ITEM 2	BUSINESS EXPERIENCE.....	4
ITEM 3	LITIGATION.....	6
ITEM 4	BANKRUPTCY.....	7
ITEM 5	INITIAL FEES.....	7
ITEM 6	OTHER FEES .....	9
ITEM 7	ESTIMATED INITIAL INVESTMENT .....	22
ITEM 8	RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES .....	29
ITEM 9	FRANCHISEE’S OBLIGATIONS.....	32
ITEM 10	FINANCING.....	35
ITEM 11	FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING.....	37
ITEM 12	TERRITORY .....	53
ITEM 13	TRADEMARKS.....	54
ITEM 14	PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION .....	57
ITEM 15	OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS .....	58
ITEM 16	RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL.....	59
ITEM 17	RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION.....	60
ITEM 18	PUBLIC FIGURES .....	70
ITEM 19	FINANCIAL PERFORMANCE REPRESENTATIONS .....	70
ITEM 20	OUTLETS AND FRANCHISEE INFORMATION .....	71
ITEM 21	FINANCIAL STATEMENTS .....	75
ITEM 22	CONTRACTS .....	75
ITEM 23	RECEIPTS.....	75

**EXHIBITS**

A	Franchise Agreement	M-1	Premier Order Fulfillment Agreement
B	Co-Brand Franchise Addendum to Franchise Agreement	M-2	Fruit Bouquets Order Fulfillment Agreement
C	Fruit Bouquets Addendum to Franchise Agreement	N-1	BloomNet Membership Agreement
		N-2	BloomNet Technologies Systems Agreement
		N-3	BloomNet Order Referral Program Rate Schedule
D	Sublease	O	List of Current Franchisees
E	Option to Obtain Lease Assignment	P	List of Former Franchisees
F	State Specific Addenda	Q	Financial Statements
G	Confidentiality Agreement	R	Agents for Service of Process & State Administrators
H	General Release		Effective Dates
I	Promissory Note		
J	Guarantee of Promissory Note	S	Receipts
K	Security Agreement		
L	Franchise Compliance Certificate		

**ITEM 1**  
**THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

**The Franchisor**

1-800-Flowers.Com Franchise Co., Inc. is a Delaware corporation that was incorporated on February 8, 2000. To simplify the language in this Disclosure Document, “**Franchisor**,” “**we**” and “**us**” means 1-800-Flowers.Com Franchise Co., Inc. “**You**” or “**Franchisee**” means the business entity, person or persons who sign the Franchise Agreement. Our principal business address is Two Jericho Plaza, Suite 200, Jericho, New York 11753. We do business under our corporate name as well as under the trade names “**1-800-Flowers**” and “**1-800-Flowers.Com**”. We do not do business under any other names. Our agents for service of process are listed in **Exhibit R**.

**Parents, Predecessors and Affiliates**

We have no predecessors. We are a wholly-owned subsidiary of 1-800-Flowers.Com, Inc., a Delaware corporation (“**1-800-Flowers**”), our parent, through another subsidiary of 1-800-Flowers, 1-800-Flowers Retail Inc., a Delaware corporation (“**Retail**”). Our affiliates are: BloomNet, Inc., a Delaware corporation (“**BloomNet**”); 800-Flowers, Inc., a New York corporation (“**800-Flowers**”); Conroy’s, Inc., a California corporation (“**Conroy’s**”); Napco Marketing Corp, a Delaware corporation (“**Napco**”); Cheryl & Co., an Ohio company (“**Cheryl**”); The Popcorn Factory, Inc., a Delaware corporation (“**Popcorn**”); Flowerama of America, Inc., an Iowa corporation (“**Flowerama**”); DesignPac Gifts LLC, an Illinois limited liability company (“**Design**”); and Harry & David Operations, Inc., a Delaware corporation (“**HDO**”). 1-800-Flowers does not guarantee our performance under the Franchise Agreement.

1-800-Flowers, through its subsidiaries, is an e-commerce provider of floral products, plants, gifts, and fresh fruit products, including fresh cut fruit bouquets and related products (collectively, “**fruit bouquets**”), and conducts international flowers-by-telephone businesses under the names “**1-800-Flowers**”, “**Fruit Bouquets by 1-800-Flowers.Com**” and “**fruitbouquets.com**”, and utilizes the toll-free telephone number 1-800-356-9377; corresponding to “**1-800-Flowers**”, to receive orders for flowers, fruit bouquets, gifts, and other related products. 1-800-Flowers, through one of its subsidiaries, operates a business (the “**BloomNet Network**”) that refers floral and gift orders received from consumers through the Internet and by telephone for fulfillment and delivery. Retail operates company-owned retail floral shops. 1-800-Flowers is the holder of the “**1-800-Flowers**”, “**Fruit Bouquets**”, “**Fruit Bouquets by 1-800-Flowers.Com**” and “**fruitbouquets.com**” service marks, trademarks, logos and other identifying marks (the “**1-800-Flowers Marks**”). BloomNet grants limited licenses to use certain software, documentation and copyrighted content that comprise the “**BloomNet Technologies Systems**” for communications functions and the fulfillment of orders at retail flower shops. BloomNet also has an on-line wholesale site for floral and other products through its BloomNet division. Napco is a subsidiary of BloomNet and sells hard goods and other products for retail flower shops. In addition, our franchisees may purchase certain products from Cheryl, Popcorn, Design and HDO in order to fulfill certain types of orders from 800-Flowers.

With the exception of BloomNet, Napco, Cheryl, Popcorn, HDO, Design and Flowerama, the principal business address of our parent and its affiliates is Two Jericho Plaza, Suite 200, Jericho, New York 11753. BloomNet and Napco’s principal business address is 7800 Bayberry Road, Jacksonville, Florida 32256. Cheryl’s principal place of business is 646 McCorkle Boulevard, Westerville, Ohio 43092. Popcorn’s principal place of business is 13970 West Laurel Drive, Lake Forest, Illinois 60045. HDO’s principal place of business is 2500 South Pacific Highway, Medford, Oregon 97501. Design’s principal place of business is 2457 West North

Avenue, Melrose Park, Illinois 60160. Flowerama's principal place of business is 5108 Nordic Drive, Cedar Falls, Iowa 50613.

### Operating and Franchising Experience

We do not operate a business of the type being franchised. 1-800-Flowers and its predecessors and affiliates have operated businesses of the type being franchised since 1970. Retail currently operates 1 retail store under the trade name "**1-800-Flowers**" and 8 Flowerama shops under the trade name "**1-800-Flowers | Flowerama**".

We have offered franchises for retail flower shops since April 3, 2002. As of our fiscal year ended June 27, 2021, there were 18 franchisees operating 21 1-800-Flowers retail flower shops, 9 1-800-Flowers design centers doing business under the trade name "**1-800-Flowers**", 32 franchisees operating 35 Co-Brand retail flower shops that use both the "**1-800-Flowers**" name and marks and their existing name and 1 company-owned location owned by Retail. We have offered 1-800-Flowers Co-Brand franchises since June 2010 and we have offered the Fruit Bouquets Program to franchisees since October 2011. Flora Plenty of America, Inc., a New York corporation ("**Flora Plenty**"), the predecessor of Flora Plenty, Inc., a New York corporation that was liquidated and whose assets were distributed to Retail in June 1995, offered franchises for retail flower shops for sale from 1981 to 1982.

Conroy's has offered franchises for retail flower shops for sale since March 1974. Between October 1995 and October 1999, Conroy's offered franchises for retail flower shops operating under the trade names "**1-800-Flowers**" and "**Conroy's 1-800-Flowers**". As of June 27, 2021, there were 21 Conroy's franchisees operating 27 retail flower shops under the trade name "**1-800-Flowers | Conroy's**".

Flowerama has offered franchises for retail flower shops for sale since 1970. As of June 27, 2021, there were 26 Flowerama franchisees operating 35 retail shops under the trade name "**Flowerama**" and 1 retail shop under the trade name "**1-800-Flowers | Flowerama**" and 8 company-owned locations owned by Retail.

We do not offer franchises for sale in other lines of business. Except for Flora Plenty, Conroy's and Flowerama, none of our affiliates have offered franchises for sale in this line of business. None of our affiliates have offered franchises for sale in any other line of business. Franchises for "**1-800-Flowers | Conroy's**" shops and "**Flowerama**" and "**1-800-Flowers | Flowerama**" shops are available under separate Franchise Disclosure Documents.

### 1-800-Flowers Marks, System and Trade Practices

We have developed the 1-800-Flowers system (the "**1-800-Flowers System**") for the operation of retail flower shops ("**1-800-Flowers Shops**") that use the trade names "**1-800-Flowers**" and "**1-800-Flowers.Com**" and the 1-800-Flowers Marks and our valuable trade practices, designs, phrases, logos, signs, formulas, operating procedures, electronic systems, merchandising methods, cost control, accounting and general business techniques, strategies, routines, copyrights, manuals, training materials, bulletins and all other items we own, use or develop (collectively, the "**1-800-Flowers Trade Practices**") to offer flowers, fruit bouquets, plants, cookies, candy, gift baskets, gift items, novelty items, personalized gift and novelty items and related products and services and sentiment items for sale to the public. All 1-800-Flowers franchisees are members of the BloomNet Network.

## Franchise Programs

We offer 3 separate franchises in this Disclosure Document, though we may not necessarily grant you the opportunity to purchase under any of these programs:

### Standard Franchise Program

Under this program, you will sign a Franchise Agreement (**Exhibit A**) to operate one 1-800-Flowers retail unit (a “**Standard Franchised Unit**”) at a location that you select and we accept (a “**Franchised Location**”). Your Franchised Location will be designated in your Franchise Agreement before we sign the Franchise Agreement.

### Co-Brand Franchise Program

Under this program (the “**Co-Brand Franchise Program**”), you will sign a Franchise Agreement and a Co-Brand Franchise Addendum (**Exhibit B**) to co-brand an existing retail flower shop (an “**Existing Flower Shop**”) to a co-branded 1-800-Flowers Shop (a “**Co-Branded Franchised Unit**”). You may, if you choose to do so, continue to operate your shop under its existing name in combination with the 1-800-Flowers brand, or you may choose to operate your shop only under the 1-800-Flowers brand. Under both of these alternatives, you must add 1-800-Flowers products to your product offerings and use the 1-800-Flowers brand name and signage in and on your shop, on your delivery vehicles, and in all of your marketing efforts, with our approval. As part of our Co-Brand Franchise Program, we will continue to offer opportunities for flower shops that will operate under the trade name “**1-800-Flowers | Conroy’s**” under a separate Franchise Disclosure Document.

Use of the term “**Franchised Unit**” in this Disclosure Document refers to both a Standard Franchised Unit and a Co-Branded Franchised Unit, unless the context of its use indicates otherwise.

### The Fruit Bouquets Program

Under this program (the “**Fruit Bouquets Program**”), you will sign a Fruit Bouquets Addendum to Franchise Agreement (**Exhibit C**), which will grant you the right to offer and sell fruit bouquets and other related products from your Franchised Unit (a “**Fruit Bouquets Business**”). A Fruit Bouquets Business may only be added into a Franchised Unit. You will add fruit bouquets to your product offerings and use the “**Fruit Bouquets**”, “**fruitbouquets.com**” and/or “**Fruit Bouquets by 1-800-Flowers.Com**” brand name, as we designate, on signage in your Franchised Unit, on your delivery vehicles, and in all of your marketing efforts and packaging, with our approval. If you would also like to receive fruit bouquet orders for fulfillment from 800-Flowers separate and apart from our franchise program, then you may also sign a Fruit Bouquets Order Fulfillment Agreement (**Exhibit M-2**).

### BloomNet Membership, BloomNet Technologies Systems and Premier Order Fulfillment

In addition to the Franchise Agreement, you must sign a BloomNet Membership Agreement (**Exhibit N-1**) and a BloomNet Technologies Systems Agreement (**Exhibit N-2**). The BloomNet Membership Agreement allows you to join the BloomNet Network, and the BloomNet Technologies Systems Agreement allows you to refer and receive orders and communications through the BloomNet Technologies Systems.

Separate and apart from our franchise programs, 800-Flowers may refer you floral and gift orders to fulfill in your trade area if you maintain a standard of high quality and fulfill these orders to the complete satisfaction of 800-Flowers. In addition, 800-Flowers may, in its discretion, offer you and you may choose to sign a Premier

Order Fulfillment Agreement (**Exhibit M-1**). The Premier Order Fulfillment Agreement will entitle you to receive and fulfill floral and gift orders for 800-Flowers in your trade area on a more frequent basis than you would otherwise receive.

### **The Market**

The market for retail outlets offering flowers, plants, fresh cut fruit bouquets, gift items and related products and services to the general public is well developed, and sales, although typically non-seasonal, may be higher during holidays or on certain dates such as Valentine's Day or Mother's Day. Your competitors include other retail flower and plant shops, including members of the BloomNet Network, franchisees of ours and our affiliates, gift shops and other retail operators such as grocery stores and discount retailers, as well as street vendors, telephone services and Internet merchants, including 1-800-Flowers.Com, which offer flowers, plants and gift items for sale to the public. If you add a Fruit Bouquets Business into your Franchised Unit, you will also have competition from other companies that provide these products, some of which may be Internet-based and/or franchise systems, such as Edible Arrangements.

### **Industry Specific Regulations**

Franchised Units must comply with federal, state and local laws applicable to the operation of a floral service business, including: (a) obtaining all applicable permits and approvals by municipal, county or state agencies; (b) establishing general standards, specifications and requirements for the construction, design and maintenance of the Franchised Unit; (c) maintaining prescribed standards pertaining to employee health and safety, fire safety and general emergency preparedness, (d) using vending machines as prescribed, and (e) using, storing and disposing of waste, insecticides, and other hazardous materials as prescribed. If you offer fruit bouquets, you must comply with applicable laws regarding the handling, storage, preparation and delivery of fresh fruit. This may require you to obtain food service licenses or other licenses or permits. The Americans with Disability Act of 1990 requires readily accessible accommodation for disabled people and therefore may affect your building construction, site elements, entrance ramps, doors, etc. You must obtain all required real estate permits, licenses and operational licenses. You should investigate whether there are regulations and requirements that may apply in the geographic area in which you are interested in locating your Franchised Unit and you should consider both their effect and cost of compliance. You must also comply with all local, state, and federal laws that apply to your operations, including health, sanitation, insurance, smoking laws and regulations, EEOC, OSHA, non-discrimination, employment, and sexual harassment rules, regulations and laws.

The Payment Card Industry Data Security Standard ("PCI DSS") requires that all companies that process, store or transmit credit or debit card information maintain a secure environment. PCI DSS applies to all organizations or merchants, regardless of size or number of transactions, that accept, transmit or store any cardholder data. You should consult with your attorney concerning these and other local laws and ordinances that may affect your Franchised Unit.

## **ITEM 2 BUSINESS EXPERIENCE**

### **Executive Chairman:**

**James F. McCann**

Mr. McCann has served as Executive Chairman of 1-800-Flowers since July 2016. He has also served as our Chairman since 2006.

**Chief Executive Officer:**

**Christopher G. McCann**

Mr. McCann was appointed as Chief Executive Officer of 1-800-Flowers in July 2016. He also currently serves as our Vice President.

**President:**

**Dinesh Popat**

Mr. Popat has been our President since March 2019. He has also served as President of BloomNet, Napco, Conroy's and Flowerama since March 2019. From January 2017 to March 2019, he was Chief Marketing Officer for Prescriptive Insights in New York, New York. From May 2014 to December 2016, he was Chief Representative Officer for Avon Products, Inc., in New York, New York.

**Senior Vice President and Chief Financial Officer:**

**William Shea**

Mr. Shea has been Senior Vice President and Chief Financial Officer for 1-800-Flowers since September 2000. He has also served as our Vice President and Treasurer since 2001.

**General Counsel, Senior Vice President and Corporate Secretary:**

**Michael R. Manley**

Mr. Manley has served as General Counsel, Senior Vice President and Corporate Secretary for 1-800 Flowers since July 9, 2018. From August 2013 to July 2, 2018, he was a Partner and member of the Corporate Group of Venable, LLP located in New York, New York.

**Senior Vice President-Real Estate and Construction:**

**Brian McGee**

Mr. McGee has served as Senior Vice President-Real Estate & Construction since August 2014. He joined 1-800-Flowers as Director of Real Estate in February 1996.

**Senior Vice President - Franchising:**

**Vincent J. McVeigh**

Mr. McVeigh has been Senior Vice President of Franchising of 1-800-Flowers since January 2018. Before that, from November 2008 to December 2017, he served as Senior Vice President of BloomNet.

**Senior Vice President-Florist Operations and Fruit Bouquets:**

**Camilo Escobar**

Mr. Escobar has been Senior Vice President of Florist Operations and Fruit Bouquets for 1-800-Flowers since September 2008.

**Director of Franchise Operations:**

**Stephen Lenzovich**

Mr. Lenzovich has been Director of Franchise Operations since November 2011.

**Purchasing Program Manager:**

**Curtis Young**

Mr. Young has been the Purchasing Program Manager since July 2018. Before that, from October 2012 to June 2018, he was Assistant Manager for Kwik Trip, Inc. in Lacrosse, Wisconsin.

**ITEM 3  
LITIGATION**

**State of Maryland Determination, File Number 2014-0102.** In June 2014, the State of Maryland concluded that we, when offering our co-branded franchises under a separate Franchise Disclosure Document, violated the Maryland Franchise Registration and Disclosure Law (the “**Maryland Franchise Law**”) between February 25, 2013 and February 25, 2014 by (i) offering and selling co-brand franchises to 3 Maryland flower shop owners without providing them with our then-current Maryland registered Franchise Disclosure Document, (ii) not requiring them to sign the Maryland state-specific Addendum included in the Franchise Disclosure Document at the time they signed the Franchise Agreement, and (iii) collecting initial franchise fees from one Maryland flower shop owner in violation of Maryland’s requirement that we defer collection of initial franchise fees and payments until we had completed our initial obligations as franchisor under the parties’ Franchise Agreement. On June 19, 2014, 1-800-Flowers, without admitting or denying any violation of law, voluntarily entered into a Consent Order with the Office of the Attorney General of Maryland and agreed to cease and desist from the offer and sale of franchises in violation of the Maryland Franchise Law and to pay the Attorney General \$5,000 as a civil monetary penalty.

**Arizona Family Florists, LLC, Bradley Denham, Cheryl Denham, South Florals DC, LLC, Daniel Sanchez, Samuel Noriega, Water Mill Flowers, Inc., Thomas Dowd and Cesar Rivera, Plaintiffs, vs. 1-800-Flowers.Com, Inc., 1-800-Flowers .Com Franchise Co., Inc. and BloomNet, Inc., Defendants,** Case Number 2:16-cv-2638-JFB-AYS. On May 24, 2016, the 1-800-Flowers franchisees named as plaintiffs above filed a Complaint in the United States District Court for the Eastern District of New York against the defendants, which was followed by their filing of an Amended Complaint on July 15, 2016. The claims of plaintiffs South Florals, Daniel Sanchez and Samuel Noriega (the “**Miami Plaintiffs**”) were settled and dismissed with prejudice on February 8, 2017. No monies were paid to the Miami Plaintiffs by any of the Defendants; rather, the parties entered into an order fulfillment agreement; the term of one existing Franchise Agreement was reduced and new Franchise Agreements and Co-Brand Franchise Addenda were entered into for 2 of the Miami Plaintiffs’ other shops, all with coterminous terms, and provision was made for the potential execution of Franchise Agreements and Co-Brand Franchise Addenda for future new shops on mutually agreed upon terms. A Second Amended Complaint was filed on February 3, 2017 (with the Complaint and the Amended Complaint collectively, the “**Complaint**”) by the remaining Plaintiffs (Arizona Family Florists, LLC, Bradley Denham and Cheryl Denham, collectively the “**Arizona Plaintiffs**” and Water Mill Flowers, Inc., Thomas Dowd and Cesar Rivera, collectively the “**Ft. Lauderdale Plaintiffs**”). The Complaint is for breach of contract and the covenant of good faith and fair dealing, common law unfair competition, violation of the Arizona Consumer Fraud Act, violation of Florida’s Deceptive and Unfair Trade Practices Act, Violation of New York’s Franchise Sales Act, common law fraud, common law negligent misrepresentation, common law fraudulent inducement and conversion, and seeking damages in the amount of \$13,540,120, attorneys’ fees, an accounting, a declaration discharging non-compete restrictions, declaratory relief, rescission of an alleged Arizona Fruit Bouquets Franchise Agreement, and a permanent injunction prohibiting defendants from improperly competing in a portion of Fort Lauderdale, Florida, and alleging, among other things, that defendants breached their Order Fulfillment Agreements with the plaintiffs and failed to renew them, failed to pay plaintiffs commissions for completed floral order and gift order fulfillment, failed to provide minimum value in orders, engaged in unfair competition, and made misrepresentations regarding defendants’ fruit bouquets



program, and that plaintiffs suffered damages as a result. The Defendants filed Answers and Counter-Claims to the Complaint, with the Answer and Counter-Claims to the Second Amended Complaint filed on April 7, 2017. The Answer denied the allegations in the Complaint and asserted numerous affirmative defenses, including release or waiver of certain claims by all or some of the plaintiffs and that certain claims were barred by applicable statutes of limitation, statute of frauds, and rights of set-off. The Counter-Claims seek dismissal of the Complaint, monetary damages for breach of contract, breach of the Arizona Franchise Agreement and abandonment of the Arizona Franchise by the Arizona Plaintiffs, and injunctive relief regarding the Arizona Plaintiffs' continued unauthorized use of the 1-800-Flowers marks and for enforcement of the non-competition provisions in the plaintiffs' agreements, plus legal fees and expenses.

Discovery was completed and the parties made their respective Motions for Summary Judgment and prepared their respective Oppositions to those filed by the other party. Oral argument on the Motion for Summary Judgment was held on February 27, 2019. On February 21, 2020, the Magistrate Judge rendered her Report and Recommendation as to the Summary Judgment Motions filed by the Plaintiffs and the Defendants. In the Report, the Magistrate Judge dismissed certain of the Claims of the Plaintiffs, including the Breach of Contract Claims of the Plaintiffs Denham set forth in Claims Fourth, Fifth and Sixth. Plaintiffs' Motions for Summary Judgment against the Defendants were denied. The Plaintiffs have filed their respective Objections to the Magistrate's Report and Recommendation and, in turn, the Defendants filed their Responses thereto. The parties await the decision of the Judge as to whether or not she will affirm the Magistrates' Report and Recommendation.

Other than these 2 actions, no litigation is required to be disclosed in this Item.

#### **ITEM 4 BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item.

#### **ITEM 5 INITIAL FEES**

The amount of your initial franchise fee (the "**Initial Franchise Fee**") and the procedures for payment are determined by the type of franchise you purchase.

#### **Initial Franchise Fee for Standard Franchised Unit**

You must pay us an Initial Franchise Fee of \$30,000 (the "**Standard Initial Franchise Fee**") for a Standard Franchised Unit. The Standard Initial Franchise Fee is payable in full when you sign the Franchise Agreement and is not refundable under any circumstances. If the term of your Franchise Agreement is less than 10 years, then the Standard Initial Franchise Fee may be reduced accordingly.

#### **Initial Franchise Fee for Co-Branded Franchised Unit**

You must pay us an Initial Franchise Fee of \$20,000 (the "**Co-Brand Initial Franchise Fee**") for a Co-Branded Franchised Unit. The Co-Brand Initial Franchise Fee is payable in full when you sign the Franchise Agreement and Co-Brand Franchise Addendum and is not refundable under any circumstances. If the term of your Franchise Agreement is less than 10 years, then the Co-Brand Initial Franchise Fee may be reduced accordingly.

### **Initial Franchise Fee for Fruit Bouquets Business**

You must pay us an Initial Franchise Fee (the “**Fruit Bouquets Initial Franchise Fee**”) of \$7,500 if we grant you the right to sell fruit bouquets and related products (a “**Fruit Bouquets Franchise**”) at one Franchised Unit and a Fruit Bouquets Initial Franchise Fee of \$3,500 for a Fruit Bouquets Franchise at each additional Franchised Unit. A Fruit Bouquets Business may only be added into a Franchised Unit. The Fruit Bouquets Initial Franchise Fee is payable in full when you sign the Fruit Bouquets Addendum to the Franchise Agreement (**Exhibit C**) and is not refundable under any circumstances. If you sign a Franchise Agreement and a Fruit Bouquets Addendum to the Franchise Agreement on or before October 1, 2022, we will waive payment of the entire Fruit Bouquets Initial Franchise Fee.

### **Franchisor Financing**

If you meet our criteria, including a minimum credit score of 650, we may offer you the opportunity to finance up to \$30,000 with us for the build-out of your Standard Franchised Unit and/or for the purchase and installation of signage for your Standard Franchised Unit. If you are granted a Successor Franchise and meet our criteria, including a minimum credit score of 650, we may offer to finance up to \$30,000 for your Successor Franchise Fee. If you are purchasing a Fruit Bouquets Franchise and meet our criteria, including a minimum credit score of 650, we may offer to finance up to \$30,000 for your Fruit Bouquets build-out costs and/or the signage costs for a Fruit Bouquets Business. Offers of financing are made to franchisees in our sole discretion on a case-by-case basis. If we offer financing to you, you must sign our form of Promissory Note attached to this Disclosure Document as **Exhibit I**. If you are an entity, your owners must guarantee payment of the Promissory Note under a Guarantee attached to this Disclosure Document as **Exhibit J**, and you must also grant us a security interest in the assets of your Franchised Unit under our form of Security Agreement attached to this Disclosure Document as **Exhibit K**. Financing is generally repaid over 1 year with interest at the rate of 7% per annum. The length of time to repay and the interest rate may vary on a case by-case-basis. If we offer you financing for multiple purposes, you may have to sign multiple Promissory Notes, Guarantees and Security Agreements.

### **Product Purchases**

We may require you to purchase an initial inventory of items that are specific to the 1-800-Flowers System, such as branded signature products, branded packaging, and gift items. As described in Item 8, you will purchase these products from our affiliates, BloomNet and/or Napco. We estimate that the cost of this initial inventory will be between \$1,000 and \$1,500, which will be payable in full upon delivery of the inventory and is not refundable under any circumstances.

### **Sublease**

If you sublet the Franchised Location from us or a subsidiary or affiliate under our Sublease, you will pay us (or our subsidiary or affiliate, as we direct) rent, which we estimate will be between \$2,500 and \$7,500 per month. You must also pay us or a subsidiary or affiliate a security deposit under our Sublease equal to 2 months’ rent. We estimate your initial fees will include 3 months’ rent plus a security deposit equal to 2 months’ rent.

**VetFran Discount**

We are a member of the International Franchise Association (the “IFA”) and participate in the IFA’s VetFran Program, which provides a discount on Initial Franchise Fees to qualified Veterans of the U.S. Armed Forces and to spouses of active duty services members who otherwise meet the VetFran Program’s requirements (collectively, “Qualified VetFran Participants”). First-time purchasers of start-up Standard Franchised Units who are Qualified VetFran Participants are eligible for a reduced Standard Initial Franchise Fee of \$20,000. First-time purchasers of Co-Branded Franchised Units who are Qualified VetFran Participants are eligible for a reduced Co-Brand Initial Franchise Fee of \$10,000. To qualify for this discount, a Qualified VetFran Participant must own at least a 50% interest in the Franchised Unit. “Veteran” means a recipient of an honorable discharge as evidenced by the U.S. Department of Defense who must give us the required documents to obtain the VetFran discount. The VetFran discount is not available if you are purchasing an existing Franchised Unit, if you are renewing your franchise rights or if you are an existing franchisee and are purchasing additional franchises.

**Refunds, Different Fees and Financing**

Qualified employees of 1-800-Flowers or its affiliates may pay reduced fees. Otherwise, except for Qualified VetFran Participants as described above, all franchisees must pay the initial fees described in this Item 5. The Standard Initial Franchise Fee, Co-Brand Initial Franchise Fee and Fruit Bouquets Initial Franchise Fee are fully earned by us when paid and are not refundable under any circumstances. We use the proceeds from Initial Franchise Fees to defray a portion of our expenses in connection with the sale and establishment of franchises, such as: (i) costs related to developing and improving our services; (ii) expenses of preparing and registering this Disclosure Document; (iii) legal fees; (iv) accounting fees; (v) costs of obtaining and screening franchisees; and (vi) general administrative expenses. We have the right to reduce, defer or waive the Standard Initial Franchise Fee, Co-Brand Initial Franchise Fee or Fruit Bouquets Initial Franchise Fee if and when we determine, in our sole discretion, that doing so is warranted by a given situation. There are no other required payments to, or purchases from, us or any of our affiliates before you begin operating as our franchisee.

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**ITEM 6  
OTHER FEES**

**(STANDARD FRANCHISED UNIT)**

<b>Type Of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
<b>Continuing Franchise Fee - Floral Business</b>	6% of “Adjusted Gross Sales”; 6% of all “Incoming Sales” other than “BloomNet Incoming Sales”; 6% of your share of the Gross Sales Price of orders sent as “Outgoing Sales” other than “BloomNet Outgoing Sales”; 6% of “Outgoing Service Handling Fees”	Payable monthly no later than the 5 <sup>th</sup> day of the month for the immediately preceding month	(Note 1, Note 14)
<b>Continuing Franchise Fee - Fruit Bouquets Business</b>	6% of “Fruit Bouquets Gross Sales”	Payable monthly no later than the 5 <sup>th</sup> day of the month	(Note 1, Note 15)

Type Of Fee	Amount	Due Date	Remarks
<b>Marketing Fee - Floral Business</b>	3% of "Adjusted Gross Sales"	Payable monthly no later than the 5 <sup>th</sup> day of the month for the immediately preceding month	(Note 1) We do not presently charge you a Marketing Fee, but reserve the right to do so in the future.
<b>Marketing Fee - Fruit Bouquets Business</b>	2% of "Fruit Bouquets Gross Sales"	Payable monthly no later than the 5 <sup>th</sup> day of the month	(Note 1) The Marketing Fee for the Fruit Bouquets Business is paid into a fund that is separate from the Floral Marketing Fund. We do not presently charge you a Fruit Bouquets Marketing Fee, but reserve the right to do so in the future.
<b>Rent and Other Occupancy Charges; Sublease Security Deposit</b>	Rent and other charges will vary depending on the site. Your security deposit will generally equal 2 months' rent	Payable no later than the 1 <sup>st</sup> day of each month	(Note 2) Applicable only to properties that are subleased from our affiliate under our Sublease ( <b>Exhibit D</b> ).
<b>Late Charges</b>	10% on delinquent fees; 10% on rent due under our Sublease if not paid by the first day of each month	Payable with delinquent balance	(Note 2, Note 3)
<b>Interest</b>	10% per annum or maximum amount permitted by law	Payable with delinquent balance	(Note 3)
<b>Audit Costs</b>	Cost of audit, interest on under-payment at 10% or maximum amount permitted by applicable law and a penalty of 25% of the underpayment	Payable no later than the 5 <sup>th</sup> day of the month following billing	(Note 4)
<b>Repossession Costs</b>	Legal, repossession, re-letting and other damages according to proof	As directed by our Sublease or by the Court	(Note 5)
<b>Opening Corporate Staff Expenses</b>	Will vary depending upon number of days in Franchised Unit (\$1,000-\$3,000)	Payable no later than the 20 <sup>th</sup> day of the month following billing	(Note 6)
<b>Additional Training Fee – Floral Business</b>	Currently \$1,500, per each additional trainee, to defray direct cost of providing training	Payable no later than the 5 <sup>th</sup> day of the month following billing	(Note 8)
<b>Administrative Transfer Fee (Franchise Agreement)</b>	\$10,000 plus our out-of-pocket costs associated with the transfer, including costs of attorneys' fees associated with the transfer	At the close of escrow for the transfer of the franchise	To reimburse our administrative costs in effecting the transfer. You must also reimburse our out-of-pocket costs associated with the transfer

Type Of Fee	Amount	Due Date	Remarks
<b>Administrative Transfer Fee (Fruit Bouquets Business)</b>	\$5,000, plus expenses	At the close of escrow for the transfer of the Fruit Bouquets Business	To reimburse our administrative costs in effecting the transfer. You must also reimburse our out-of-pocket costs associated with the transfer
<b>Administrative Reconciliation Fee</b>	\$250 per occurrence	Payable no later than the 5 <sup>th</sup> day of the month following billing	(Note 1)
<b>Reimbursement for Advances</b>	As incurred	Payable no later than the 5 <sup>th</sup> day of the month following billing	(Note 7)
<b>Remedial Training</b>	Our then-current additional training fee plus our out-of-pocket costs for the lodging, travel and meals for our personnel to defray the direct costs of providing the training	On demand	(Note 8)
<b>Attorneys' Fees</b>	Reasonable as incurred	As ordered	(Note 9)
<b>Indemnification Expenses</b>	As incurred	Payable as ordered by Court or 5 <sup>th</sup> day of the month following billing	(Note 10)
<b>Gross-Up Fees</b>	Up to 6%	On demand	(Note 1)
<b>Successor Franchise Fee - Floral Business</b>	\$30,000	When you sign the Successor Franchise Agreement	(Note 11)
<b>Successor Franchise Fee - Fruit Bouquets Business</b>	\$7,500	When you sign the Successor Franchise Agreement and then-current Fruit Bouquets Addendum to the Franchise Agreement, as required	(Note 11)
<b>Relocation Fee</b>	\$2,500	When we approve your request to relocate your Franchised Unit	You must obtain our consent to the relocation of your Franchised Unit
<b>Special Programs Service Fee</b>	Up to 6% of Gross Sales generated from special programs	Payable monthly no later than the 5 <sup>th</sup> day of the month following billing	(Note 12)
<b>Additional Layout Charges</b>	As incurred	Payable no later than the 5 <sup>th</sup> day of the month following billing	(Note 13)
<b>Order Fulfillment Fees</b>	As incurred. Currently, \$3.50 per order, or \$1.00 net of delivery confirmation	As incurred	(Note 1, Note 14, Note 17, Note 18)

Type Of Fee	Amount	Due Date	Remarks
<b>De-identification Expenses</b>	As incurred	As incurred	(Note 16)
<b>BloomNet Monthly Membership Rates</b>	As incurred per terms of BloomNet Membership Agreement. The monthly rates are calculated on a monthly-orders-referred basis and are currently as follows: 0-10 orders: \$0.00; 11-29 orders: \$49.99; 30-59 orders: \$129.99; 60-99 orders: \$199.99; 100-199 orders: \$299.99; 200-299 orders: \$499.99; 300-499 orders: \$799.99; 500-749 orders: \$999.99; 750-999 orders: \$1,249.99; 1000+ orders: \$1,499.99	Monthly	(Note 14, Note 17)
<b>BloomNet Monthly Access Rates</b>	As incurred per terms of BloomNet Technologies Systems Agreement. The monthly access rates are calculated on a monthly-orders-referred basis and are currently as follows: 1-10 orders: \$0; 11-29 orders: \$49.99; 30-59: \$79.99; 60-99 orders: \$119.99; 100-199 orders: \$164.99; 200-299 orders: \$199.99; 300-499 orders: \$244.99; 500+ orders: \$294.99. BloomNet Essential License Fee: \$5.00 per month	Monthly	(Note 14, Note 17)
<b>Other BloomNet Fees</b>	Varies	Varies	See BloomNet Order Referral Program Rate Schedule ( <b>Exhibit N-3</b> ) (Note 14, Note 17)
<b>Website and Intranet Rates</b>	Initial Setup Fee: \$159.00; Internet Service Fee: \$79.99 per month; URL Registration Fee: \$19.99 per year; Additional Domain Name Fee: \$19.99 per year; Domain Name Change Fee: \$19.99 (one-time fee); Order Capture Rate: \$3.99 per order, Web Marketing Program: \$24.99 per month	Annually, unless otherwise noted	(Note 17, Note 19)
<b>Purchase Price for Company Operated 1-800-Flowers Shop</b>	\$50,000 - \$575,000	Upon the closing of the transaction	(Note 20)

Type Of Fee	Amount	Due Date	Remarks
<b>Product or Supplier Approval</b>	Reimbursement of our costs, not to exceed \$500	On demand	If you request that we evaluate a product or supplier
<b>Misuse of the Marks Fee</b>	\$1,000 per infraction	On demand	(Note 22)
<b>Customer Service Fee</b>	25% of the retail value of merchandise we provide or the amount of money we refund to a customer to satisfy a customer service issue that you do not resolve to our satisfaction	As incurred	(Note 21)
<b>Optional Marketing</b>	\$1,800 - \$2,500	Annually	(Note 23)
<b>Liquidated Damages</b>	5% of the gross revenue of any business that provides similar services at your Franchised Unit or any site within 10 miles of any 1-800-Flowers Shop or your Franchised Unit	On demand	If you violate the post-term covenant not to compete, you must pay us, throughout the 2-year period following the termination, transfer, or expiration of your Franchise Agreement
<b>Relocation Assessment</b>	An amount equal to the Continuing Franchise Fees you paid for your Franchised Unit at its previous location, plus an additional 10%, during the most recent calendar year during which it was operational	On demand	If we consent to a relocation of your Franchised Unit, you may close the Franchised Unit at your current Franchised Location within 12 months, but must then reopen at the new franchised location within 12 months from the date you closed. If you fail to do so, we have the right to bill you for the Relocation Assessment
<b>Private Offering Fee (Franchise Agreement)</b>	\$10,000 or such greater amount as is necessary to reimburse us for our reasonable costs and expenses with reviewing the proposed offering.	Before offering.	Payable for each proposed private offering of securities, partnership or other ownership interests in Franchisee and is in addition to any Transfer Fee under any Franchise Agreement

**OTHER FEES  
(CO-BRANDED FRANCHISED UNIT)  
(NOTE 24)**

Type Of Fee	Amount	Due Date	Remarks
<b>Continuing Franchise Fee - Floral Business</b>	Begins at a minimum of \$850 per month and increases up to a maximum of \$1,500 per month during the term of your Franchise Agreement. Will begin at more than \$850 per month depending on the sales volume of your Existing Flower Shop in the last calendar year before you sign our Franchise Agreement and Co-Brand Addendum	Payable monthly no later than the 5 <sup>th</sup> day of the month, beginning when the 1-800-Flowers co-branded signage is installed at the Franchised Unit or 60 days after we sign the Franchise Agreement, whichever occurs first	(Note 14, Note 25)
<b>Marketing Fee - Floral Business</b>	\$250 per month	Payable monthly no later than the 5 <sup>th</sup> day of the month	We have the right to increase this fee up to \$750 per month upon 30 days' advance notice to you. If we want you to contribute more than \$750 per month to the Floral Marketing Fund, it must be approved by a majority vote of Co-Brand franchisees
<b>Successor Franchise Fee - Floral Business</b>	\$20,000	Upon execution of the Successor Franchise Agreement and Co-Brand Addendum	(Note 11)
<b>Administrative Transfer Fee - Floral Business</b>	\$5,000 plus our out-of-pocket costs associated with the transfer, including costs of attorneys' fees associated with the transfer	At the close of escrow for the transfer of the Franchise	To reimburse our administrative costs to effect the transfer

Except for the allocation of revenues established by BloomNet or recognized floral wire services (which may be changed by BloomNet or the floral wire services at any time and which is approximately 73% to the fulfilling florist, 20% to the referring florist and 7% to BloomNet or the wire service as a settlement processing charge), all fees are uniformly imposed by and are payable to us, unless we determine otherwise. No other fees or payments are to be paid to us, nor do we impose or collect any other fees or payments for any third-party. Any fees paid to us are non-refundable, unless otherwise noted. Fees payable to third parties are refundable based on your individual arrangements. We have the right to change all fees paid to us as discussed in this Item 6 at any time.

**Note 1:**

As a Continuing Franchise Fee, you must pay us: (a) 6% of "**Adjusted Gross Sales**"; (b) 6% of the "referring florist's" share (which is currently 20%) of the Gross Sales Price of all orders referred from the Franchised Unit as "**Outgoing Sales**" other than "**BloomNet Outgoing Sales**"; (c) 6% of all "**Outgoing Service Handling Fees**"



and/or all other fees or revenues associated with your “**Outgoing Sales**”; and (d) 6% of all “**Incoming Sales**” other than “**BloomNet Incoming Sales**”. In addition, you must pay us 3% of “**Adjusted Gross Sales**” as a Marketing Fee.

“**Adjusted Gross Sales**” are the proceeds from all sales made at or by the Franchised Unit. “**Adjusted Gross Sales**” do not include “**Incoming Sales**” referred to your Franchised Unit, the amount of any “**BloomNet Incoming Sales**” referred to your Franchised Unit, the amount of any “**Outgoing Sales**” referred from the Franchised Unit, the amount of any “**BloomNet Outgoing Sales**” referred from the Franchised Unit, the amount of any “**Fruit Bouquets Gross Sales**”, monies spent on purchases of supplies and/or products from us and/or our affiliates, money refunded to a customer upon return of merchandise, or sales taxes or other taxes collected from customers and paid over to the appropriate governmental authority imposing the tax.

“**Outgoing Sales**” are orders you refer (as the “**referring florist**”) from the Franchised Unit to unaffiliated third-party florists and gift providers and other Franchised Units for fulfillment and delivery by these other florists (as the “**fulfilling florist**”). “**Incoming Sales**” are orders referred to your Franchised Unit for fulfillment and delivery from unaffiliated third-party floral providers and other Franchised Units. “**BloomNet Incoming Sales**” are floral and gift orders referred to your Franchised Unit for fulfillment and delivery by 800-Flowers and/or its affiliates through the BloomNet Network. “**BloomNet Outgoing Sales**” are floral and gift orders referred from your Franchised Unit for fulfillment and delivery by 800-Flowers and/or its affiliates through the BloomNet Network.

As a member of the BloomNet Network, you must pay the current fees and transaction charges due under the BloomNet Membership Agreement (**Exhibit N-1**), the BloomNet Technologies Systems Agreement (**Exhibit N-2**) and as specified on the BloomNet Order Referral Program Rate Schedule (**Exhibit N-3**). If floral or gift orders for BloomNet Incoming Sales are referred to you through the BloomNet Technologies Systems, you will be assessed, or you must pay, the then-current monthly membership rate and an order fulfillment rate per order, as detailed in the table above.

“**Fruit Bouquets Gross Sales**” are all revenues from operating a Fruit Bouquets Business, including from the sale of all products and services in, through, or from your Franchised Unit, by any means of business conducted at your Franchised Unit, including any orders referred from a third party for fulfillment (except for orders for fruit bouquets referred for fulfillment by 800-Flowers pursuant to the terms of the Fruit Bouquets Order Fulfillment Agreement). “**Fruit Bouquets Gross Sales**” excludes sales or service taxes collected from customers and paid to the appropriate taxing authority and all customer refunds, adjustments and credits given to customers in good faith.

To ensure that we receive a full 6% of Adjusted Gross Sales, 6% of Incoming Sales other than BloomNet Incoming Sales, 6% of your share of the net of service charges, credits, charge backs, refunds and taxes (cumulatively, the “**Gross Sales Price**”) of floral and gift orders sent as Outgoing Sales other than BloomNet Outgoing Sales, 6% of Outgoing Service Handling Fees, and 6% of Fruit Bouquets Gross Sales, and the full Marketing Fees that are due, you must pay us, whether in arrears, in advance, in a lump sum or in the same manner that you pay us Continuing Franchise Fees and Marketing Fees, the amount of all taxes we must pay on revenue we earn or collect based upon your use of our intellectual property or other intangibles or based upon the existence of the Franchise Agreement.

You will authorize us to debit from your designated primary business checking or savings operating account any funds due and payable to us for Continuing Franchise Fees, Marketing Fees, rent and rent-related expenses and all other sums that you owe to us or our affiliates. You will also authorize us and our affiliates to process

your credit card sales transactions and, following the settlement of these transactions, to credit any net amount due to you against all Continuing Franchise Fees, Marketing Fees, rent, rent-related expenses, or other sums that are then due from you to us or our affiliates that you incurred prior to the settlement of these transactions, whether incurred under the Franchise Agreement, the Sublease, or under any other agreement between you and us or our affiliates. In addition, you will authorize BloomNet, at its option, to deduct and retain an amount equal to all Continuing Franchise Fees, Marketing Fees, rent and rent-related expenses, BloomNet Access fees and all sums due and owing to us, or our affiliates, from any funds due to you under the BloomNet Membership Agreement, BloomNet Technologies Systems Agreement, Premier Order Fulfillment Agreement and/or Fruit Bouquets Order Fulfillment Agreement.

You must supply us with all required monthly sales data by the 5<sup>th</sup> day of the month for the immediately preceding month to permit us to calculate the amount of your Continuing Franchise Fees and Marketing Fees. If you do not do so, we will estimate your Continuing Franchise Fees and Marketing Fees for the missing period based upon your Adjusted Gross Sales, Incoming Sales and Outgoing Sales at the Franchised Unit during the identical period of the immediately preceding calendar year plus an additional 10% of those amounts, or, if you did not operate the Franchised Unit during the identical period of the immediately preceding calendar year, based upon your average monthly Adjusted Gross Sales, Incoming Sales and Outgoing Sales during the months you operated the Franchised Unit plus an additional 10% of those amounts. If you believe that our estimate of your Continuing Franchise Fees and Marketing Fees exceeds your actual Continuing Franchise Fees and Marketing Fees for any period, you must contest our estimate within the time period in our current 1-800-Flowers Franchise Operations and Brand Standards Manual (the “**Franchise Manual**”) or the Fruit Bouquets by 1-800 Flowers.com Operations Manual (the “**Fruit Bouquets Manual**”) if you add a Fruit Bouquets Business into your Franchised Unit. We will charge you an administrative reconciliation fee of \$250 each time you request a reconciliation of estimated and actual fees. We will make any adjustment or refund as necessary for any over-payments made to us under these procedures within 90 days after we receive all missing sales data from you, BloomNet or the wire service. If you do not contest the amount of our estimate of your Continuing Franchise Fees and Marketing Fees within the time period in our current Franchise Manual or Fruit Bouquets Manual, our estimate will be presumed to be correct and you will have no further right to contest it.

**Note 2:**

If you sublet the Franchised Location from us or a subsidiary or affiliate under our Sublease (**Exhibit D**), you will pay us (or our subsidiary or affiliate, as we direct) rent under the Sublease in an amount that we will establish. We have the right to require you to pay us rent in excess of the rent we pay to a “**Master Landlord**” for the service we are providing to you by acting as the tenant under a “**Master Lease**”. You must pay all rent, other occupancy expenses and cost-of-living or other adjustments to rent and other occupancy expenses as they become due. You must pay rent no later than the first day of each month or a 10% late charge will also be due. You must also reimburse us, when you sign the Sublease, for all expenses we have paid for the negotiation, signing and/or securing of the Master Lease and for the acquisition of the Master Lease and pay us a security deposit under our Sublease equal to 2 months’ rent. At our discretion, we have the right to require you to pay rent and all other charges that become due under the Sublease directly to the Master Landlord.

**Note 3:**

You must pay us a late charge of 10% of overdue fees. You must pay us or our affiliate rent due under the Sublease no later than the first day of each month or the 10% late charge will be due. You must pay us interest on the overdue amount at the rate of 10% per annum from the due date. Interest accrues from the original due

date until the overdue amount is paid in full and is in addition to the late charges. We will not assess interest or late charges at rates that exceed the maximum amounts permitted by applicable law.

**Note 4:**

We have the right to review all books, sales records and supporting materials for the Franchised Unit at all reasonable times. We generally conduct the audit at our expense. If you understate Adjusted Gross Sales, Incoming Sales, Outgoing Sales, and/or Fruit Bouquets Gross Sales (collectively, the “**Sales Figures**”), you must pay us the undisclosed fees. If you understate any Sales Figures by 3% or more, you must pay us our audit expenses plus interest on the amount understated at the rate of 10% or the maximum interest rate allowed by law plus a penalty of 25% of the amount of the underpayment. Interest accrues from the date of the underpayment. If you understate any Sales Figures more than once during the term of the Franchise Agreement, we have the right to terminate your Franchise Agreement.

**Note 5:**

If we or our affiliate terminate your Sublease due to your default, you are liable for our costs of recovering possession of the Franchised Location and the expenses of re-letting the Franchised Location (including renovation and alteration of the Franchised Location), and for other damages, including the then-current value of the amount of unpaid rent for the balance of the term, less the amount you prove can be reasonably avoided.

**Note 6:**

We will provide you with members of our staff to assist you in the operation of your Franchised Unit for up to one week after the Franchised Unit opens, at no additional charge. We have the right to require you to permit our staff to remain in the Franchised Unit for more than one week if we determine that our operations staff is necessary for the proper operation of the Franchised Unit. If our staff remains at the Franchised Unit for more than one week, you must pay us the costs we incur to provide this additional service.

**Note 7:**

You must pay us the amount we advance on your behalf, and interest on the advance from the day it is made.

**Note 8:**

If you send more than 2 persons to the Initial Training Program, you must pay us our then-current additional training fee (the “**Additional Training Fee**”), currently \$1,500, for each additional trainee for their attendance at the Initial Training Program. If you request us to provide additional Initial Training Programs for your new or replacement supervisory or managerial personnel following the opening of your Franchised Unit and, in our discretion, we agree to do so, you must pay us the Additional Training Fee for each such new trainee for their attendance at the Initial Training Program. When we provide you with an additional training program related to the 1-800-Flowers System, you will also pay us the Additional Training Fee for the program to defray our costs associated with providing the program. In addition, you must pay travel and living expenses for your supervisory and managerial employees who attend such additional training programs. You must pass our training exam before receiving your training certificate. We have the right to require you to attend refresher training courses every 5 years during the term of the Franchise Agreement to receive training on new items and standard operating procedures that we designate. In addition, and if you are not meeting our minimum performance standards, we may provide training and education updates and have the right to

impose a fee on you to defray our direct costs for providing these services. Our direct costs include expenses incurred for training materials, travel expenses, the costs for the site where the programs are held, and the like. If we determine that it is necessary, we have the right to require you to attend remedial training, and may provide other assistance subject to the availability of our personnel. We have the right to charge you our then-current Additional Training Fee for providing such remedial training, to defray the direct costs of providing the training.

**Note 9:**

If we, or our affiliate, incur legal expenses to collect any sum due under the Franchise Agreement, Sublease, Premier Order Fulfillment Agreement, Fruit Bouquets Order Fulfillment Agreement, or Fruit Bouquets Addendum to the Franchise Agreement, or to enforce any provision of these Agreements, we have the right to recover our attorneys' fees, expenses and court costs.

**Note 10:**

You must indemnify, defend and hold us and our affiliates and their respective officers, directors, shareholders, employees and agents free and harmless from all claims of third parties arising out of the Franchise Agreement, the Premier Order Fulfillment Agreement, the Fruit Bouquets Addendum to the Franchise Agreement, the Fruit Bouquets Order Fulfillment Agreement, or the business conducted at the Franchised Unit. You may incur expenses as a result of this indemnification.

**Note 11:**

If, at the expiration of your Franchise Agreement, we grant you an extension to the term of the franchise (a "**Successor Franchise**"), you must execute our then-current form of Franchise Agreement (a "**Successor Franchise Agreement**"), and pay us a fee (a "**Successor Franchise Fee**") of \$30,000 for a Standard Franchised Unit and \$20,000 for a Co-Brand Franchised Unit. If the term of your Successor Franchise Agreement is less than 10 years, then the Successor Franchise Fee may be reduced accordingly. If we also grant you an extension to the term of your Fruit Bouquets Business, you must pay us an additional Successor Franchise Fee of \$7,500 and, if we require, execute our then-current form of Fruit Bouquets Addendum to the Franchise Agreement.

**Note 12:**

We have the right to develop special programs designed to generate sales for our franchisees. For all of your gross sales generated from these programs, in addition to the Continuing Franchise Fees you must pay on those sales, we also have the right to retain up to 6% of those sales, as a service fee to reimburse the Floral Marketing Fund for any advances that it made for the development of such programs, and to generate revenue to us.

**Note 13:**

If you change the location of the Franchised Unit during the term of the Franchise Agreement, you must pay us any costs we incur for the preparation and delivery of any suggested layout plans for the Franchised Unit at the new location.

**Note 14:**

Separate and apart from our franchise programs, 800-Flowers may refer you floral and gift orders to fulfill in your trade area if you maintain a standard of high quality and fulfill these orders to the complete satisfaction of 800-Flowers. In addition, 800-Flowers may, in its discretion, offer you, and you may choose, to sign a Premier Order Fulfillment Agreement (**Exhibit M-1**). The Premier Order Fulfillment Agreement will entitle you to be referred and fulfill floral and gift orders for 800-Flowers in your trade area on a more frequent basis than you would otherwise receive for which you will receive a commission, less processing charges, in an amount equal to 80% of the gross sales price of the orders referred by 800-Flowers to you and which are directly fulfilled by you. Your commission and processing charges may vary during the term of your Premier Order Fulfillment Agreement. 800-Flowers may refer incoming floral and gift orders to the Franchised Unit through the BloomNet Network. 800-Flowers may also refer you orders for fruit bouquets if you choose to sign the Fruit Bouquets Order Fulfillment Agreement and the Fruit Bouquets Addendum to the Franchise Agreement. 800-Flowers may use one of the recognized floral wire services, the BloomNet Technologies Systems, or other electronic systems designated by 800-Flowers to refer these orders. Wire service charges and BloomNet Technologies Systems commissions and fees are in addition to, and exclusive of, the fees due to us under the Franchise Agreement. You must sign a BloomNet Membership Agreement (**Exhibit N-1**) and a BloomNet Technologies Systems Agreement (**Exhibit N-2**). The BloomNet Membership Agreement allows you to join the BloomNet Network, and the BloomNet Technologies Systems Agreement allows you to refer and receive orders and communications through the BloomNet Technologies Systems. You will pay BloomNet a monthly membership rate as a BloomNet member and activation and installation fees for the BloomNet Essential enclosure card program. The monthly membership rates are calculated on a monthly-orders-referred basis and may vary during the term of your BloomNet Membership Agreement. You will also pay BloomNet a monthly software fee and an order fulfillment rate per order for each BloomNet order you fulfill from your Franchised Unit (see the BloomNet Order Referral Program Rate Schedule attached as **Exhibit N-3**). These fees are calculated on a monthly-orders-referred basis and may vary during the term of your BloomNet Technologies Systems Agreement. We have the right to require you to use certain wire services and/or to restrict the wire services you may use.

**Note 15:**

The Fruit Bouquets Pricing Guide, which is governed by the Fruit Bouquets Order Fulfillment Agreement, provides that you will be paid a flat fee commission based on the particular fruit arrangement you provide. 800-Flowers has the right to update this fee structure at any time at its sole discretion, and it expects to update it at least twice a year. The Fruit Bouquets Pricing Guide is provided on-line to franchisees purchasing a Fruit Bouquets Business.

**Note 16:**

Before the final date of termination of the Franchise Agreement, you must modify the Franchised Location to our satisfaction to remove items that identify the Franchised Location as a 1-800-Flowers (and Fruit Bouquets by 1-800-Flowers.Com or fruitbouquets.com, if applicable) Franchised Unit. These items include all exterior, interior and reader-board signs and any other items in or on the building, property and delivery vans containing the 1-800-Flowers Marks. You may be required to assign or transfer to us all telephone and fax numbers used by the Franchised Unit. Our Franchise Manual, Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit) and stationery containing our 1-800-Flowers Marks must be turned in to our authorized representative. You must cease use of any website URL containing our 1-800-Flowers Marks and remove any reference to 1-800-Flowers and Fruit Bouquets from websites, ads in the yellow

and white pages, and any delivery vehicles that you control. If you do not do so, we have the right to do so, or cause the same to be done at your expense.

**Note 17:**

You must pay 1-800-Flowers and BloomNet their current fees and transaction charges due under the BloomNet Membership Agreement and the BloomNet Technologies Systems Agreement. The current BloomNet Order Referral Program Rate Schedule is included in **Exhibit N-3** to this Disclosure Document. These fees are subject to change at any time.

**Note 18:**

If you do not timely send your delivery confirmation on an order (by 7:00 PM in the time zone where your Franchised Unit is located), or if your delivery confirmation is missing on an order, you must pay an additional charge of \$2.25 on such orders. If you do not reply with your rejection of an order request within the time periods that we will specify, or fail to meet our specified order referring requirements, additional charges will apply, as disclosed in **Exhibit N-3** to this Disclosure Document.

**Note 19:**

We have the right, but are not obligated, to establish and maintain a website to provide information about the 1-800-Flowers System and the goods and services that 1-800-Flowers Shops provide. In addition, we have the right, but are not obligated, to establish and maintain an “**Intranet**” through which we and our franchisees may communicate with each other. If we do so, you shall establish and continually maintain (during all times that the Intranet shall be established and until the termination of the Franchise Agreement) an electronic connection (the specifications of which shall be specified in the Manuals) with the Intranet that allows us to send messages to and receive messages from you, subject to the standards and specifications that we provide. We have the right to require you and all other franchisees who use the Intranet to contribute a reasonable amount toward the cost of the Intranet’s maintenance.

**Note 20:**

We or an affiliate have the right to sell the assets of company-owned 1-800-Flowers Shops to our franchisees. The purchase price of an ongoing business will equal its fair market value and typically depends on the business's gross sales and cash flow. In the typical case, the buyer will (i) purchase all assets of the business owned by the seller, including the goodwill of the business other than the goodwill associated with the 1-800-Flowers Marks, (ii) receive an assignment of all relevant commercial contracts, and (iii) sublease the Franchised Location from us or an affiliate under a Sublease. The seller will generally retain all liabilities of the former business. The purchase price will vary considerably among 1-800-Flowers Shops, depending upon the gross cash flow for the existing business, and other factors, and is negotiable. The purchase of an existing 1-800-Flowers Shop will be accomplished under our then-current form of Asset Purchase Agreement.

**Note 21:**

You must immediately address and resolve customer service issues with your customers. If you fail to do so to the reasonable satisfaction of a customer, and we or any of our affiliates believe it is necessary to provide the customer with merchandise at reduced or no cost to the customer to satisfy the customer service issue, then we will provide such merchandise to the customer at reduced or no cost to the customer, as we determine

to be appropriate, and you must reimburse us for the retail value of such merchandise plus 25% of such value as a customer service fee.

**Note 22:**

If you misuse our 1-800-Flowers Marks, you must pay us \$1,000 as a “Misuse of the Marks Fee” per infraction upon demand.

**Note 23:**

We have established an optional marketing program whereby we arrange the production and distribution to participating franchisees of certain marketing materials, including banners, seasonal advertising and similar items. If you choose to participate in this program, we will charge you a monthly fee.

**Note 24:**

All fees listed in the Item 6 chart for a Standard Franchised Unit apply to a Co-Branded Franchised Unit. All fees listed in the Item 6 chart for a Co-Branded Franchised Unit only apply to Co-Branded Franchised Units.

**Note 25:**

The requirement to pay Continuing Franchise Fees for a Co-Branded Franchised Unit begins when the 1-800-Flowers signage is installed at your Co-Branded Franchised Unit or 60 days after you sign the Franchise Agreement and Co-Brand Addendum, whichever occurs first. You will authorize us to debit from your designated primary business checking or savings operating account, any funds due and payable to us for Continuing Franchise Fees, Marketing Fees, and all other sums that you owe to us or our affiliates. You will also authorize us and our affiliates to process your credit card sales transactions and, following the settlement of these transactions, to credit any net amount due to you against all Continuing Franchise Fees, Marketing Fees, or other sums that are due from you to us or our affiliates that you incurred prior to the settlement of these transactions, whether incurred under the Franchise Agreement, Co-Brand Addendum, or under any other agreement between you and us or our affiliates. In addition, you will authorize BloomNet, at its option, to deduct and retain an amount equal to all Continuing Franchise Fees, Marketing Fees, BloomNet fees and all sums due and owing to us, or our affiliates, from any funds due to you under the BloomNet Membership Agreement and/or the BloomNet Technologies Systems Agreement.

The starting amount of the Continuing Franchise Fee for a Co-Branded Franchised Unit is determined based on the volume of floral sales from your Existing Flower Shop during the immediately preceding calendar year before you signed the Franchise Agreement and Co-Brand Addendum, according to the chart that follows this paragraph. For example, if in that calendar year your business had sales volume of \$500,000, then your Continuing Franchise Fee would start at \$850 per month and would be \$1,500 by year 7 of the term of the Franchise Agreement.

	Annual Volume (\$)	Franchise Agreement Term (Year)									
		1	2	3	4	5	6	7	8	9	10
Monthly Continuing Franchise Fee (\$)	250,000 - 299,999	\$850	\$850	\$850	\$850	\$1,000	\$1,000	\$1,250	\$1,250	\$1,500	\$1,500
	300,000 - 449,999	\$850	\$850	\$1,000	\$1,000	\$1,000	\$1,000	\$1,250	\$1,250	\$1,500	\$1,500
	450,000 - 599,999	\$850	\$850	\$1,000	\$1,000	\$1,250	\$1,250	\$1,500	\$1,500	\$1,500	\$1,500
	600,000 +	\$1,000	\$1,000	\$1,250	\$1,250	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**  
**(STANDARD FRANCHISED UNIT)**  
**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Type Of Expenditure</b>	<b>Amount</b>	<b>Method Of Payment</b>	<b>When Due</b>	<b>To Whom Payment Is To Be Made</b>
<b>Initial Franchise Fee</b>	\$30,000 (Note 1)	Cashier's check	When you sign the Franchise Agreement	Us
<b>Franchised Location</b> (3 month's Prepaid Rent & Security Deposit)	\$10,000 to \$37,500 (Note 2)	As arranged	As incurred	Landlords and Us
<b>Leasehold Improvements</b>	\$40,000 - \$265,000 (Note 3)	As arranged	As incurred	Landlords and Suppliers
<b>Site Selection, Space Planning, Project Management</b>	\$5,000 - \$12,000 (Note 3)	As incurred	As incurred	Suppliers
<b>Equipment and Fixtures</b>	\$50,000 - \$125,000 (Note 4)	As arranged	As incurred	Suppliers and Lessors
<b>Signs</b>	\$7,500 - \$35,000 (Note 4)	As arranged	As incurred	Suppliers and Lessors
<b>Travel &amp; Living Expenses While Training</b>	\$1,000 - \$10,000 (Note 5)	As arranged	As incurred	Airlines, Hotels & Restaurants, etc.
<b>Miscellaneous Opening Costs</b>	\$9,000 - \$15,000 (Note 6)	As arranged	As incurred	Suppliers, Utilities, Wire Services, Taxing Authorities, etc.
<b>Van</b>	\$20,000 - \$25,000 per van (Note 7)	As arranged	As incurred	Automobile Dealer or Lessor
<b>Insurance</b>	\$9,000 - \$15,000 (Note 8)	As arranged	As incurred	Insurance Carrier or Finance Company
<b>Opening Inventory</b>	\$15,000 - \$50,000 (Note 9)	Lump sum	Before or immediately following Opening	BloomNet, Napco, Suppliers
<b>Additional Funds - 3 Months</b>	\$60,000 - \$150,000 (Note 10)	As needed	As incurred	Employees, Suppliers, Utilities, etc.
<b>Grand Opening Promotional Campaign</b>	\$2,000 - \$5,000 (Note 11)	Lump sum	As incurred	Suppliers
<b>TOTAL</b>	<b>\$258,500 - \$774,500</b> (Notes 10 and 12)			



**ESTIMATED INITIAL INVESTMENT  
(CO-BRANDED FRANCHISED UNIT)**

Type Of Expenditure	Amount	Method Of Payment	When Due	To Whom Payment Is To Be Made
<b>Initial Franchise Fee</b>	\$20,000 (Note 13)	Cashier's check	When you sign the Franchise Agreement and Co-Brand Addendum	Us
<b>Franchised Location</b> (3 month's Prepaid Rent & Security Deposit)	Not Applicable (Note 14)	Not applicable	Not applicable	You will already have established your rent, security deposit and related occupancy expenses for your Existing Flower Shop. These expenses are not included in this chart
<b>Leasehold Improvements</b>	\$0 - \$40,000 (Note 15)	As arranged	As incurred	Landlords and Suppliers
<b>Equipment and Fixtures</b>	\$0 - \$30,000 (Note 16)	As arranged	As incurred	Suppliers and Lessors
<b>Signs</b>	\$5,000 - \$20,000 (Note 16)	As arranged	As incurred	Suppliers and Lessors
<b>Travel &amp; Living Expenses While Training</b>	\$1,000 - \$7,250 (Note 17)	As incurred	As incurred	Airlines, Hotels & Restaurants, etc.
<b>Van Wrap</b>	\$500 - \$2,000 per van (Note 18)	As arranged	As incurred	Automobile Graphics Company
<b>Grand Opening Promotional Campaign</b>	\$500 - \$2,000 (Note 19)	Lump sum	Before opening	Suppliers
<b>Insurance</b>	\$9,000 - \$13,000 (Note 20)	As arranged	Before opening	Insurance Companies
<b>Product Inventory</b>	\$1,000 - \$2,500 (Note 21)	As arranged	Before opening	BloomNet, Napco and Suppliers
<b>Additional Funds - 3 Months</b>	\$20,000 (Notes 10 and 12 )	As needed	As incurred	Employees, Suppliers, Utilities, etc.
<b>TOTAL</b>	<b>\$57,000 - \$156,750</b> (Notes 10 and 12)			

**FRUIT BOUQUETS BUSINESS  
YOUR ESTIMATED INITIAL INVESTMENT**

Type Of Expenditure	Amount	Method Of Payment	When Due	To Whom Payment Is To Be Made
<b>Initial Franchise Fee</b>	\$0 - \$7,500 (Note 1)	Cashier's check	When you sign the Fruit Bouquets Addendum to the Franchise Agreement	Us

Type Of Expenditure	Amount	Method Of Payment	When Due	To Whom Payment Is To Be Made
Equipment and Fixtures	\$12,000 - \$20,000 (Note 4)	As arranged	As incurred	Suppliers and Lessors; Us
Signs	\$5,000 - \$20,000 (Note 4)	As arranged	As incurred	Suppliers and Lessors
Travel & Living Expenses While Training	\$1,000 - \$5,000 (Note 5)	As incurred	As incurred	Airlines, Hotels & Restaurants, etc.
Product Inventory	\$500 - \$1,000	As arranged	Before opening	Suppliers
Additional Funds - 3 Months	\$0	As needed	As incurred	Employees, Suppliers, Utilities, etc.
<b>TOTAL</b>	<b>\$18,500 - \$53,500</b> (Notes 10 and 12)			

**Note 1:**

See Item 5 for the amount of the Initial Franchise Fees and when each payment is due. All fees and payments are uniformly imposed, payable to us and are non-refundable unless otherwise noted. As described in Items 5 and 10, in our sole discretion, we may offer franchisees the opportunity to finance up to \$30,000 of the build-out and/or signage costs for a Standard Franchised Unit and we may offer franchisees the opportunity to finance up to \$30,000 of the Successor Franchise Fee if they are granted a Successor Franchise. In addition, we or our affiliate may offer franchisees the opportunity to finance up to \$30,000 of a portion of the build-out costs and signage costs for a Fruit Bouquets Business. We do not offer financing for any other fees.

If you sign a Franchise Agreement and a Fruit Bouquets Addendum to the Franchise Agreement, on or before October 1, 2022, we will waive the Fruit Bouquets Initial Franchise Fee. The low estimate in the “**Fruit Bouquets Business, Your Estimated Initial Investment**” chart above assumes that the Franchise Agreement and the Fruit Bouquets Addendum to the Franchise Agreement have been signed on or before October 1, 2022 and the Fruit Bouquets Initial Franchise Fee has been waived.

**Note 2:**

You must lease the Franchised Location unless you purchase or own an acceptable site for your Franchised Unit. In our discretion, 1-800-Flowers or a subsidiary or affiliate may lease the Franchised Location from a landlord (a “**Master Landlord**”) under a master lease (a “**Master Lease**”) and sublet the Franchised Location to you under our then-current Sublease, or we may lease the Franchised Location to you independent of the terms of a Master Lease and may require the same, different or additional terms than those of the Master Lease. Alternatively, you may lease the Franchised Location directly from a third-party landlord (a “**Third-Party Landlord**”) under a direct lease (a “**Third-Party Lease**”). Franchised Units must include an on-site production area within the footprint of the Franchised Unit where you will process and prepare your orders. Typical sites for Franchised Units are free-standing pads in a mall, shopping center or strip shopping center properties, corner or mid-block properties in commercial areas, or in-line end-cap sites in shopping center or strip shopping center properties. The typical Standard Franchised Unit has 1,800 - 3,500 square feet. Rent is estimated at between \$2,500 and \$7,500 per month. The low estimate includes 3 months’ rent, plus a security deposit equal to one month’s rent. The high estimate includes 3 months’ rent, plus a security deposit equal to two month’s rent. The amount of rent payable for a Franchised Location is dependent upon factors such as the type of franchise purchased, the location, size, age, condition, and visibility of the Franchised Location, and

the amount, if any, of a landlord's contribution towards the costs of construction of a Franchised Unit. In addition, the amount of rent is generally subject to scheduled cost-of-living or fixed rent adjustments. These estimates assume that your Standard Franchised Unit will be a leased, unimproved, unfinished retail store-type unit and are based on the assumption that a Third-Party Landlord will require a prepayment of one month's rent and a security deposit equal to 1 month's rent. Some landlords may charge you a higher security deposit. If you sublet the Franchised Location from us, you will pay us or an affiliate rent and other occupancy expenses under a Sublease in the amounts we determine, including a security deposit equal to 2 months' rent. Other occupancy expenses are not included in these estimated rent figures and vary from site to site.

**Note 3:**

You must pay all expenses for your leasehold improvements unless a Master Landlord or a Third-Party Landlord makes a contribution for these expenses. If you pay these expenses, you will generally make installment payments over the course of construction of the leasehold improvements to contractors, material suppliers, and the like. These estimates include costs of construction, materials, permits, overhead and profit, architectural fees, building supervision and bonds and insurance. These estimates do not include the costs for construction of a new building under a ground lease. These estimates also include the cost of hiring a third party to assist you with locating a suitable site, negotiating a lease or purchase agreement, space planning and project management for the build-out of your Franchised Unit. We have the right to designate the vendor whom you must use for these services.

**Note 4:**

You must pay all expenses for your equipment, fixtures, furnishings, signs, telephones and computer hardware, software, point of sale and accounting systems for the Franchised Unit. You can either purchase these items directly from a vendor or dealer, in which case you will likely make lump sum payments to the vendor at or about the time of installation, or you can arrange for an equipment lessor or other financing source to participate in the acquisition of these items with you. You will pay a deposit and/or a number of installment payments at the funding of the obligation and must typically make monthly installment payments for 24 to 60 months if you arrange financing of this type.

If you add a Fruit Bouquets Business into your Franchised Unit, you will have additional expenses for required equipment, signage and supplies, such as are contained in a fruit bouquets starter kit, which includes tools, packaging and containers, and may include equipment required for compliance with applicable health laws related to food service businesses. In some cases, you may purchase certain equipment from us or our affiliates. Your costs may be lower if we determine that your Franchised Unit already has sufficient refrigerator, storage, prep space and/or equipment to accommodate a Fruit Bouquets Business. The estimate includes the costs to meet our signage requirements, which include a vehicle wrap for your van (if applicable), interior signage and exterior signage.

**Note 5:**

The initial training fee is included in the Initial Franchise Fee, but you must pay all travel and living expenses for you and your trainee(s) to attend our initial training program (the "**Initial Training Program**"). Expenses included in this item are estimated round-trip air fares, lodging and meal expenses, and auto rental charges for you and one additional trainee.

**Note 6:**

These estimates include security deposits, utility deposits, legal and accounting fees, initial set up, initial website set up and domain name change fees, automated credit card clearing setup, bond expenses and the like.

**Note 7:**

You must pay all expenses if you acquire a van for the Franchised Unit. You can either purchase a van directly from a vendor or dealer, in which case you must either make a lump sum payment at the time of delivery or arrange for a vehicle lessor or other financing source to participate in the acquisition of a van with you. You will pay a deposit and/or a number of installment payments at the funding of the obligation and must typically make monthly installment payments for 24 to 60 months if you arrange financing of this type. If requested by us, your delivery vehicle must be wrapped with the current corporate-approved vehicle wrap standards, set forth in the Franchise Manual or Fruit Bouquets Manual (if applicable).

**Note 8:**

You must acquire and maintain the required forms of insurance coverage for the Franchised Unit. If you add a Fruit Bouquets Business into your Franchised Unit, you may have to purchase additional types of insurance related to the provision of food products. We have the right to require you to maintain insurance coverage in amounts that exceed any coverage required by a Master Lease or Third-Party Lease. You must either make a lump sum payment to the insurance company at the time the coverage becomes effective or arrange for a financing source to participate in the acquisition of this coverage with you. You will pay a deposit and/or a number of installment payments at the funding of the obligation and must typically make monthly installment payments for 4-10 months if you arrange financing of this type. You may not amend or cancel your insurance policies without at least 30 days' prior written notice to us. You must provide us with certificates of insurance evidencing coverage on an ongoing basis.

**Note 9:**

We may require you to purchase an initial inventory of items that are specific to the 1-800-Flowers System, such as branded signature products, branded packaging, and gift items. As described in Item 8, you will purchase some of these products from our affiliates, BloomNet and/or Napco. We estimate that the cost of this initial inventory will be between \$15,000 and \$50,000, which will be payable in full upon delivery of the inventory and is not refundable under any circumstances.

**Note 10:**

You must, at all times, maintain adequate reserves and working capital sufficient for you to fulfill all of your obligations under your Franchise Agreement and to cover the risks and contingencies of your Franchised Unit for at least 3 months. The estimates for "Additional Funds" provided above include estimated employee wages, 3 months of inventory, facility expenses, opening cash, and other miscellaneous expenses that you may incur during the first 3 months of operations, but do not include a salary or draw for you. These estimates do not take into account the finance charges, interest and related costs you may incur if you finance any portion of your initial investment or any other recurring monthly operating expenses. These amounts are the minimum recommended levels to cover operating expenses, including employee salaries for 3 months. However, the amounts specified may not be adequate. Additional working capital may be required if sales are

low or fixed costs are high. The disclosure laws require us to include this estimate of all costs and expenses to operate your Franchised Unit during the “**initial phase**” of your business, which is defined as a 3 month period or longer period if “**reasonable for the industry.**” We are not aware of any established longer “**reasonable period**” for the floral and gift industry, so our estimate covers a 3 month period. We make no guarantee, and do not intend to imply, that 3 months is a “break even” point for you to recover your initial investment in your Franchised Unit. We make no representation regarding how long it will take you to recover your initial investment or to become profitable.

**Note 11:**

You must conduct a grand opening campaign to promote your Franchised Unit and we estimate you will spend between \$2,000 and \$5,000 on this campaign.

**Note 12:**

We relied on over 50 years of experience in the floral and gift business and on the experiences of our franchisees opening and operating 1-800-Flowers Franchised Units, if and to the extent that they shared this information with us, to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. We do not offer direct or indirect financing to you for any items. Generally, all the payments discussed in Item 7 are not refundable; however, each vendor establishes and enforces its own refund policies. The Item 7 estimates do **not** include real estate and related occupancy costs.

**Note 13:**

See Item 5 for the amount of each payment and when each payment is due. Initial Franchise Fees are not refundable. As described in Items 5 and 10, in our sole discretion, we may offer franchisees the opportunity to finance up to \$30,000 of the build-out, and/or signage costs for a Franchised Unit and we may offer franchisees the opportunity to finance up to \$30,000 of the Successor Franchise Fee if they are granted a Successor Franchise. In addition, we or our affiliate may offer franchisees the opportunity to finance up to \$30,000 of the build-out costs and signage costs for a Fruit Bouquets Business. We do not offer financing for any other fees.

**Note 14:**

You should already have a site for your Existing Flower Shop, which will become the Franchised Location for your Co-Branded Franchised Unit. You will already have established your rent, security deposit and related occupancy expenses. These expenses are not included in this chart. Your Co-Branded Franchised Unit must have at least 1,000 square feet and you must have the right to occupy its Franchised Location for at least 5 years.

**Note 15:**

If we require you to add or change your leasehold improvements, you must pay all of those expenses. Unless we approve your existing leasehold improvements, you must make leasehold improvements to bring your Existing Flower Shop to our current standards and specifications; however, we may be flexible in these requirements because of the unique design, layout, location and physical characteristics of your Existing Flower Shop.

**Note 16:**

If we require you to add or change the equipment or fixtures of your Existing Flower Shop in order to co-brand it to become a Co-Branded Franchised Unit, you must pay all related expenses. You must change your signage as we require. You must install equipment, fixtures and signs at the Co-Branded Franchised Unit to bring your Existing Flower Shop to our current standards and specifications; however, we may be flexible in these requirements because of the unique design, layout and physical characteristics of your Existing Flower Shop. If you add a Fruit Bouquets Business into your Franchised Unit, you will have additional expenses for required equipment and signage, which may include equipment required for compliance with applicable health laws related to food service businesses. Your costs may be lower if we determine that your Franchised Unit already has sufficient refrigerator, storage, prep space and/or equipment to accommodate a Fruit Bouquets Business. The estimate includes the costs to meet our signage requirements, which include a vehicle wrap for your van (if applicable), interior signage and exterior signage.

**Note 17:**

The initial training fee is included in the Initial Franchise Fee for your Co-Branded Franchised Unit, but you must pay all travel and living expenses for you and your trainee(s) to attend the Initial Training Program. Expenses included in this item for you and your one trainee are estimated round-trip air fares, lodging and meal expenses for one week and auto rental charges for one week of training at our training facility. The lower end of our estimate assumes that you and your trainee(s) are within driving distance of our training facility. Additional information on our training program is provided in Item 11.

**Note 18:**

You will, in most cases, already have vans for your use as delivery vehicles for your Existing Flower Shop that you will use for your Co-Branded Franchised Unit. You must make sure that your vans comply with our standards, must promptly replace worn-out equipment at your expense, and must cause your delivery vans to be repaired and repainted when appropriate or as designated by us. If requested by us, your delivery vehicle must be wrapped with the current corporate-approved vehicle wrap standard, set forth in the Franchise Manual or Fruit Bouquets Manual (if applicable). If you do not have any vans, Franchisor may require you to acquire one.

**Note 19:**

If you are Co-Branding your Franchised Unit, we estimate you will spend between \$500 and \$2,000 on a grand opening campaign.

**Note 20:**

Our estimates assume that you have at least the minimum insurance that we require. If you do not already have the required minimum insurance for your Existing Flower Shop, you will have to purchase the additional coverages that we require for your Co-Branded Franchised Unit. If you add a Fruit Bouquets Business into your Co-Branded Franchised Unit, you may have to purchase additional types of insurance related to the provision of food products.

**Note 21:**

Our estimates assume that you have an existing inventory of floral products from your Existing Flower Shop, but if you add a Fruit Bouquets Business into your Co-Branded Franchised Unit, then you will need to purchase an initial inventory of fruit and other items we specify. You may also have to purchase an initial inventory of items that are specific to the 1-800-Flowers System, such as branded signature products, branded packaging, and gift items.

**ITEM 8  
RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

**Purchases from Designated and Approved Suppliers**

You must purchase or lease all goods, merchandise, services, supplies, fixtures, equipment (which may include computer hardware and software), and inventory for the Franchised Unit from designated or approved suppliers according to our standards and specifications. We will provide you with a list of our designated and approved suppliers after you sign your Franchise Agreement. You must purchase specific products and services we require you to obtain from specific suppliers, and we or our affiliates may be included in those suppliers. All flowers, plants, fruit bouquets, accessories, gift and sentiment items and other merchandise sold from the Franchised Unit, and all fixtures, furnishings, signs and equipment installed at the Franchised Unit must conform to the standards and specifications we establish in the Franchise Manual, the Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit), and other manuals, company directives and materials that we provide. You must use our current, approved designs for merchandise placement in your Franchised Unit and must stock an inventory of these items in the amounts that we determine. If you fail to remove any unapproved flowers, plants, fruit bouquets, accessories, gift and sentiment items or other merchandise from the Franchised Unit within 5 days after our written notice to you to do so, we have the right to enter the Franchised Unit without prior notice to remove such unapproved merchandise from the Franchised Unit.

You may only use bookkeepers and accountants we approve to assist you with your record keeping and financial reporting obligations under the Franchise Agreement and the Franchise Manual, and under the Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit). You must select your bookkeepers and accountants and submit them to us for our approval at least 30 days before you open the Franchised Unit for business. You may recommend bookkeepers and accountants to us at any time in accordance with our procedures. We will test and evaluate bookkeepers and accountants at our expense and at no cost to you and approve or disapprove the bookkeepers and accountants with reasonable promptness, not to exceed 90 days. You must submit quarterly financial statements, including a balance sheet and a profit and loss statement to us, prepared by a certified public accountant. If you are signing a Franchise Agreement and Co-Brand Addendum to operate a Co-Branded Franchised Unit, we do not require you to purchase a new computer system or point of sale system when you co-brand your Existing Flower Shop to become a Co-Branded Franchised Unit, but we have the right to require you to purchase a specific system in the future. You must prepare and submit to us daily and/or weekly revenue reports, which shall be submitted to us electronically or via such other means we identify.

We and/or our affiliates have the right to negotiate purchase arrangements with suppliers (including price terms, fees and/or rebates, such as from wire services) for your benefit. There are currently no purchasing or distribution cooperatives in which you must participate. We do not provide any material benefits to our franchisees (such as the grant of additional franchises or territories) based on our franchisees' use of approved

suppliers. We do not currently derive any revenue from approved or designated suppliers, however, our affiliates do so. We have the right to derive revenue from approved or designated suppliers in the future if rebates or other considerations become available to us because of your purchases or our purchases of products or services.

### **Purchases from Us or Our Affiliates**

You must purchase goods we designate from BloomNet.net, a division of BloomNet, and/or from Napco, as we require. BloomNet or Napco will generally be the only approved supplier of certain products. As a member of the BloomNet Network, you must pay BloomNet membership rates and enter into a BloomNet Membership Agreement with BloomNet. You must also enter into a BloomNet Technologies Systems Agreement with BloomNet to obtain a limited license to use certain software, documentation and copyrighted content which comprise the BloomNet Technologies Systems, or other software systems BloomNet designates to fulfill orders and other functions at the Franchised Unit. BloomNet or its designee are the only approved suppliers of the BloomNet Technologies Systems. In addition, we, our subsidiary or one of our affiliates may sublease the Franchised Location to you. You may also purchase certain confection products from Cheryl's, Popcorn, Design and HDO in order to fulfill certain types of orders from 800-Flowers.

With these exceptions, neither we, nor our affiliates, are the only approved suppliers of any required products or services. We or our affiliates have the right to derive revenue from Subleases and from the sale of designated products to our franchisees. BloomNet may derive revenue from the licensing of the BloomNet Technologies Systems to our franchisees and from the BloomNet membership rates they pay, and Napco derives revenues from the sale of designated products to our franchisees.

BloomNet's (incl. Napco) total revenues were \$142,919,191 during the fiscal year ended June 27, 2021. BloomNet's (incl. Napco) total revenues from the sale of their designated products and services to 1-800-Flowers franchisees during this period were \$4,539,821 or 3.2% of its total revenues. BloomNet's total revenues from its software licensing with 1-800-Flowers franchisees during this period were \$3,207,326 or 2.2% of its total revenues. BloomNet's total revenues from membership rates paid by 1-800-Flowers franchisees during this period were \$847,556 or .60% of its total revenues. BloomNet's total revenues from its sale of designated wholesale products paid by 1-800-Flowers franchisees during this period were \$484,939 or .34% of its total revenues. The sources of this information are the financial books and records of BloomNet.

If you sublet the Franchised Location from us, you will pay us or a subsidiary or affiliate rent and other occupancy expenses under a Sublease in amounts we determine. Our total revenues based on the most recent audited financial statements were \$1,453,703 during the fiscal year ended June 27, 2021. Our total revenues from Subleases with franchisees during this period were \$370,329 or 25% of our total revenues.

Our parent company, 1-800-Flowers, owns us, BloomNet and Napco, which are approved suppliers. James F. McCann, Christopher McCann, Dinesh Popat, William Shea, Michael R. Manley, Vincent McVeigh, Brian McGee, Stephen Lenzovich and Camilo Escobar own an interest in 1-800-Flowers.

We estimate that your required purchases or lease will range from 75% to 80% of your total initial investment and 30% to 40% of your annual operating expenses. If you are co-branding your existing business, we estimate that your required purchases or lease will range from 15% to 21% of your total initial investment and 28% to 34% of your annual operating expenses.



## **Recommended Suppliers**

You may recommend suppliers to us at any time. We test and evaluate recommended suppliers at your expense and approve or disapprove the suppliers with reasonable promptness, not to exceed 90 days based upon our tests and evaluations of their products or services. A supplier must demonstrate to our reasonable satisfaction that it can supply an item meeting our standards and specifications for the item, that it is in good financial standing in the business community, and that its products and/or services are reliable. Our specifications and standards for supplier approval are generally available upon written request. We will notify you if and when we no longer approve a previously approved supplier. A supplier must continually adhere to our standards to maintain its approval. You may not use a supplier before we approve the supplier in writing. We currently do not charge any fee beyond our actual expenses for testing and evaluating recommended suppliers.

## **Rebates**

If marketing rebates become available from suppliers and we, or our affiliates, earn rebates during the term of your Franchise Agreement as a result of our franchisees' purchases of products from these suppliers, we or our affiliates will deposit these rebates into the Floral Marketing Fund. During the fiscal year ended June 27, 2021, we received no rebates from sales of items to franchisees.

## **POS System**

You must purchase or lease the point of sale/computer system that we require. As described in Item 11, we currently have 2 different systems that we have approved for use in Franchised Units. You must choose one of these systems for your Franchised Unit.

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## **Insurance**

You must obtain and maintain the minimum insurance coverages that we require. If you do not already maintain insurance that meets our minimum requirements, you must obtain additional insurance as necessary. You must provide us with a certificate of insurance or other evidence that you have met our insurance requirements within 10 days after the insurance is obtained, but not later than the date your Franchised Unit opens while displaying the 1-800-Flowers Marks. We have the right to require you to obtain insurance coverages that are greater than those required by the terms of your lease, or your lease may require insurance coverages that are greater than what we require. All of your insurance plans, with the exception of your Employment Practices Liability Insurance and Worker's Compensation, must name us as an additional insured, and all policies must provide us with 30 days' advance notice of any cancellation or termination of coverage. We have the right to change our insurance requirements, and you must comply with any such changes. If you do not obtain all required insurance coverage, we have the right to purchase the missing insurance coverage on your behalf and you must reimburse our costs incurred to obtain this insurance for you.

Currently, we require that you have and maintain the following insurance coverages: (i) auto liability for hired and non-owned vehicles and scheduled vehicles (if owned) for a combined single limit of \$1,000,000; (ii) public liability including products liability, covering bodily injury, property damage, and advertising, sidewalks and parking areas and personal injury in the amount of at least \$1,000,000 combined single limit and an aggregate of \$2,000,000 against claims for personal injury, death or property damage occurring in, on, or about the Franchised Unit; (iii) workers compensation as may be required by law; (iv) employer's liability for a limit of \$1,000,000 for each accident or disease; (v) fire and extended coverage insurance on the Franchised Unit and

its property in an amount adequate to rebuild or replace all of it in the event of an insured loss; (vi) fire-legal liability insurance in an amount of the value of the Franchised Location; (vii) business interruption insurance in sufficient amounts to cover 12 months of Continuing Franchise Fees and Marketing Fund Fee payments to us, 12 months of rent and other direct site costs for the Franchised Location, and 12 months of insurance premiums and other fixed expenses; (viii) Employment Practices Liability Insurance; and (ix) an umbrella policy in the amount of at least \$2,000,000.

**Credit Cards**

You are required to honor all credit, charge and cash cards approved by us in writing. To the extent that you store, process, transmit or otherwise access or possess cardholder data in connection with your operation of the Franchised Unit, you are required to maintain the security of such data and adhere to the then-current Payment Card Industry Data Security Standards (“PCI DSS”), currently found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org), for the protection of cardholder data throughout the term. You shall, if we request that you do so, provide appropriate documentation to us to demonstrate compliance with applicable PCI DSS requirements by you and all of your identified subcontractors.

**ITEM 9  
FRANCHISEE’S OBLIGATIONS**

**This table lists your principal obligations under the Franchise Agreement and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document.**

Obligation	Section In Agreement	Disclosure Document Item
a. Site selection and acquisition/ lease	Section 3 of Franchise Agreement	Items 6, 8
b. Pre-opening purchases/ leases	Sections 3, 9, 10(l), 10(m), 10(o), 10(u), 10(v), 10(y), 12 and 13 of Franchise Agreement	Item 8
c. Site development and other pre-opening requirements	Sections 3, 9, 10(m), 10(n), 10(o), 10(v), 12 and 13 of Franchise Agreement; Sections 2.2 and 2.7 of Co-Brand Addendum	Items 6, 7, 8 and 11
d. Initial and ongoing training	Sections 10(j), 10(l) and 11(a)-11(c) and 11(f) of Franchise Agreement	Item 11
e. Opening	Sections 9(c) and 10(n) of Franchise Agreement	Items 7 and 11
f. Fees	Sections 5, 7, 8, 10(f), 17(d)(viii) and (ix), 17(e), 17(g), 18 and 22(f) and (g) of Franchise Agreement; Sections 2.3 - 2.7 and 2.14 of Co-Brand Addendum; Sections “ <u>Receipt of Orders</u> ” and “ <u>Settlement Processing Statement</u> ” of BloomNet Membership Agreement; Sections 1 and 5 of BloomNet Technologies Systems Agreement	Items 5, 7 and 11
g. Compliance with standards and policies/operating manual	Sections 2(b), 7(c), 8(b)(iv), 8(d), 9(a), 9(b), 9(e), 9(g), 10, 12, 14, 15 and 18 of Franchise Agreement; Sections 2.7, 2.9 and 2.10 of Co-Brand Addendum; Fruit Bouquets Manual and company directives; Sections “ <u>Appearance</u> ”, “ <u>Capabilities</u> ”, “ <u>Attitude</u> ”, and “ <u>General</u> ” of BloomNet Membership Agreement; Section 4 of BloomNet Technologies Systems Agreement; Section 3 of Fruit	Items 8 and 11

Obligation	Section In Agreement	Disclosure Document Item
	Bouquets Order Fulfillment Agreement; Section 3 of Premier Order Fulfillment Agreement	
h. Trademarks and proprietary information	Sections 2(b), 2(c), 2(d), 9(g), 15, 16(d), 16(e), and 18 of Franchise Agreement; Sections 2.9, 2.11, 2.15, 2.17 of Co-Brand Addendum; Sections “ <u>Confidential Information</u> ” and “ <u>Trademarks</u> ” of BloomNet Membership Agreement; Sections 3, 6 and 9 of BloomNet Technologies Systems Agreement; Sections 2 and 12 of Fruit Bouquets Order Fulfillment Agreement; Sections 2 and 12 of Premier Order Fulfillment Agreement	Items 13 and 14
i. Restrictions on products/ services offered	Sections 2(b)-2(d), 10(a), 10(h), 10(p), 10(x), 12(a), 12(c), 12(f) and 12(g) of Franchise Agreement; Section 4 of BloomNet Technologies Systems Agreement; Sections 1 and 8 of Fruit Bouquets Order Fulfillment Agreement; Sections 1 and 8 of Premier Order Fulfillment Agreement	Item 16
j. Warranty and customer service requirements	Sections 8(c)(iv) and 10(r) of Franchise Agreement; Section “ <u>Attitude</u> ” of BloomNet Membership Agreement; Section 4 of BloomNet Technologies Systems Agreement; Section 1 of Fruit Bouquets Order Fulfillment Agreement; Section 1 of Premier Order Fulfillment Agreement	Item 11
k. Territorial development and sales quotas	Not applicable	Item 12
l. Ongoing product/service purchases	Sections 10(u), 10(v), 10(x), 12 and 18 of Franchise Agreement; Section 4 of BloomNet Technologies Systems Agreement	Items 6 and 8
m. Maintenance, appearance and remodeling requirements	Sections 9(h), 10(b), 10(d), 10(e), 10(m), 10(o), 10(t), 10(u), 10(v) and 18 of Franchise Agreement; Section 4 of BloomNet Technologies Systems Agreement	Items 8 and 11
n. Insurance	Section 13 of Franchise Agreement; Section 10 of Fruit Bouquets Order Fulfillment Agreement; Section 10 of Premier Order Fulfillment Agreement	Item 7
o. Advertising	Sections 8, 15(g) and 18 of Franchise Agreement	Items 6, 7 and 11
p. Indemnification	Sections 3(e), 7(e), 7(k), 9(f), 10(l), 10(s), 17(g) and Section 19 of Franchise Agreement; Section 7 of the Sublease; Section “ <u>Indemnification</u> ” of BloomNet Membership Agreement; Sections 4, 5 and Exhibit A (Section 7) of BloomNet Technologies Systems Agreement; Section 9 of Fruit Bouquets Order Fulfillment Agreement; Section 9 of Premier Order Fulfillment Agreement	Item 6
q. Owner’s participation/ management/ staffing	Sections 10(i), 10(j), 10(k), 10(l), 10(t) and 10(x) of Franchise Agreement	Items 11 and 15
r. Records/reports	Sections 10(l) and 14 of Franchise Agreement; Section 11 of Fruit Bouquets Order Fulfillment Agreement; Section 11 of Premier Order Fulfillment Agreement	Item 6
s. Inspection/audits	Sections 9(c), 10(d), 11(f), 14(b), 14(d) and 15(g) of Franchise Agreement	Items 6 and 11

Obligation	Section In Agreement	Disclosure Document Item
t. Transfer	Section 17 of Franchise Agreement; Section 11 of the Sublease; Section " <u>Change of Ownership</u> " of BloomNet Membership Agreement; Section 9 of BloomNet Technologies Systems Agreement; Section 13(g) of Fruit Bouquets Order Fulfillment Agreement; Section 14(g) of Premier Order Fulfillment Agreement	Item 17
u. Renewal	Sections 4(b) – 4(f) of the Franchise Agreement; Section 2 of BloomNet Technologies Systems Agreement; Section 4 of Fruit Bouquets Order Fulfillment Agreement; Section 4 of Premier Order Fulfillment Agreement	Item 17
v. Post-termination obligations	Sections 16(b), 16(e), 16(f), 17(e), 18(c), 18(e) and 22 of Franchise Agreement; Section " <u>Termination</u> " of BloomNet Membership Agreement; Section 8 of BloomNet Technologies Systems Agreement; Sections 2 and 12(b) of Fruit Bouquets Order Fulfillment Agreement; Sections 2 and 11(b) of Premier Order Fulfillment Agreement	Item 17
w. Non-competition covenants	Sections 16(a), 16(b), 16(c), 18(c) and 22(a) of Franchise Agreement; Section 15 of Fruit Bouquets Order Fulfillment Agreement	Item 17
x. Dispute resolution	Sections 23(a) and 23(s) of Franchise Agreement; Section " <u>Errors, Omissions and Disputes</u> " of BloomNet Membership Agreement; Section 9 of BloomNet Technologies Systems Agreement; Section 14(f) of Fruit Bouquets Order Fulfillment Agreement; Section 14(f) of Premier Order Fulfillment Agreement	Item 17
y. Security Interest	Section 7(j) of Franchise Agreement	Item 17
z. Charges	Section 8 of the Franchise Agreement; Section 5 and Exhibit B of Fruit Bouquets Order Fulfillment Agreement; Section 5 and Exhibit A of Premier Order Fulfillment Agreement	Items 6, 7 and 11

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**ITEM 10  
FINANCING**

<b>Item Financed (Source)</b>	<b>Amount Financed</b>	<b>Down Payment</b>	<b>Terms (Years)</b>	<b>Apr %</b>	<b>Prepay Penalty</b>	<b>Security Required</b>	<b>Liability Upon Default</b>	<b>Loss Of Legal Right On Default</b>
Purchase Price for Company-Owned Store (Note 1)	A portion of purchase price (Note 1)	Varies (Note 1)	Varies (Note 1)	Varies (Note 1)	None	Personal Guarantee, security interest on assets of business (Note 2)	Loss of franchise and/or repossession of business (Note 3)	Waive presentment for payment, notice of dishonor, and protest.
Leased Space for Franchised Location (Note 4)	Not Applicable	Not Applicable	5 – 10	Not Applicable	None	(Note 4)	Loss of franchise, back rent damages, & attorney fees (Note 3)	None
Partial Build-out Costs and Signage (Note 2)	Up to \$30,000	Not Applicable	Up to 1	7%	None	Personal Guarantee, Security Interest (Note 2)	Loss of franchise, damages and attorneys' fees (Note 3)	Waive presentment for payment, notice of dishonor, and protest.
Partial Build-out Costs and Signage (Fruit Bouquets Business Only) (Note 2)	Up to \$30,000	Not Applicable	Up to 1	7%	None	Personal Guarantee, Security Interest (Note 2)	Loss of franchise, damages and attorneys' fees (Note 3)	Waive presentment for payment, notice of dishonor, and protest.
Remodeling Costs and/or Signage (Note 2)	Up to \$30,000	Not Applicable	Up to 1	7%	None	Personal Guarantee, Security Interest (Note 2)	Loss of franchise, damages and attorneys' fees (Note 3)	Waive presentment for payment, notice of dishonor, and protest.
Successor Franchise Fee (Note 2)	Up to \$30,000	Not Applicable	Up to 1	7%	None	Personal Guarantee, Security Interest (Note 2)	Loss of franchise, damages and attorneys' fees (Note 3)	Waive presentment for payment, notice of dishonor, and protest.

Except as described above and below, we do not offer direct or indirect financing. We do not guarantee your note, lease or any other obligation. Any offer of financing we make to you will depend on your individual circumstances. Our decision to offer financing is in our sole discretion and we do not guarantee that you will receive an offer of financing from us. We do not receive direct or indirect payments for arranging financing. We do not currently sell, assign or discount to a third party any part of the financing arrangement we make with you, but we have the right to do so in the future. We do not arrange financing from any other sources.

**Note 1:**

If you are purchasing a company-owned 1-800-Flowers Shop, a portion of the purchase price may be financed by the seller. You must sign a Promissory Note in the seller's favor. The term of the Promissory Note will range from 1 to 2 years. The interest payable will be fixed for the term of financing and the minimum interest rate will generally be the prime rate of interest plus 1% - 2%. Monthly payments will vary depending upon interest rates, the term of the Promissory Note, and the amount of the down payment. Our standard form of Promissory Note is attached to this Disclosure Document as **Exhibit I**.

**Note 2:**

If you meet our criteria, including a minimum credit score of 650, we may offer you the opportunity to finance up to \$30,000 with us, which may be used for build-out of your Franchised Unit and/or purchase and installation of signage. In addition, if you choose to purchase a Fruit Bouquets Business, we may offer you the opportunity to finance up to \$30,000, which may be used for build-out costs and signage related to the Fruit Bouquets Business. Offers of financing are made to franchisees in our sole discretion on a case-by-case basis. We may also offer you the opportunity to finance up to \$30,000 of remodeling costs and/or signage costs, if you are granted a Successor Franchise. We may also offer you the opportunity to finance up to \$30,000 of the Successor Franchise Fee if you are granted a Successor Franchise. The financing is generally payable over 1 year with interest at the rate of 7% per annum, but these terms may vary on a case-by-case basis.

Your failure to pay any amounts owed to us when due is a material breach of your Franchise Agreement. We will have the right to terminate your Franchise Agreement if you breach the Franchise Agreement or fail to cure a non-payment breach.

If we grant you financing, you must sign a Promissory Note (**Exhibit I**) in our favor. If you are a partnership, limited liability company or corporation, all of your partners, members or shareholders must sign our Guarantee (**Exhibit J**). The Promissory Note is secured, and you must sign a Security Agreement (**Exhibit K**) in our favor. You may prepay the Promissory Note with no prepayment penalty.

**Note 3:**

If you default on any payment of principal or interest, all payments will immediately become due. Failure to make the payments required by the Promissory Note may result in termination of your Franchise Agreement and any other agreement between you and us and our repossession of the assets of the Franchised Unit and the Franchised Location. If we pursue collection of the Promissory Note, we have the right to require you to pay our legal fees and expenses.

**Note 4:**

In some cases, you will sublease the Franchised Location from us or an affiliate under a Sublease. The precise terms of a Sublease will vary depending upon many factors, including the size and location of the Franchised Location. If you do not make a rent payment on time, we have the right to collect the unpaid rent and other damages. If you are in default under a Sublease, we have the right to terminate the Sublease, take over the Franchised Location and terminate your Franchise Agreement. We also have the right to require you to reimburse us for our court costs and attorneys' fees due to your default.

**ITEM 11**

**FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING**

**Except as listed below, we are not required to provide any assistance to you.**

**Pre-Opening Obligations**

Before you open your business, we will:

- a. **Site Criteria.** Provide you with our site criteria, a sample layout for the interior of a typical Franchised Unit, and a typical set of preliminary plans and décor specifications for a Franchised Unit. We have the right to change our site criteria at any time. (**Franchise Agreement, Sections 3(a), 9(b)**). You must submit your proposed lease to us and allow us at least 15 days to review it, which we will do only as necessary to confirm that the provisions required by the Franchise Agreement have been included in the lease and that you and your landlord have signed an Option to Obtain Lease Assignment (**Exhibit E**) in the form we specify, and you must provide us with a fully signed copy of any lease you sign following our acceptance. (**Franchise Agreement, Section 3(b)(ii)**). If you are signing a Franchise Agreement and a Co-Brand Addendum, we will provide you with a typical set of preliminary plans and décor specifications for a Co-Branded Franchised Unit within 30 days of your request. (**Co-Brand Addendum, Section 2.2**).
- b. **Plans and Specifications.** Review your plans and specifications for your Franchised Unit and either approve or provide you with comments about the plans and specifications. (**Franchise Agreement, Section 9(b)**).
- c. **Consultation.** Consult with you on both the construction or renovation of your Existing Flower Shop, if any, and equipping of your Franchised Unit, and provide you with a list of designated and approved suppliers of goods and services for the construction, renovation and equipping of the Franchised Unit. (**Franchise Agreement, Sections 9(c), 12 and 14(b)**).
- d. **Inspection.** Make a final inspection of your Franchised Unit following completion of construction (or renovation) to authorize you to open the Franchised Unit for business. (**Franchise Agreement, Section 9(c)**). Your Franchised Unit must be built-out to our specifications, including any leasehold improvements, and the signage that we designate and/or approve (including interior and exterior signage for the Franchised Unit and any required vehicle wrap, if you own a vehicle) must be installed, not later than 9 months after you sign the Franchise Agreement, or if you are purchasing a Co-Branded Franchised Unit, within 90 days after you sign the Franchise Agreement and the Co-Brand Addendum. If you fail to have the Franchised Unit built-out and the signage installed within these periods, we will have the right to terminate the Franchise Agreement without giving you an opportunity to cure the default, but we may grant you an extension of this timeframe at our discretion. (**Franchise Agreement, Section 9(g)**). If you add a Fruit Bouquets Business into your

Franchised Unit, your Franchised Unit must be equipped and ready to offer fruit bouquets not later than 6 months after you sign the Fruit Bouquets Addendum to the Franchise Agreement.

e. **Initial Training Program.** Make our Initial Training Program available to your “Principal Owner” and a “General Manager”, without charge, for a period of time that we determine, which period will be prior to the date scheduled for the Franchised Unit to open for business. Please see Item 15 for the definitions of “Principal Owner” and “General Manager.” (**Franchise Agreement, Section 11(a).**)

f. **Additional Initial Training Programs.** Provide the Initial Training Program to additional supervisory or managerial personnel, if you request us to do so and, in our sole discretion, we agree to do so. For this service, we have the right to charge our then-current Additional Training Fee, currently \$1,500, for each trainee for their attendance at the Initial Training Program. (**Franchise Agreement, Section 11(b).**)

g. **Virtual Training.** We may provide any or all portions of the Initial Training Program and/or Additional Initial Training Program remotely over a virtual communication platform designated by us. (**Franchise Agreement, Section 11(f)**)

h. **Manuals.** Immediately following your successful completion of the Initial Training Program, loan you one hard copy of, or otherwise provide you with electronic or other access to, the Franchise Manual, the Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit), and all other manuals that govern the operations of the Franchised Unit to use during the term of the Franchise Agreement. We may post some or all of the Manuals on a restricted website, intranet, or extranet to which you will have access. The Manuals contain our standard operational procedures, policies, rules and regulations with which you must comply. (**Franchise Agreement, Section 10(b).**) The Franchise Manual contains 359 pages (including appendices). The Fruit Bouquets Manual contains 383 pages (including appendices). The Fruit Bouquets Pricing Guide is provided on-line to all franchisees purchasing a Fruit Bouquets Business. You will be given the opportunity to review the Franchise Manual and the Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit) before you sign your Franchise Agreement. You must operate your Franchised Unit in compliance with the terms of your Franchise Agreement and the Manuals. Notwithstanding the requirements of the Manuals and the Fruit Bouquets Pricing Guide, you alone will exercise day-to-day control over all operations, activities and elements of your Franchised Unit, including over your employees. Under no circumstances will we do so or be deemed to do so. The various requirements, restrictions, prohibitions, specifications and procedures of the 1-800-Flowers System with which you must comply under your Franchise Agreement and the Manuals do not directly or indirectly constitute, suggest, infer or imply that we control any aspect or element of the day-to-day operations of your Franchised Unit, but only constitute standards to which you must adhere when exercising your control over the day-to-day operations of your Franchised Unit consistent with our policies. (**Franchise Agreement, Section 10(a).**)

i. **Designated and Approved Suppliers.** Provide you with a list of our designated and approved suppliers after you sign your Franchise Agreement. (**Franchise Agreement, Section 12).**)

### **Continuing Obligations**

During the operation of your business, we will:

a. **Marketing Plans and Materials.** Review samples of all marketing and promotional plans and materials you desire to use, which you must submit to us for our approval before their use. (**Franchise Agreement, Section 8(d).**)



- b. **Standards.** Determine the standards of quality, service, production, merchandising and marketing for your Franchised Unit. (**Franchise Agreement, Section 10(a)**).
- c. **Additional/Remedial Training.** Provide you and your supervisory and managerial personnel with continuing training and education updates in various ways such as through the use of videos, conventions, workshops and meetings, and the like, and provide ongoing and refresher courses in the various aspects of the operation of a Franchised Unit, all of which you must attend. (**Franchise Agreement, Section 11(c)**).
- d. **On-Site Assistance.** Provide certain members of our operations staff for up to one week to assist you in establishing standard operating procedures. On-site opening assistance will not be provided if you or any of your affiliates already own or operate another Franchised Unit, or if your Franchise Agreement is signed as a Successor Franchise Agreement. We will select the representatives who will provide the on-site training and the length of time that such training will be provided. (**Franchise Agreement, Section 11(e)**).
- e. **Inspections.** Inspect the Franchised Unit to determine the operational status of the Franchised Unit, to grade all aspects of the operation of the Franchised Unit, to maintain compliance with the standards and requirements of the 1-800-Flowers System and to enhance uniformity and quality control. (**Franchise Agreement, Section 11(f)**).
- f. **Consultation and Advisory Services.** Consult with you or your supervisory or managerial personnel concerning the operation of the Franchised Unit, and provide counseling and advisory services to you about the operation of the Franchised Unit. We will, at reasonable times, upon request and at no charge to you, provide counseling and advisory services to you with respect to the planning, opening and operation of the Franchised Unit, including consultation and advice regarding operating problems and procedures, new developments and improvements in the 1-800-Flowers System, customer credit and collection advice, record keeping, purchasing, marketing, promotion and merchandising, business forms and the interpretation of policy as set forth in the Manuals, as the same may be amended, and in other directives of ours. Generally, we may make recommendations that we deem appropriate to assist your efforts. However, you alone will establish all requirements, consistent with our policies, regarding (i) employment policies, hiring, firing, training, wage and hour requirements, record keeping, supervision, and discipline of employees; (ii) the individuals to whom you will offer and sell your products and services; and (iii) the suppliers from whom you obtain any products or services used in or at your Franchised Unit for which we have not established designated or approved suppliers. (**Franchise Agreement, Section 11(g)**).
- g. **Virtual Training and Inspections.** We may provide all or any portions of the Additional/Remedial Training, post-opening on-site assistance, post-opening consultations and/or post-opening inspections remotely over a virtual communication platform designated by us. (**Franchise Agreement, Section 11(f)**).
- h. Designated and Approved Suppliers.** Provide you with updated lists of our designated and approved suppliers of goods and services periodically during the term of the Franchise Agreement. (**Franchise Agreement, Section 12**).
- i. **Testing of Recommended Suppliers.** Test and evaluate sources of supply you recommend to us with reasonable promptness and approve or disapprove these sources. (**Franchise Agreement, Section 12(f)**).
- j. **Uniform System of Accounting.** Provide you with a uniform system of accounting and record keeping for the Franchised Unit, including standardized forms. (**Franchise Agreement, Section 14(a)**).

k. **Defense of 1-800-Flowers Marks.** Protect and defend your use of the 1-800-Flowers Marks. (**Franchise Agreement, Section 15(a)**).

l. **Pricing Guidelines.** Provide pricing guidelines for 1-800-Flowers products and services, subject to Applicable Law. (**Franchise Agreement, Section 8(c)(iv)**).

m. **Manuals.** Continue to provide you with access to our Franchise Manual and Fruit Bouquets Manual during the term of your Franchise Agreement, which may include audio, video, compact discs, computer software, other electronic media and/or written materials. We have the right to update or change the Manuals in our sole discretion, and may do so from time to time. (**Franchise Agreement, Sections 10(b) and 11(d)**).

### **Length of Time to Open Your Franchised Unit**

You must open your Standard Franchised Unit for business within 9 months after signing your Franchise Agreement, unless we agree otherwise. (**Franchise Agreement, Section 3(a)**). You must re-open your Existing Flower Shop as a Co-Branded Franchised Unit within 90 days after you sign the Franchise Agreement and Co-Brand Addendum. (**Co-Brand Addendum, Section 2.8**).

A Standard Franchised Unit usually opens for business 180 days after the Franchise Agreement is signed or the location is accepted. Factors that may affect the length of time between signing of the Franchise Agreement and opening for business include the time necessary for you to: identify a location that we will accept; obtain any financing you need; obtain required permits and governmental agency approvals; fulfill local ordinance requirements; complete construction, remodeling, alteration, and improvement of the Franchised Location, including the installation of fixtures, equipment, and signs; and complete the hiring and training of personnel. Delay in construction may be caused by inclement weather, material or labor shortages, labor actions, slow deliveries, equipment shortages, pandemics and similar factors.

### **Site Selection/Lease/Purchase of Real Estate**

#### **Standard Franchised Unit**

You must identify a location for your Standard Franchised Unit that we must approve before you lease or purchase the location. (**Franchise Agreement, Section 3(a)**). We expect that you will use a third-party to assist you in locating a suitable site, negotiating the lease or purchase agreement, and planning the interior of the Franchised Unit, and with project management. We will provide you with our site selection criteria following the effective date of your Franchise Agreement. You are solely responsible for selecting the site for your Franchised Location. We will review, approve, reject or provide comments to you regarding your proposed Franchised Location site within 30 days after receipt of all available information regarding the site. (**Franchise Agreement, Section 3(a)**). We consider the general location and neighborhood, traffic patterns, parking, size, physical characteristics, lease terms, contributions for leasehold improvements, if any, from a landlord, level of competition, the proximity of other 1-800-Flowers Shops to your proposed Franchised Location, and population density, income levels and other demographic information in our consideration of a site. Following our approval of a proposed Franchised Location, if you will be entering into a Third-Party Lease for the Franchised Location directly with a Third-Party Landlord, you must submit your proposed Third-Party Lease to us and allow us at least 15 days to review it, which we will do only as necessary to confirm that the provisions required by the Franchise Agreement have been included in the Lease, and that you and the Third-Party Landlord have signed an Option to Obtain Lease Assignment (**Exhibit E**) in the form we specify. You must provide us with a fully signed copy of any lease you sign following our acceptance. (**Franchise**

**Agreement, Section 3(b)(ii)**). If you have not selected an approved Franchised Location for a Standard Franchised Unit within 6 months from the date you sign the Franchise Agreement, or open the Franchised Location within 9 months from the date you sign the Franchise Agreement, we have the right to terminate the Franchise Agreement. (**Franchise Agreement, Section 3(a)**).

The typical length of time between the signing of the Franchise Agreement and, if applicable, the Fruit Bouquets Addendum to the Franchise Agreement, and the opening of a Standard Franchised Unit is 6 to 9 months. If you add a Fruit Bouquets Business into your Franchised Unit after it has been constructed, we estimate the time between signing the Fruit Bouquets Addendum to the Franchise Agreement and when you begin to offer fruit bouquets will be between 4 to 6 months. The factors that affect this time include your ability to secure financing and obtain building permits, as well as weather conditions, pandemics, mishaps during the course of construction/renovation, delayed installation of equipment, fixtures and signs, your completion of the Initial Training Program, and your selection, hiring and training of competent personnel.

### **Co-Branded Franchised Unit**

You will not need to locate a site for your Co-Branded Franchised Unit because you will already be operating your Existing Flower Shop from your current premises. We will be deemed to have accepted your existing premises for conversion to a Co-Branded Franchised Unit when we sign your Co-Brand Addendum. (**Co-Brand Addendum, Section 2.2**). Your Existing Flower Shop must be fully co-branded to become a Co-Branded Franchised Unit, including any leasehold improvements required and the installation of the signage that we designate and/or approve (including interior and exterior signage for the Co-Branded Franchised Unit and any required vehicle wrap), not later than 90 days after you sign the Franchise Agreement and Co-Brand Addendum. If you fail to fully co-brand your Existing Flower Shop and install the required signage within this 90 day period, we have the right to terminate the Franchise Agreement without giving you an opportunity to cure the default. (**Co-Brand Addendum, Section 2.8**). If you add a Fruit Bouquets Business into your Franchised Unit, your Co-Branded Franchised Unit must be equipped and ready to offer fruit bouquets not later than 6 months after you sign the Fruit Bouquets Addendum to the Franchise Agreement. (**Co-Brand Addendum, Sections 2.2 and 2.9**).

The typical length of time between when you sign the Franchise Agreement and Co-Brand Addendum and the re-opening of your business is 60 to 90 days. If you add a Fruit Bouquets Business into your Co-Branded Franchised Unit, we estimate the time between signing the Fruit Bouquets Addendum to the Franchise Agreement, and when you begin to offer fruit bouquets, will be between 4 to 6 months. The factors that affect this time include your ability to secure financing and obtain building permits, as well as weather conditions, pandemics, mishaps during the course of renovation, the delayed installation of equipment, fixtures or signs, and your completion of the Initial Training Program.

### **Successor Franchise**

If we grant you a Successor Franchise, we will have an option to require you to relocate the Franchised Unit at the end of the initial term of your Franchise Agreement, based upon our analysis of market changes in your trade area during the past 10 years of your operation of the Franchised Unit. If we elect to require you to relocate the Franchised Unit, we must give you 6 months' prior written notice of our intention to do so and you must re-locate the Franchised Unit at your sole expense. If you are subletting the Franchised Unit's premises under a Sublease from us or a subsidiary or affiliate, you must give us notice that you wish to renew the Sublease and we must receive your notice not later than 30 days before the landlord requires notice of renewal

under the terms of the Master Lease. (**Franchise Agreement, Sections 3(e) and 4(b); Sublease, Sections 4(b) and 4(d)**).

### **Website**

We have the right, but are not obligated, to establish and maintain a website to provide information about the 1-800-Flowers System and the goods and services that 1-800-Flowers Shops provide. Our website may include a series of interior web pages that may identify 1-800-Flowers Shops by name, geographic region, address, telephone number or e-mail address. We have the right to use this website to engage in electronic commerce, or to establish another facility on the Internet to do so. (**Franchise Agreement, Section 18(c)**). You may not establish a website that includes our 1-800-Flowers Marks, nor may you offer, promote, or sell any products or services or make any other use of the 1-800-Flowers Marks on the Internet without our prior written consent. (**Franchise Agreement, Sections 18(b) and 18(c)**). As a condition to granting our consent, we have the right to establish requirements that we deem appropriate, including the requirement that your only presence on the Internet must be through one or more web pages that we establish on our website. You may not solicit or accept orders through your website for 1-800-Flowers' or its subsidiaries' products. We may, in our discretion, permit you to use an existing website and/or domain name, but if your domain name or URL contains any of our 1-800-Flowers Marks, you must transfer the domain name or URL to us when we direct you to do so and on the expiration or termination of your Franchise Agreement. (**Franchise Agreement, Sections 18(b), 18(c) and 18(f)**). You are strictly prohibited from using the 1-800-Flowers Marks in any manner on any social media and/or networking Websites, such as Facebook, LinkedIn, Instagram and Twitter, without our prior written consent. (**Franchise Agreement, Section 18(b)(iii)**).

If you are signing a Franchise Agreement and a Co-Brand Addendum, we may permit you to continue to operate a website you operated as an independent florist, provided that you utilize our 1-800-Flowers Marks as defined by the Franchise Manual and the Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit). (**Co-Brand Addendum, Section 2.15**).

### **Intranet**

We have the right, but are not obligated, to establish a website or other electronic system providing private and secure communications (e.g., an Intranet) between us, our franchisees, and other persons and entities that we decide are appropriate. If we require, you must establish and maintain access to the Intranet in the manner we designate. Additionally, we have the right to periodically prepare agreements and policies concerning the use of the Intranet that you must acknowledge and/or sign. (**Franchise Agreement, Section 18(e)**).

### **Internet**

We have the right, but are not obligated, to initiate an electronic commerce program. You may have the opportunity to participate in the program if you are in good standing under the Franchise Agreement and any other agreement with us or our affiliates. (**Franchise Agreement, Section 18(d)**). We have the sole right to market on the Internet and use the 1-800-Flowers Marks on the Internet, including all use of websites, domain names, URLs, directory addresses, email addresses, metatags, linking, advertising, co-branding and other arrangements, and in all other forms of electronic media. You may not separately register any domain name or any portion of a domain name containing the 1-800-Flowers Marks or participate or market on any website or other form of electronic media (including social technology, social media and social networking platforms) using the 1-800-Flowers Marks, unless you first obtain written approval from us. Your general conduct on the Internet or other forms of electronic media, including your use of the 1-800-Flowers Marks or any advertising,

is subject to the terms and conditions of the Franchise Agreement, the Manuals, and any other rules, requirements or policies that we have the right to periodically identify. (**Franchise Agreement, Section 18(b)**). We and our affiliates, including 800-Flowers, have the right to service customers in your trade area via the Internet, and as such you may be competing with us or our affiliates for the business of these customers and the fulfillment of their orders.

### **Marketing and Marketing Funds**

We will maintain and administer 2 separate Marketing Funds. The 1-800-Flowers Franchise, Inc. Marketing Fund (the “**Floral Marketing Fund**”) will be for the benefit of the entire 1-800-Flowers System to assist in the provision of floral services and products, and the “**Fruit Bouquets Marketing Fund**” will be for the benefit of all franchisees offering the Fruit Bouquets Program and is intended to maximize general public recognition in all media, of the Fruit Bouquets Marks, patronage of retail outlets participating in the Fruit Bouquets Program, and the availability of fruit bouquets and related products offered at 1-800-Flowers Franchised Units and elsewhere. For Standard Franchised Units, all franchisees must contribute to the Floral Marketing Fund an amount equal to 2% of Adjusted Gross Sales. (**Franchise Agreement, Section 8(a)**). If you add a Fruit Bouquets Business into your Franchised Unit, you will also contribute to the Fruit Bouquets Marketing Fund an amount equal to 2% of your Fruit Bouquets Gross Sales each month (**Fruit Bouquets Addendum, Section 9**); however, the Fruit Bouquets Marketing Fund has not yet been established, so no money has been collected or spent by this fund. Once the Fruit Bouquets Marketing Fund is established, we have the right to begin collecting Fruit Bouquets Marketing Fund contributions from you upon 30 days’ advance written notice. For Co-Branded Franchised Units, all franchisees must pay a Marketing Fee of \$250 per month to the Floral Marketing Fund. (**Co-Brand Addendum, Section 2.6**).

National and regional marketing programs can include the use of television and radio campaigns, yellow pages advertising, public relations activities, the use of toll-free telephone numbers, telemarketing systems, on-line computer networks and services, the Internet, interactive television and other technological advances for local and regional coverage. We have the right to direct the activities of the Marketing Funds and have the right to utilize the services of advertising and public relations agencies to assist in these activities. (**Franchise Agreement, Section 8(c)(iii)**). We have the right, but not the obligation, to make expenditures for you that directly benefit you or your Franchised Unit. (**Franchise Agreement, Section 8(c)(i)**). Any portions of the Marketing Funds that are not spent during the fiscal year in which they accrue may be spent by the Marketing Funds during any following year. (**Franchise Agreement, Section 8(c)(viii)**). We will make contributions to the Marketing Funds equal to the amounts required of comparable Franchised Units for each of our or our subsidiaries’ or affiliates’ company-owned 1-800-Flowers Shops operating in any market or region in which there are also 5 or more Franchised Units in operation. (**Franchise Agreement, Section 8(c)(ii)**).

During the term of your Franchise Agreement, at your written request within 120 days after the end of our fiscal year, we will provide you with an annual statement summarizing the expenditures of the Marketing Fund(s) to which you contributed during the immediately preceding fiscal year. Neither Marketing Fund will be audited. (**Franchise Agreement, Section 8(c)(vi)**). The 1-800-Flowers Marketing and Finance Departments administer the Marketing Funds on our behalf. (**Franchise Agreement, Section 8(c)**).

During the fiscal year ended June 27, 2021, the Floral Marketing Fund did not have any expenses. The Floral Marketing Fund remained suspended in the fiscal year ended June 27, 2021, but money remaining in the Floral Marketing Fund will continue to be used for promotional purposes. During the fiscal year ended June 27, 2021, the Floral Marketing Fund spent a total of \$0 of its previously accrued funds. During the fiscal year ended June 27, 2021, the Fruit Bouquets Marketing Fund was not yet established, so no money was collected or spent by

the Fruit Bouquets Marketing Fund. We receive reimbursement from the Marketing Funds for all direct and indirect expenses incurred for our development of marketing programs for 1-800-Flowers Shops products and services, and for our supervision and administration of the Marketing Funds. (**Franchise Agreement, Section 8(c)(v)**). We have the right to begin collecting Floral Marketing Fund contributions again at any time and we will provide 30 days' advance written notice that you must begin contributing. No portion of the Marketing Funds are used for advertising for the sale of franchises.

### **Local Marketing**

You may undertake additional marketing and advertising at your own expense during the term of the Franchise Agreement; however, your use of any and all marketing materials in any medium is subject to our prior review and written approval and must be conducted in a dignified manner in accordance with our then-current standards and specifications. (**Franchise Agreement, Section 8(d)**).

### **Cooperative**

We reserve the right to form a local, regional or national advertising coverage area in which your Franchised Unit is located for the purpose of developing a cooperative local, regional or national advertising or promotional program (a "**Cooperative**"). We, in our sole discretion, will have the right to change, merge, or dissolve the Cooperative. The Cooperative will not be dissolved until all of the money collected for the Cooperative has been spent for advertising and promotional purposes. (**Franchise Agreement, Section 8(g)**).

### **Grand Opening Promotional Campaign**

We will develop and provide you with a promotional campaign for the grand opening of the Franchised Unit for business. We estimate that you will spend between \$2,000 and \$5,000 for a Standard Franchised Unit (**Franchise Agreement, Section 8(f)**) and between \$500 and \$2,000 for a Co-Branded Franchised Unit. (**Co-Brand Addendum, Section 2.7**).

### **Franchise Advisory Board**

We no longer have a Franchise Advisory Board, but we have the right to re-establish one in the future.

### **POS Systems**

During the term of your Franchise Agreement, we will use our best efforts through our affiliates to establish and maintain standards for the required computerized point-of-sale hardware, software and/or web-based systems ("**POS Systems**") for the Franchised Unit and provide you, either directly through our affiliates or indirectly through the use of approved third-party vendors, with ongoing technical support, maintenance and repair services, upgrades and updates for these systems. (**Franchise Agreement, Section 11(g)**). We will specify the currently approved POS Systems in the list of designated and approved suppliers that we give you, and we have the right to change the approved POS Systems in the future. We currently approve the BloomNet Business Management System (BloomNet BMS) and the Visual Ticket POS System, but these POS Systems are not the only systems we may approve. The hardware distributor of the BloomNet BMS POS System is Dell Computers, One Dell Way, Round Rock, Texas 78682, telephone: 800-999-3355. The software vendor for the BloomNet BMS POS System is BloomNet, Two Jericho Plaza, Suite 200, Jericho, New York, 11753, telephone: 516-237-6000.

**BloomNet Business Management System:**

<b>BloomNet Business Management System Hardware Requirements</b>	<b>Description</b>
Dell Optiplex 360 Workstation (WS360010) (or similar model)	Workstation
Dell 2330d B&W Laser Printer (PT2330) (or similar model)	Printer
Dell Point of Sale (POS) Kit: Keyboard/Swiper, Cash Drawer & Receipt Printer (OM300010) (or similar model)	POS Kit
BloomNet Technologies BMS Software: All inclusive, multi-user license	License Agreements and Software

The estimated cost to purchase or lease the BloomNet POS System is approximately \$150 to \$10,000. The estimated cost for monthly lease, maintenance, upgrades and updates is approximately \$200 per month.

The manufacturer of the Visual Ticket POS System is FloralSystems.com, Inc., 497 Main Road, Corfu, New York 14036, telephone: 866-797-2428. The estimated cost to purchase or lease the Visual Ticket POS System is approximately \$5,000 to \$50,000. The estimated cost for monthly lease, maintenance, upgrades and updates is approximately \$200 to \$500 per month, depending on the number of stations and features chosen.

If you are co-branding your Existing Flower Shop under the Co-Brand Addendum, we expect that you will initially use your existing POS System in your Co-Branded Franchised Unit. We have the right to specify the POS System you must purchase at any time, although at our discretion we may wait to do so until after your existing contract expires. We also have the right to change the approved POS Systems in the future. When we require you to purchase an approved POS System, the relevant provisions in your Franchise Agreement will apply. **(Co-Brand Addendum, Section 2.10)**.

You must update and upgrade your POS System during the term of the Franchise Agreement. You must pay a monthly charge for technical support as established by your service provider. You must use your POS System in your business as a cash register system, a customer data system, an inventory system, an employee payroll and time maintenance system, a wire service reconciliation and a daily sales reporting system. We have the right to, and will, access daily sales information from your POS System in our sole and absolute discretion and will require you to transmit this data on a daily basis by fax, telephone or through dedicated electronic polling systems. All electronic cash registers, POS Systems, electronic communications systems and computer hardware and software installed at the Franchised Unit must permit us to poll sales information from the Franchised Unit and to electronically transmit and obtain sales and other data to and from the Franchised Unit. **(Franchise Agreement, Section 10(m))**.

You must enter into a BloomNet Technologies Systems Agreement with BloomNet to obtain a limited license to use certain electronic communications software, documentation and content that comprise the BloomNet Technologies Systems, or other electronic systems BloomNet designates to fulfill orders and communications functions at the Franchised Unit. **(Franchise Agreement, Section 2(b))**.

**Initial Training Program**

All training will occur, as we determine in our discretion, at our Jericho, New York headquarters, designated locations in Jacksonville, Florida, and/or at a Franchised Unit or company-owned 1-800-Flowers Shop. The Initial Training Program consists of approximately 20 days of training, including one week of training at one

of our training facilities and one week of training at your Franchised Unit or another Franchised Unit. (**Franchise Agreement, Section 11(a)**).

We do not currently have a set schedule for providing training. The Initial Training Program is conducted when, in our judgment, there are a sufficient number of individuals ready to train, but in any event will be provided to you prior to the date scheduled for your Franchised Unit to open for business. We will train your Principal Owner and General Manager to open a Franchised Unit at no cost to you other than your initial franchise fees. (**Franchise Agreement, Section 11(a)**). If you send more than 2 persons to the Initial Training Program, you must pay us the Additional Training Fee, currently \$1,500, for each additional trainee for their attendance at the Initial Training Program. The Initial Training Program is mandatory for you and your designated supervisory or managerial employee and is available to any other of your supervisory and managerial employees whom you desire to attend this program, at your expense.

We require that all trainees pass our certification test at the conclusion of the training program. You must pay for the living and travel expenses for all of your participants in the Initial Training Program. (**Franchise Agreement, Section 10(l)**).

We may, at your request and in our discretion, provide additional Initial Training Programs for your new or replacement supervisory or managerial personnel following the opening of your Franchised Unit. If you request us to provide such training and, at our discretion, we agree to do so, you must pay us our then-current Additional Training Fee for each additional trainee for their attendance at the Initial Training Program. In addition, you must pay all transportation costs, food, lodging and similar costs incurred in connection with your employees' attendance at any such Additional Initial Training Programs. (**Franchise Agreement, Section 11(b)**).

If the trainee is not the person who will perform the accounting functions required by the Franchise Agreement and the Franchise Manual, we have the right to require the person who will be responsible for those functions to attend training sessions that deal with accounting matters. (**Franchise Agreement, Section 10(l)(i)**). You and your designated trainee must complete the Initial Training Program to our satisfaction. We generally do not require franchisees who operate multiple Franchised Units to attend the Initial Training Program after doing so for their first Franchised Unit, but we do require them to send their supervisory and managerial employees for each of their Franchised Units to the Initial Training Program. You and your supervisory and managerial employees must attend training and education programs and refresher courses provided by us during the term of the Franchise Agreement. (**Franchise Agreement, Section 10(l)**). The following are our Initial Training Programs as of our most recent fiscal year end:

**INITIAL TRAINING PROGRAM  
STANDARD FRANCHISED UNIT**

Subject	Hours Of Classroom Training	Hours Of On-The-Job Training	Location
Introduction	2	0	Corp. HQ, Jacksonville, FL or virtual communication platform
Franchisee Compliance Checklist	4	16	Corp. HQ, Jacksonville, FL, Various Agencies or virtual communication platform



<b>Subject</b>	<b>Hours Of Classroom Training</b>	<b>Hours Of On-The-Job Training</b>	<b>Location</b>
Product Knowledge: Flowers	2	4	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Product Knowledge: Plants	2	2	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Care and Handling	2	6	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Product Knowledge Review & Exam: Flowers & Plants/Care & Handling	2	0	Corp. HQ, Jacksonville, FL or virtual communication platform
Flower & Plant Identification	0	8	Flower Marts or virtual communication platform
Design Principles	4	24	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Design Principles Review & Exam	1	0	Corp. HQ, Jacksonville, FL or virtual communication platform
Delivery Services	2	8	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Delivery Services Review & Exam	1	0	Corp. HQ, Jacksonville, FL or virtual communication platform
Guest Services & Selling Skills	4	8	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Guest Services & Selling Skills Review & Exam	1	0	Corp. HQ, Jacksonville, FL or virtual communication platform
Loss Prevention	2	0	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Merchandising	3	4	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Merchandising Review & Exam	1	0	Corp. HQ, Jacksonville, FL or virtual communication platform
POS Training	0	24	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform

<b>Subject</b>	<b>Hours Of Classroom Training</b>	<b>Hours Of On-The-Job Training</b>	<b>Location</b>
Marketing, Advertising & Promotions	6	0	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Marketing, Advertising & Promotions Review & Exam	1	0	Corp. HQ, Jacksonville, FL or virtual communication platform
Finance & Administration	8	0	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Finance & Administration Review & Exam	1	0	Corp. HQ, Jacksonville, FL or virtual communication platform
Seasonal Planning	4	0	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Store Review	2	0	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
Vendor List	1	0	Corp. HQ, Jacksonville, FL, Existing Franchise Store or virtual communication platform
<b>TOTAL HOURS</b>	<b>56</b>	<b>104</b>	

**INITIAL TRAINING PROGRAM  
CO-BRANDED FRANCHISED UNIT**

<b>Subject</b>	<b>Hours Of Classroom Training</b>	<b>Hours Of On-The-Job Training</b>	<b>Location</b>
Introduction	1	0	Franchisee Store Location or virtual communication platform
Franchisee Compliance Checklist	2	0	Franchisee Store Location or virtual communication platform
Delivery Services	2	0	Franchisee Store Location or virtual communication platform
Delivery Services Review & Exam	1	0	Franchisee Store Location or virtual communication platform
Guest Services & Selling Skills	4	0	Franchisee Store Location or virtual communication platform
Guest Services & Selling Skills Review & Exam	1	0	Franchisee Store Location or virtual communication platform

Subject	Hours Of Classroom Training	Hours Of On-The-Job Training	Location
Loss Prevention	2	0	Franchisee Store Location or virtual communication platform
Merchandising	3	0	Franchisee Store Location or virtual communication platform
Merchandising Review & Exam	1	0	Franchisee Store Location or virtual communication platform
Marketing, Advertising & Promotions	6	0	Franchisee Store Location or virtual communication platform
Marketing, Advertising & Promotions Review & Exam	1	0	Franchisee Store Location or virtual communication platform
Finance & Administration	4	0	Franchisee Store Location or virtual communication platform
Finance & Administration Review & Exam	1	0	Franchisee Store Location or virtual communication platform
Seasonal Planning	4	0	Franchisee Store Location or virtual communication platform
Store Review	2	0	Franchisee Store Location or virtual communication platform
Vendor List	1	0	Franchisee Store Location or virtual communication platform
Franchisee Questions	4	0	Franchisee Store Location or virtual communication platform
<b>TOTAL HOURS</b>	40	0	

The instructors for floral training include Stephen Lenzovich, Mike Cline, Steven Seniow, Arthur Herrera and Elmerinda Phillips. Each of our instructors has at least 6 years of experience in the subject they are teaching and they have all been with us for more than 6 years.

**INITIAL TRAINING PROGRAM  
FRUIT BOUQUETS**

Subject	Hours Of Classroom Training	Hours Of On-The-Job Training	Location
Health, Sanitation and Safety	.5	0	Existing Franchised Unit or virtual communication platform

<b>Subject</b>	<b>Hours Of Classroom Training</b>	<b>Hours Of On-The-Job Training</b>	<b>Location</b>
Location Set-up	.5	0	Existing Franchised Unit or virtual communication platform
Design Resource Guide	.25	0	Existing Franchised Unit or virtual communication platform
Production	1	0	Existing Franchised Unit or virtual communication platform
Fruit and Supply Purchasing	.5	0	Existing Franchised Unit or virtual communication platform
Storage, Equipment and Work Flow	1	0	Existing Franchised Unit or virtual communication platform
Delivery Procedures, Delivery Vehicles	.5	0	Existing Franchised Unit or virtual communication platform
Training Video	.5	0	Existing Franchised Unit or virtual communication platform
Kitchen Basics, Cleaning Practices	.5	0	Existing Franchised Unit or virtual communication platform
Selecting Fruit	.5	0	Existing Franchised Unit or virtual communication platform
Washing Fruit. Preparing Fruit for Cutting	.25	0	Existing Franchised Unit or virtual communication platform
Fruit Cutting, Slices and Shapes	.5	0	Existing Franchised Unit or virtual communication platform
Fruit Storage	.25	0	Existing Franchised Unit or virtual communication platform
Arranging	3	0	Existing Franchised Unit or virtual communication platform
Cutting Apples, Oranges and Pears	.25	0	Existing Franchised Unit or virtual communication platform
Skewering Fruit	.25	0	Existing Franchised Unit or virtual communication platform
Chocolate – Storage, Prep, Dipping	.5	0	Existing Franchised Unit or virtual communication platform
Decorating with Chocolate	.5	0	Existing Franchised Unit or virtual communication platform
Toppings	.5	0	Existing Franchised Unit or virtual communication platform
Containers, Preparing Bases	.25	0	Existing Franchised Unit or virtual communication platform

Subject	Hours Of Classroom Training	Hours Of On-The-Job Training	Location
Skewering Other Fruit	.5	0	Existing Franchised Unit or virtual communication platform
Arranging	3.25	0	Existing Franchised Unit or virtual communication platform
Wrapping	.25	0	Existing Franchised Unit or virtual communication platform
<b>TOTAL HOURS</b>	<b>16</b>	<b>0</b>	

If you purchase a Fruit Bouquets Business, we will provide an additional 2 days of training at no cost to you, at your existing Franchised Unit as described above. (**Fruit Bouquets Addendum, Section 10**).

The instructors for Fruit Bouquets training include Scott Shepard, Priscilla Targownik and Billy Cabral. With the exception of Billy Cabral who has been with us for less than 1 year, our instructors have been with us for at least 4 years and have at least 5 years of experience in the subjects they are teaching. Fruit Bouquets training is currently conducted at your Franchised Unit.

#### INITIAL TRAINING PROGRAM MULTI-UNIT OPERATIONS

Subjects	Hours Of Classroom Training	Location
Introduction	1	Corp. HQ, Jacksonville, FL or virtual communication platform
Managing Standards at Multiple Sites	4	Corp. HQ, Jacksonville, FL or virtual communication platform
Advertising & Promotions for Multiple Sites	3	Corp. HQ, Jacksonville, FL or virtual communication platform
Purchasing for Multiple Sites	3	Corp. HQ, Jacksonville, FL or virtual communication platform
Building a Staff for Multiple Sites	4	Corp. HQ, Jacksonville, FL or virtual communication platform
Questions & Wrap-Up	1	Corp. HQ, Jacksonville, FL or virtual communication platform
<b>TOTAL HOURS</b>	<b>16</b>	

The primary instructional materials include the Franchise Manual, the Fruit Bouquets Manual, visual materials (such as PowerPoint slides) and other materials that we believe will be useful during training.

Before you open for business at the Franchised Unit, you, or other supervisory or managerial personnel that you designate who will assume responsibility for the day-to-day management of the operation of your Franchised Unit, must attend and successfully complete our Initial Training Program to our satisfaction. You shall be responsible for all expenses incurred in connection with attendance at the Initial Training Program, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages.

Upon your agreement, we may waive this training requirement if you are experienced in the floral business and do not require initial training. Furthermore, the Initial Training Program will not be provided if (i) you or any affiliate of yours already owns or operates another Franchised Unit at the time that you sign your Franchise Agreement, or (ii) you are signing the Franchise Agreement as a Successor Franchise Agreement. (**Franchise Agreement, Sections 10(l) and 11(a)**).

**Additional Initial Training.** If you request that we provide the Initial Training Program to additional supervisory or managerial employees, other than your Principal Owner and General Manager, and at our discretion we agree to do so, we will have the right to charge you our then-current Additional Training Fee, currently \$1,500, for each of your additional trainees for their attendance at the Initial Training Program, in order to defray the direct costs of training such persons. In addition, you shall be responsible for any and all other expenses incurred in connection with you and your employees attending such additional training, including the costs of transportation, lodging, meals, training materials and any wages. The training of the additional person(s) shall be done at times and at locations we determine, which times and locations may not be the same as established for you and the initial trainee. (**Franchise Agreement, Section 11(b)**).

If you add a Fruit Bouquets Business to your Franchised Unit, you may request additional training or assistance related to fulfilling fruit arrangements. If, at our discretion, we provide such additional training, we will provide the additional training at no charge. (**Fruit Bouquets Addendum, Section 12**).

**Additional/Remedial Training.** We will provide your Principal Owner and General Manager, and, as appropriate, your supervisory or managerial employees, with additional training and education programs through the use of videos, conventions, workshops and meetings, and the like, and shall provide ongoing and refresher courses in the various aspects of operation of a Franchised Unit. We have the right to require you to complete such training, and to charge you our then-current Additional Training Fee, currently \$1,500, for each additional trainee for such training and education program that is in-person, in order to defray the direct costs of providing these services. In addition, you will be responsible for any and all other expenses incurred in connection with you and your supervisory or managerial employees attending these training and education programs, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages. (**Franchise Agreement, Section 11(c)**).

If we determine that it is necessary, we have the right to require you to attend remedial training, and may provide other assistance subject to the availability of our personnel. We have the right to charge you our then-current Additional Training Fee for you and each additional trainee for such remedial training, to defray the direct costs of providing the training. In addition, you will be responsible for any and all other expenses incurred in connection with you and your supervisory and managerial employees attending such remedial training, including the costs of transportation, lodging, meals, training materials and any wages. We will, in our discretion, select the time and location of all remedial training. (**Franchise Agreement, Section 11(c)**).

### **Virtual Training and Assistance.**

We may provide all or any portions of the Initial Training Program, Additional Initial Training Program, Additional/Remedial Training Programs, post-opening on-site opening assistance and/or post-opening consultations remotely over a virtual communication platform designated by us. (**Franchise Agreement, Section 11(f)**).

## ITEM 12 TERRITORY

### **Franchise Agreement**

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands we control.

Your Franchise Agreement will designate the approved location of the Franchised Unit and you may conduct business only at that Franchised Location.

You can solicit and accept orders through recognized floral wire services and BloomNet, pre-approved local yellow pages advertising and other pre-approved media, as we deem appropriate, without restriction, but you may not use other alternative distribution channels to solicit or fill orders. You may not use the Internet or a centralized telephone system for inter-store or intra-store transmissions of sales to or from the Franchised Unit without our prior written consent or otherwise use inter-store or intra-store transmissions of sales to understate Gross Sales. As a member of the BloomNet Network, you may be referred orders from BloomNet or 800-Flowers at your Franchised Unit through the BloomNet Network for fulfillment, but neither BloomNet nor 800-Flowers is obligated to refer you any wire, telephone or Internet orders. If an order is referred to you for fulfillment using these alternative distribution methods, you will earn a portion of the revenue from that order if you fulfill the order according to our requirements. The Premier Order Fulfillment Agreement, if you choose to sign it, does not grant you exclusive rights to fulfill orders in a specific area or zip code.

There is no minimum sales quota, market penetration or other contingency you must meet to maintain your rights under the Franchise Agreement, except that you must comply with the terms of the Franchise Agreement, the 1-800-Flowers System, the Franchise Manual, the Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit) and any of our other directives.

### **General**

We and our affiliates can establish membership relationships and company-owned units using the 1-800-Flowers Marks and grant franchises under the trade name "1-800-Flowers" or "Conroy's Flowers" for a similar or competitive business that will use the 1-800-Flowers Marks at any location. Retail will operate company-owned retail units under the trade names "1-800-Flowers", "Conroy's Flowers", "1-800-Flowers.Com", "Fruit Bouquets", "Fruit Bouquets by 1-800-Flowers.Com", "fruitbouquets.com", "Flowerama", "1-800-Flowers|Conroy's", and "1-800-Flowers|Flowerama". 1-800-Flowers, through its subsidiaries, is a leading e-commerce provider of floral products and gifts through the Internet. 1-800-Flowers has developed an international flowers-and-gifts-by-telephone business selling flowers, gifts and related products and services under the trade name "1-800-Flowers" and utilizes the toll-free telephone number 1-800-356-9377, corresponding to "1-800-Flowers", to receive orders. Orders received through the Internet and by telephone are referred to retail flower shops for fulfillment. We and our affiliates have the right to establish other methods and alternative channels of distribution under the 1-800-Flowers Marks or other trademarks at any location in the future and have the right to use the 1-800-Flowers Marks, the 1-800-Flowers System, and the marks and names of our affiliates, to own and operate and to grant others the right to own and operate 1-800-Flowers kiosks, carts, concessions, design centers or distribution centers, satellite units, or other mobile, remote, limited service or non-permanent facilities, or other retail operations as part of larger retail venues such as department stores, supermarkets, or shopping malls, or in public areas such as amusement parks, airports, train stations, public facilities, college and school campuses, arenas, stadiums, hospitals, office buildings, convention centers,

airlines (in-flight service) and military bases, both within and outside your trading area. In addition, we and our affiliates have the right to own and/or operate and to grant others the right to own and/or operate competing businesses through toll-free "1-800", "1-888", "1-877" and "1-866" telephone numbers, on-line computer networks and services and the Internet, including so called "virtual stores", anywhere.

We have the right, but are not obligated, to initiate an electronic commerce program. You may have the opportunity to participate in the program if you are in good standing under the Franchise Agreement and any other agreement with us or our affiliates.

We have the sole right to market on the Internet and use the 1-800-Flowers Marks on the Internet and in all other forms of electronic media, including all use of websites, domain names, URLs, directory addresses, email addresses, metatags, linking, advertising, co-branding and other arrangements. You may not separately register any domain name or any portion of a domain name containing the 1-800-Flowers Marks or participate or market on any website or other form of electronic media (including social technology, social media and social networking platforms) using the 1-800-Flowers Marks, unless you first obtain written approval from us. You may not solicit sales through alternative distribution channels, such as catalog sales, telemarketing or other direct marketing, without our prior written consent.

We are not required to pay you if we exercise any of the rights specified above.

If your lease for the premises of the Franchised Unit terminates without your fault, or if the premises are damaged, condemned or otherwise unusable, or if in your and our reasonable judgment there is a change in the character of the location of the Franchised Unit sufficiently detrimental to its business potential to warrant its relocation, we will grant our permission for you to relocate the Franchised Unit.







You may not relocate your Franchised Unit without our prior written consent, which will not be unreasonably withheld. You are not granted any options, rights of first refusal, or similar rights to acquire additional franchises, but we may consider granting you the right to establish additional Franchised Units under then-current Franchise Agreements, particularly if you already own additional Existing Flower Shops in areas and at sites that we approve, but we have no obligation to do so.

### ITEM 13 TRADEMARKS

1-800-Flowers authorizes us to grant you the limited right to operate a Franchised Unit under the "1-800-Flowers" trade name and 1-800-Flowers Marks. You may also use our other current and future trade names, trademarks and/or service marks to operate your Franchised Unit on a limited basis only with our express written consent. The word "trademark" means all trade names, trademarks, service marks and logos used to identify your Franchised Unit. The following service marks have been registered or applied for registration on the United States Patent and Trademark Office Principal Register:

Mark	Registration Number	Registration Date
"1-800-FLOWERS"	1,009,717	April 29, 1975 (renewed May 14, 2015)
"1-800-FLOWERS.COM"	2,434,592	March 13, 2001 (renewed June 5, 2020)
"1800FLOWERS.COM"	2,825,367	March 23, 2004 (renewed March 26, 2014)



Mark	Registration Number	Registration Date
"800-FLOWERS"	1,398,787	June 24, 1986 (renewed August 27, 2016)
	2,014,298	November 5, 1996 (renewed October 28, 2016)
	4,058,345	November 22, 2011 (renewed July 13, 2021)
	3,155,701	October 17, 2006 (renewed December 27, 2016)
	3,161,360	October 24, 2006 (renewed June 14, 2017)
	3,161,361	October 24, 2006 (renewed June 13, 2017)
	4,321,990	April 16, 2013

1-800-Flowers has filed all required affidavits. You must follow your Franchise Agreement, the Franchise Manual, the Fruit Bouquets Manual, and any other rules we provide when you use these 1-800-Flowers Marks. You cannot use a name or the 1-800-Flowers Marks as part of a corporate name or with modifying words, designs or symbols except for those that we license to you. You cannot use the 1-800-Flowers Marks in the sale of an unauthorized product or service or in a manner we do not authorize in writing. You may not use "1-800-Flowers", the telephone numbers "1-800-356-9377" or "1-800-266-7697", or "1-888", "1-866", or "1-877" telephone numbers or other like toll-free telephone numbers that we may use or confusingly similar imitations of such telephone numbers. You may not use words in your telephone numbers. You may not use the trademark or domain names, or confusingly similar imitations of the trademark or domain names, on the Internet except as we specify or approve. Our rights to use or franchise the use of the 1-800-Flowers Marks are not limited by any agreement, except for the trademark license agreement with 1-800-Flowers.

1-800-Flowers has registered or filed an intent-to-use application for the following trademarks on the United States Patent and Trademark Office Principal Register:

Mark	Application Date	Serial Number	Registration Date	Registration Number
"FRUIT BOUQUETS BY 1800FLOWERS.COM" and design	May 3, 2011	85/311,102	January 5, 2021	6,239,866
FRUIT BOUQUETS and design	May 3, 2011	85/311,052	March 3, 2020	6,002,773
FRUIT BOUQUETS BY 1800FLOWERS.COM and design	May 3, 2011	85/311,131	March 3, 2020	6,002,774
FRUIT BOUQUETS and design	May 6, 2011	85/314,733	March 3, 2020	6,002,775
FRUIT BOUQUETS.COM and design	May 6, 2011	85/314,758	March 3, 2020	6,002,776
FRUIT BOUQUETS.COM and design	May 6, 2011	85/314,779	January 23, 2018	5,386,809

### General

We are not aware of any currently effective material determinations of the USPTO, the TTAB, the trademark administrator of any state or any court, or any pending infringement, opposition or cancellation or any pending material litigation involving the 1-800-Flowers Marks. There are no prior superior rights or infringing uses actually known to us that could materially affect your use of the 1-800-Flowers Marks; however, we have not conducted an exhaustive search of users of names that may be the same or similar to the unregistered Marks and we may not be able to prevent their continued use of these words, particularly in cases where their use predates our federal trademark registration. There may be similar uses to the unregistered 1-800-Flowers Marks of which we are unaware, which could arise from prior uses. No agreements limit our right to use or license the use of the 1-800-Flowers Marks in a manner material to your franchise.

You must notify us immediately when you learn about an infringement of, or challenge to, your use of the 1-800-Flowers Marks, and we have the right to take the action we deem appropriate in response. We will control any trademark litigation or proceeding, and we must defend you against a claim against your proper use of the 1-800-Flowers Marks, and we will cause the applicable Marketing Fund, if funded, to reimburse you for all damages for which you are held liable for your proper use of the 1-800-Flowers Marks, and to reimburse us for our legal fees and other costs that we incur to defend the 1-800-Flowers Marks. In order for you to receive such reimbursement, you must have used the 1-800-Flowers Marks that are the subject of the controversy in strict accordance with our rules, regulations, procedures, requirements and instructions, and you must have notified us immediately when you learned about the infringement or challenge.

You must also agree: (i) that you will not use any marks that are confusingly similar to the 1-800-Flowers Marks; (ii) that you will not seek to register any marks that are confusingly similar to the 1-800-Flowers Marks; (iii) that you will not seek to register a composite mark incorporating any of the 1-800-Flowers Marks, or any part thereof; and (iv) that you will not challenge the validity of the 1-800-Flowers Marks.

You must modify or discontinue the use of the 1-800-Flowers Marks, whether alone or with other franchisees, if we modify or discontinue their use, and when your Franchise Agreement terminates, unless you are a party to another Franchise Agreement with us that is currently valid at that time. You must pay your actual costs of compliance (for example, the cost to replace sign faces). You must not directly or indirectly contest our right to the 1-800-Flowers Marks, trade secrets or business techniques that are part of the 1-800-Flowers Trade Practices, and must not register any of the 1-800-Flowers Marks individually or as part of a composite mark.

## **ITEM 14 PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

There are no patents or copyrights, or pending patents or copyrights, that we own rights to and/or that are material to the 1-800-Flowers System.

As a member of the BloomNet Network, BloomNet grants you a limited license to use the BloomNet Technologies Systems or other electronic systems BloomNet designates for the fulfillment of orders and for other functions at the Franchised Unit. With this exception, you do not receive the right to use any item covered by a patent or copyright, but you have the right to use the proprietary information in the Franchise Manual, in the Fruit Bouquets Manual and the Fruit Bouquets Pricing Guide (if you add a Fruit Bouquets Business to your Franchised Unit), and in any other manuals we provide until the termination or expiration of your Franchise Agreement, or as we otherwise direct. The Franchise Manual, Fruit Bouquets Manual and Fruit Bouquets Pricing Guide are described in Item 11. Although we have not filed an application for a copyright registration for the Franchise Manual, Fruit Bouquets Manual, Fruit Bouquets Pricing Guide or other manuals, we claim copyright protection and the information contained in these items is both confidential and proprietary. Item 11 describes limitations on the use of the Manuals and/or the Fruit Bouquets Pricing Guide by you and your employees. You must promptly tell us when you learn about unauthorized use of our 1-800-Flowers Trade Practices. We are not obligated to take any action, but have the right to respond to this information as we deem appropriate.

We regard our trade secrets, specifications and/or formulas and products, our System of operating a Franchised Unit, and all the information contained in the Manuals, as proprietary information owned by us. You will agree, as part of the Franchise Agreement, not to contest our exclusive ownership of the copyrights, trade secrets, processes, methods, procedures, formulae, techniques, and other proprietary information to which we claim exclusive rights. You are not given any rights in other trade secrets or proprietary or confidential information developed by us in the future. You must implement any reasonable procedures that we adopt to protect our trade secrets, including restrictions on disclosures to your employees and requiring supervisory and managerial employees who will have access to our trade secrets to sign agreements containing non-disclosure and non-competition provisions. There are no prior superior rights or infringing uses actually known to us that could materially affect your use of the copyrights, trade secrets, processes, methods, procedures, or other proprietary information described above. There are no agreements currently in effect that limit our rights to use or license the above-mentioned copyrights in any manner.

### **Confidential Information**

You must not, during or after the term of your Franchise Agreement, divulge or use for the benefit of anyone else any confidential information, knowledge, or know-how concerning the 1-800-Flowers System, or the methods of operation of the Franchised Unit. You may divulge our confidential information only to supervisory or managerial personnel who must have access to it to perform their employment duties. All of our confidential information and other data, which we designate as confidential, will be confidential

information for purposes of your Franchise Agreement. You must sign our standard form Confidentiality Agreement (**Exhibit G**), in our discretion, if we provide you with confidential information before you sign your Franchise Agreement.

All data pertaining to your Franchised Unit and all data you create or collect in connection with your operation of the Franchised Unit, including, data pertaining to, or otherwise concerning, the Franchised Unit's customers and the names and other pertinent data about the venues you service, or that you otherwise collect, including data uploaded to, or downloaded from your computer system (collectively "**1-800-Flowers Data**") is our sole property. We have the right to review and use the 1-800-Flowers Data in any manner that we deem appropriate without any compensation to you. You must provide us with copies and/or originals of the 1-800-Flowers Data within 5 days after our request for the same, at any time during the term of your Franchise Agreement and upon the expiration and/or termination of your Franchise Agreement, at no cost to us. We license the use of the 1-800-Flowers Data to you during the term of your Franchise Agreement, at no cost to you, solely for your use in the operation of your Franchised Unit. You must maintain the 1-800-Flowers Data as secret and as confidential information and must not make any part of the 1-800-Flowers Data available to any unauthorized person without our prior written consent, and then only in the manner we permit.

### **Improvements**

If you develop any new concept, process or improvement in the 1-800-Flowers System (an "**Improvement**"), you must promptly notify us and provide us with all necessary related information, without compensation. Any Improvement will become our sole property, and we will be the sole owner of all related intellectual property rights. You must assign to us any rights you may have or acquire in the Improvements, including the right to modify the Improvements, and you will waive and/or release all rights of restraint and moral rights to the Improvements. You will assist us in obtaining and enforcing the intellectual property rights to any Improvement in any and all countries and you agree to provide us with and sign all necessary documentation for obtaining and enforcing such rights. You will appoint us as your agent and attorney-in-fact to sign and file any documentation and to do all other lawful acts to further the prosecution and issuance of intellectual property rights related to any Improvement.

The goodwill associated with all phone and fax numbers, email addresses, domain names, websites or webpages, social media and other Internet addresses used in operation of the Franchised Unit is an asset that belongs to us. Upon cancellation, termination or expiration of the Franchise Agreement, you will be deemed to have assigned to us or our designee all right, title and interest in and to these and/or services associated with the same. You must sign the instruments we request to confirm the assignments and transfers to us.

## **ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

You must designate an individual (a "**Principal Owner**") to serve as the primary operator of the Franchised Unit. The Principal Owner must own at least a 51% interest in the Franchised Unit, serve as your authorized representative, act as a liaison between you and us, and have the authority to act on your behalf without the active participation of any other owner of the Franchised Unit. Your Principal Owner must devote his or her full time, attention and best efforts to the performance of your duties under the Franchise Agreement during open and operating hours. If you are the Principal Owner of multiple Franchised Units, you will satisfy this requirement so long as you devote your full time and attention to the management of all of your Franchised Units during open and operating hours. If you or your Principal Owner is absent from the operation of the

Franchised Unit or does not participate in the day-to-day operations of your Franchised Unit, then you must provide for direct, on-premises supervision of the Franchised Unit by a general manager (a “**General Manager**”). The identity of your General Managers must be disclosed to us. We will train the General Managers of the Franchised Unit, according to our Manuals.

All personnel you employ at the Franchised Unit must maintain the standards of sanitation, cleanliness and demeanor that we establish. All personnel you employ at the Franchised Unit must be trained in accordance with our then-current training and operations standards and must maintain the standards of training, competence, cleanliness and demeanor that will be established by us. You must ensure that only personnel performing supervisory or managerial functions have access to our confidential information, and all such personnel agree not to disclose, and do not disclose, any confidential information that may be revealed to them during the period of their employment and, upon our request, shall execute a confidentiality agreement, in a form prescribed by us. We shall be deemed to be a third-party beneficiary under any such confidentiality agreements.

All employees you hire or employ at your Franchised Unit will be your employees and your employees alone, and will not, for any purpose, be deemed to be our employees or subject to our direct or indirect control, most particularly with respect to any mandated or other insurance coverage, taxes or contributions, or requirements regarding withholdings, levied or fixed by any governmental authority. You will file your own tax, regulatory and payroll reports, and be responsible for all employee benefits and workers compensation insurance payments for your employees and operations. We will not have the power to hire or fire your employees. Our authority under the Franchise Agreement to train and approve your supervisory or managerial personnel for qualification to perform certain functions at your Franchised Unit does not directly or indirectly vest us with the power to hire, fire or control any of your personnel. You, and you alone, will be solely responsible for all hiring and employment decisions and functions relating to your Franchised Unit, including those related to hiring, firing, training, establishing remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, and supervision and discipline of employees, regardless of whether you have received advice from us on these subjects or not. Any guidance we may give you regarding employment policies should be considered merely as examples. You will be responsible for establishing and implementing your own employment policies, and should do so in consultation with local legal counsel experienced in employment law.

The term “**Franchisee**” as used in the Franchise Agreement refers to each person that signs the Franchise Agreement as Franchisee, and to each person that is one of the spouses, partners, shareholders, trustees, or beneficiaries of any person that signs the Franchise Agreement as Franchisee, and applies equally to each such person as if he, she, or it was the only named Franchisee in the Franchise Agreement. Your obligations and the obligations of each spouse, partner, shareholder, trustee, and beneficiary of any person that signs the Franchise Agreement as Franchisee, are joint and several. We require each of these persons to sign our form of Personal Guaranty, which is attached as **Exhibit B** to the Franchise Agreement.

## **ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You must offer and sell only those goods and offer and provide only those services that we have approved. You must offer and sell all goods and offer and provide all services that we designate as required for all franchisees. We have the right to add, and the right to remove, authorized goods and services that you must offer. There are no limits on our right to do so. You must use our current, approved designs for merchandise placement in your Franchised Unit and must stock an inventory of these items in the amounts we determine.

Currently, we require that you offer 30% of the Core Retail SKUs, and the remaining SKUs that you offer for sale must be purchased from one of our currently approved vendors. We have the right to require you to participate in market research programs, the test-marketing of new products and other similar programs for the benefit of the 1-800-Flowers System, and you must provide us with timely reports and test results of these tests and programs for our review, analysis and compilation.

You may not permit any intoxicating beverages of any kind to be sold, dispensed or consumed, in or from the Franchised Unit, without our prior written consent. Except with our prior written approval, you may not cause or permit vending machines, gaming machines, pay telephones, automatic teller machines, Internet kiosks or any other mechanical or electrical device to be installed or maintained at the Franchised Location.

You have the right to solicit and accept orders through BloomNet or recognized floral wire services, pre-approved local yellow pages advertising and other pre-approved media, as we deem appropriate, without restriction, but you may not use other alternative distribution channels to solicit or fill orders.

If you are signing a Co-Brand Addendum, we may, in our discretion, permit you to use an existing website and/or domain name, but if your domain name or URL contains any of our 1-800-Flowers Marks, you must transfer the domain name or URL to us when we direct you to do so and on the expiration or termination of your Franchise Agreement. You may not solicit or accept orders through your website for 1-800-Flowers' or its subsidiaries' products.

**ITEM 17  
RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

**This table lists certain important provisions of the Franchise Agreement and related agreements. You should read these provisions in the agreements attached to this Disclosure Document.**

**FRANCHISE AGREEMENT (INCLUDING CO-BRAND ADDENDUM AND FRUIT BOUQUETS ADDENDUM)**

Provision	Section In Franchise Agreement (Exhibit A)	Summary
a. Length of the franchise term	Section 4(a) of Franchise Agreement	Term is equal to the lesser of the lease term or 10 years, unless the parties agree otherwise, but in no event will the term be greater than 10 years, commencing on the Commencement Date and expiring on the Expiration Date (both as defined in the Franchise Agreement), unless sooner terminated as provided in the Franchise Agreement. If your lease has a term of less than 10 years, then the Franchise Agreement will have a term equal to your lease term, except that, if you meet certain conditions, at your option you may relocate your Franchised Unit at the end of your lease and operate from the new site for the remainder of your 10 year term.
b. Renewal or extension of the term	Sections 4(b) - 4(d), 4(f) of Franchise Agreement	We may grant you the right to a Successor Franchise for an additional term up to 10 years if you are eligible for a Successor Franchise. If you do not sign our Successor Franchise Agreement prior to the Expiration Date and you continue to

Provision	Section In Franchise Agreement (Exhibit A)	Summary
		accept the benefits of the Franchise Agreement after it expires, then at our option, the Franchise Agreement may be treated either as (i) expired as of the Expiration Date with you then operating without a license to do so and in violation of our rights; or (ii) continued on a month-to-month basis until we provide you with written notice of our intent to terminate.
c. Requirements for Franchisee to renew or extend	Sections 4(b) - 4(d) of Franchise Agreement	Upon expiration of the Franchise Agreement, we may extend the term of the franchise and grant you a Successor Franchise for the Franchised Unit on the terms in our then-current form of Successor Franchise Agreement for an additional term of up to 10 years. You must satisfy eligibility requirements per our policies, sign Successor Franchise Agreement and General Release substantially in the form of <b>Exhibit H</b> attached to this Disclosure Document, pay fee and remodel, etc. If you have added a Fruit Bouquets Business into your Franchised Unit, you must also pay the Successor Franchise Fee for this program. You may be asked to sign a Successor Franchise Agreement with materially different terms and conditions from your original Franchise Agreement.
d. Termination by Franchisee	Not applicable	You have the right to seek to terminate your agreement on grounds available to you by law (subject to state law).
e. Termination by Franchisor without cause	Section 21(a)(xvii) of Franchise Agreement	We have the right to terminate for any reason before your completion of the Initial Training Program.
f. Termination by Franchisor with cause	Section 9(g) and Article 21 of Franchise Agreement	We have the right to terminate if you are in default and can resort to our security interest in the assets of Franchised Unit.
g. "Cause" defined – curable defaults	Sections 21(a)(xiii)-21(a)(xxii) and 21(b) of Franchise Agreement	You have 10 days to cure monetary defaults; 30 days to cure non-monetary defaults.
h. "Cause" defined – non-curable defaults	Sections 21(a)(i-xii), 21(a)(xxiii) and 21(d) of Franchise Agreement	Non-curable defaults: convictions; expiration of term of Franchise Agreement, sublease or third-party lease, unless otherwise provided in the Franchise sublease or third-party lease, repeated defaults even if cured; abandonment; unapproved transfers; bankruptcy; failure to report sales; destruction of sales records; failure, for a period of 10 days after notification of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the franchise; failure to have Franchised Unit built-out and required signage installed within 9 months after Franchise Agreement signed (or fully co-branded within 90 days if you sign a Co-Brand Addendum); unauthorized disclosure of the contents of the Manuals; misuse of the 1-800-Flowers Marks; a breach of your obligations under the Franchise Agreement, which by its nature is not capable of being cured by you.

Provision	Section In Franchise Agreement (Exhibit A)	Summary
i. Franchisee's obligations on termination/non-renewal	Sections 16(b) and 16(e), and Article 22 of Franchise Agreement	Obligations include complete de-identification and payment of amounts due; discontinue use of 1-800-Flowers Marks and 1-800-Flowers Trade Practices; notify phone company; return Manuals; non-solicitation and non-compete; we have right to purchase unused inventory that contains the 1-800-Flowers Marks.
j. Assignment of contract by Franchisor	Section 17(a) of Franchise Agreement	No restriction on our right to assign.
k. "Transfer" by Franchisee – definition	Section 17(b) of Franchise Agreement	Includes transfer of franchise or ownership change.
l. Franchisor's approval of transfer by Franchisee	Section 17(b) of Franchise Agreement	We have the right to approve all transfers but will not unreasonably withhold approval.
m. Conditions for Franchisor's approval of transfer	Sections 17(b), 17(c), 17(d) and 17(f) of Franchise Agreement	Transferee qualifies, transfer fee paid, purchase agreement approved, training arranged, sign General Release substantially in the form of <b>Exhibit H</b> attached to this Disclosure Document, current Franchise Agreement signed by transferee; transferee pays Remodeling Security Deposit if we require it; upon our request, you must sign a continuing guarantee of transferee's obligations under the new Franchise Agreement. If you added a Fruit Bouquets Business into your Franchised Unit, it must be transferred at the same time to transferee.
n. Franchisor's right of first refusal to acquire Franchisee's business	Section 17(c) of Franchise Agreement	We have the right to match any offer for the Franchised Unit.
o. Franchisor's option to purchase Franchisee's business	Not Applicable	Not Applicable.
p. Death or disability of Franchisee	Section 17(e) of Franchise Agreement	Franchise must be assigned by estate to an approved buyer within 6 months.
q. Non-competition covenants during the term of the franchise	Section 16(a) of Franchise Agreement Section 2.12 of Co-Brand Addendum	No involvement in competing business during the term of the franchise (subject to state law).
r. Non-competition covenants after the franchise is terminated or expires	Sections 16(b), 16(c) and 18(c) of Franchise Agreement Section 2.13 of Co-Brand Addendum	No competing business for 2 years within 10 miles of another 1-800-Flowers Shop, including after assignment. If you violate the post-term covenant not to compete, you must pay us, throughout the 2-year period following the termination, transfer, or expiration of your Franchise Agreement, 5% of the gross revenue of any business that provides similar services at your Franchised Unit or any site within 10 miles of any 1-800-Flowers Shop or your Franchised Unit. No use of our Marks, Trade Secrets or Confidential Information after termination. All the above is subject to state law.



<b>Provision</b>	<b>Section In Franchise Agreement (Exhibit A)</b>	<b>Summary</b>
s. Modification of the Agreement	Sections 10(b), 15(d) and 23(d) of Franchise Agreement	No modifications generally, but the Franchise Manual and the Fruit Bouquets Manual (if you add a Fruit Bouquets Business into your Franchised Unit) are subject to change.
t. Integration/ merger clause	Section 23(d) of Franchise Agreement	Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises outside of this Disclosure Document, the Franchise Agreement and its attachments may not be enforceable. Nothing in the Franchise Agreement or in any related exhibit is intended to disclaim the representations we made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	Not Applicable	Not Applicable.
v. Choice of forum	Section 23(s) of Franchise Agreement	Must be in Nassau County or Suffolk County, New York, in the Supreme Court of the State of New York, Nassau County, or the United States District Court in and for the Eastern District of New York. A right to a jury trial is waived (subject to state law).
w. Choice of law	Section 23(s) of Franchise Agreement	Governed by New York law (subject to the exception in Section 23(s) and applicable state law).

### **SUBLEASE**

<b>Provision</b>	<b>Section In Sublease (Exhibit D)</b>	<b>Summary</b>
a. Length of the term	Article 4 of Sublease	Term is equal to 10 years or the term of the Master Lease less one day.
b. Renewal or extension of the term	Sections 4(a) and 4(b) of Sublease	If you are granted a Successor Franchise, you can renew if extension rights available in Master Lease.
c. Requirements for Sublessee to renew or extend	Sections 4(a) and 4(b) of Sublease	You must be granted a Successor Franchise and give notice of your desire to renew the Sublease not later than 30 days before notice is due to the landlord under the Master Lease.
d. Termination by Sublessee	Not Applicable	Not Applicable, subject to state law.
e. Termination by Franchisor without cause	Not Applicable	Not Applicable.
f. Termination by Franchisor with cause	Article 12 of Sublease	We have the right to terminate if you are in default.
g. "Cause" defined – curable defaults	Article 12 of Sublease	You have ability to cure non-payment of rent and other defaults listed in Section 12.
h. "Cause" defined – non-curable defaults	Article 12 of Sublease	Per Master Lease.
i. Sublessee's obligations on termination/non-renewal	Article 12 of Sublease	Per Master Lease.
j. Assignment of contract by Franchisor	Section 13(g) of Sublease	Terms of Sublease will be binding upon any assignees.

<b>Provision</b>	<b>Section In Sublease (Exhibit D)</b>	<b>Summary</b>
k. "Transfer" by Sublessee - definition	Article 11 of Sublease	Includes transfer of franchise or ownership change.
l. Franchisor's approval of transfer by Sublessee	Article 11 of Sublease	We have the right to approve all transfers, but will not unreasonably withhold approval.
m. Conditions for Franchisor's approval of transfer	Section 11(a) of Sublease	Per Franchise Agreement.
n. Franchisor's right of first refusal to acquire Sublessee's business	Not Applicable	Not Applicable.
o. Franchisor's option to purchase Sublessee's business	Not Applicable	Not Applicable.
p. Death or disability of Sublessee	Not Applicable	Not Applicable.
q. Non-competition covenants during the term of the Sublease	Not Applicable	Not Applicable, subject to state law.
r. Non-competition covenants after the Sublease is terminated or expires	Not Applicable	Not Applicable, subject to state law.
s. Modification of the Sublease	Section 13(h) of Sublease	No modifications generally without written agreement of both parties.
t. Integration/ merger clause	Section 13(h) of Sublease	Only the terms of Sublease are binding (subject to state law). Any other promises may not be enforceable. Nothing in the Sublease or in any related exhibit is intended to disclaim the representations we made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	Not Applicable	Not Applicable.
v. Choice of forum	Section 13(w) of Sublease	Must be in Nassau County or Suffolk County, New York, in the Supreme Court of the State of New York, Nassau County, or the United States District Court in and for the Eastern District of New York (subject to state law).
w. Choice of law	Section 13(w) of Sublease	Governed by New York law.

**PREMIER ORDER FULFILLMENT AGREEMENT**

<b>Provision</b>	<b>Section In Premier Order Fulfillment Agreement (Exhibit M-1)</b>	<b>Summary</b>
a. Length of the term	Article 4 of Premier Order Fulfillment Agreement	One year.
b. Renewal or extension of the term	Article 4 of Premier Order Fulfillment Agreement	Automatic one-year renewals, unless terminated by either party at least 15 days before agreement is to be renewed.

<b>Provision</b>	<b>Section In Premier Order Fulfillment Agreement (Exhibit M-1)</b>	<b>Summary</b>
c. Requirements for Florist to renew or extend	Not applicable	Not applicable.
d. Termination by Florist	Article 4 of Premier Order Fulfillment Agreement	Florist has the right to terminate on 45 days' notice (subject to state law).
e. Termination by 800-Flowers without cause	Section 4(b) of Premier Order Fulfillment Agreement	Either party may terminate on 45 days' notice.
f. Termination by 800-Flowers with cause	Article 4 of Premier Order Fulfillment Agreement	800-Flowers has the right to terminate if you are in default.
g. "Cause" defined – curable defaults	Article 4 of Premier Order Fulfillment Agreement	Defaults in performance of obligations under Agreement.
h. "Cause" defined – non-curable defaults	Article 4 of Premier Order Fulfillment Agreement	Bankruptcy, insolvency; termination of other Agreements.
i. Florist's obligations on termination/non-renewal	Sections 2(b), 2(e) and 12(b) of Premier Order Fulfillment Agreement	Cannot use Licensed Property.
j. Assignment of contract by 800-Flowers	Section 14(g) of Premier Order Fulfillment Agreement	Unrestricted right to assign without Florist's consent.
k. "Transfer" by Florist – defined	Section 14(g) of Premier Order Fulfillment Agreement	Includes ownership change and change in legal structure of Florist.
l. 800-Flowers' approval of transfer by Florist	Section 14(g) of Premier Order Fulfillment Agreement	Agreement may not be assigned without 800-Flower's approval.
m. Conditions for 800-Flowers' approval of transfer	Section 14(g) of Premier Order Fulfillment Agreement	Sign new and then-current Premier Order Fulfillment Agreement and any other related agreements.
n. 800-Flowers' right of first refusal to acquire Florist's business	Not applicable	Not applicable.
o. 800-Flowers' option to purchase Florist's business	Not applicable	Not applicable.
p. Death or disability of Florist	Not applicable	Not applicable.
q. Non-competition covenants during the term of the Agreement	Not applicable	Not applicable, subject to state law.
r. Non-competition covenants after the Agreement is terminated or expires	Not applicable	Not applicable, subject to state law.
s. Modification of the Agreement	Section 14(a) of Premier Order Fulfillment Agreement	No modifications generally without written agreement of both parties.
t. Integration/ merger clause	Section 14(a) of Premier Order Fulfillment Agreement	Only the terms of the Premier Order Fulfillment Agreement are binding (subject to state law). Any representations or promises made outside of this Disclosure Document and Premier Order Fulfillment Agreement may not be enforceable. Nothing in the Premier Order Fulfillment

<b>Provision</b>	<b>Section In Premier Order Fulfillment Agreement (Exhibit M-1)</b>	<b>Summary</b>
		Agreement or in any related agreement is intended to disclaim the representations we made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	Not applicable	Not applicable.
v. Choice of forum	Section 14(f) of Premier Order Fulfillment Agreement	Must be in Nassau County or Suffolk County, New York, in the Supreme Court of the State of New York, Nassau or the United States District Court in and for the Eastern District of New York. A right to a jury trial is waived (subject to state law).
w. Choice of law	Section 14(f) of Premier Order Fulfillment Agreement	New York law applies (subject to state law).

**FRUIT BOUQUETS ORDER FULFILLMENT AGREEMENT**

<b>Provision</b>	<b>Section In Fruit Bouquets Order Fulfillment Agreement (Exhibit M-2)</b>	<b>Summary</b>
a. Length of the term	Article 4 of Fruit Bouquets Order Fulfillment Agreement	One year.
b. Renewal or extension of the term	Article 4 of Fruit Bouquets Order Fulfillment Agreement	Automatically renewed for successive one-year terms.
c. Requirements for Fulfiller to renew or extend	Not applicable	Not applicable.
d. Termination by Fulfiller	Article 4 of Fruit Bouquets Order Fulfillment Agreement	Fulfiller may terminate upon 30 days' notice (subject to state law).
e. Termination by 800 -Flowers without cause	Article 4 of Fruit Bouquets Order Fulfillment Agreement	Either party may terminate on 30 days' prior written notice.
f. Termination by 800 -Flowers with cause	Article 4 of Fruit Bouquets Order Fulfillment Agreement	800-Flowers has the right to terminate on 30 days' prior written notice.
g. "Cause" defined – curable defaults	Article 4 of Fruit Bouquets Order Fulfillment Agreement	Defaults in performance of obligations under Agreement.
h. "Cause" defined – non-curable defaults	Article 4 of Fruit Bouquets Order Fulfillment Agreement	Failure to meet performance standards.
i. Fulfiller's obligations on termination/non-renewal	Section 2(c) of Fruit Bouquets Order Fulfillment Agreement	Cannot use Licensed Property.
j. Assignment of contract by 800-Flowers	Section 14(g) of Fruit Bouquets Order Fulfillment Agreement	No restriction on 1-800-Flowers' right to transfer.
k. "Transfer" by Fulfiller-defined	Section 14(g) of Fruit Bouquets Order Fulfillment Agreement	Includes ownership change and change in legal structure of Fulfiller.

Provision	Section In Fruit Bouquets Order Fulfillment Agreement (Exhibit M-2)	Summary
l. 800-Flowers' approval of transfer by Fulfiller	Section 14(g) of Fruit Bouquets Order Fulfillment Agreement	No transfer without 800-Flowers' approval.
m. Conditions for 800-Flowers' approval of transfer	Section 14(g) of Fruit Bouquets Order Fulfillment Agreement	Sign new and then-current Fruit Bouquets Order Fulfillment Agreement and any other related agreements.
n. 800-Flowers' right of first refusal to acquire Fulfiller's business	Not applicable	Not applicable.
o. 1-800-Flowers' option to purchase Fulfiller's business	Not applicable	Not applicable.
p. Death or disability of Fulfiller	Not applicable	Not applicable.
q. Non-competition covenants during the term of the Agreement	Section 15(a) of Fruit Bouquets Order Fulfillment Agreement	Cannot create or deliver cut fruit bouquets or similar products for or to any third-party, except for orders you receive directly from the consumer through one of your normal channels of sale, or orders you are fulfilling for another one of our Fruit Bouquets franchisees, or a fulfiller who has signed a Fruit Bouquets Order Fulfillment Agreement with 800-Flowers, which is in effect at the time you receive the order (subject to state law).
r. Non-competition covenants after the Agreement is terminated or expires	Article 15 of Fruit Bouquets Order Fulfillment Agreement	Cannot create, market, fulfill or distribute any cut fruit arrangements or similar products for or to any third-party at or within a 25-mile radius of the business location(s) from your which Fulfiller fulfills fruit arrangements for 2 years after termination or expiration (subject to state law).
s. Modification of the Agreement	Section 14(a) of Fruit Bouquets Order Fulfillment Agreement	No modifications generally without written agreement of both parties.
t. Integration/ merger clause	Section 14(a) of Fruit Bouquets Order Fulfillment Agreement	Only the terms of the Fruit Bouquets Order Fulfillment Agreement are binding (subject to state law). Any representations or promises outside the Fruit Bouquets Order Fulfillment Agreement may not be enforceable. Nothing in the Fruit Bouquets Order Fulfillment Agreement or in any related agreement is intended to disclaim the representations we made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	Not applicable.	Not applicable.

<b>Provision</b>	<b>Section In Fruit Bouquets Order Fulfillment Agreement (Exhibit M-2)</b>	<b>Summary</b>
v. Choice of forum	Section 14(f) of Fruit Bouquets Order Fulfillment Agreement	Must be in Nassau County or Suffolk County, New York, in the Supreme Court of the State of New York, Nassau County or the United States District Court in and for the Eastern District of New York. A right to a jury trial is waived (subject to state law).
w. Choice of law	Section 14(f) of Fruit Bouquets Order Fulfillment Agreement	Governed by New York law (subject to state law).

**BLOOMNET MEMBERSHIP AGREEMENT & BLOOMNET TECHNOLOGIES SYSTEMS AGREEMENT**

<b>Provision</b>	<b>Section In Agreements (Exhibits N-1 And N-2)</b>	<b>Summary</b>
a. Length of the term	Article 2 of BloomNet Technologies Systems Agreement	Agreement continues in effect until terminated.
b. Renewal or extension of the term	Article 2 of BloomNet Technologies Systems Agreement	Agreement continues in effect until terminated.
c. Requirements for Customer to renew or extend	Not Applicable	Agreement continues in effect until terminated.
d. Termination by Customer	Section " <u>Termination</u> " of BloomNet Membership Agreement; Article 8 of BloomNet Technologies Systems Agreement	Customer has the right to terminate for any reason on 30 days' notice (subject to state law).
e. Termination by BloomNet without cause	Section " <u>Termination</u> " of BloomNet Membership Agreement; Article 8 of BloomNet Technologies Systems Agreement	BloomNet has the right to terminate the BloomNet Membership Agreement at any time and for any reason.  BloomNet Technologies Systems has the right to terminate for any reason on 30 days' notice.
f. Termination by BloomNet Technologies with cause	Section " <u>Termination</u> " of BloomNet Membership Agreement; Article 8 of BloomNet Technologies Systems Agreement	BloomNet Technologies System has the right to terminate the Agreement if you fail to make payments within 10 days, fail to abide by the terms of the Agreement, cease to operate business, and upon insolvency and bankruptcy.
g. " <u>Cause</u> " defined – curable defaults	Article 8 of BloomNet Technologies Systems Agreement	Failure to make payments within 10 days, failure to abide by the terms of the Agreement, cease to operate business, and upon insolvency and bankruptcy.
h. " <u>Cause</u> " defined – non-curable defaults	Article 8 of BloomNet Technologies Systems Agreement	If Customer repeats violations of the terms of the Agreement.

Provision	Section In Agreements (Exhibits N-1 And N-2)	Summary
i. Customer's obligations on termination/non-renewal	Section " <u>Termination</u> " of BloomNet Membership Agreement; Article 8 of BloomNet Technologies Systems Agreement.	Cease using licensed material, return hardware, software and manuals.
j. Assignment of contract by BloomNet	Article 9 of BloomNet Technologies Systems Agreement	BloomNet has the right to assign without restriction.
k. " <b>Transfer</b> " by Customer - definition	Section " <u>Change of Ownership</u> " of BloomNet Membership Agreement; Article 9 of BloomNet Technologies Systems Agreement	Any assignment of rights, duties or obligations under the Agreement.
l. BloomNet Technologies Systems' approval of transfer by Customer	Article 9 of BloomNet Technologies Systems Agreement	BloomNet has the right to approve all transfers.
m. Conditions for BloomNet Technologies Systems' approval of transfer	Article 9 of BloomNet Technologies Systems Agreement	BloomNet has the right to approve all transfers.
n. BloomNet Technologies Systems' right of first refusal to acquire Customer's business	Not applicable	Not applicable.
o. BloomNet Technologies Systems' option to purchase Customer's business.	Not applicable	Not applicable.
p. Death or disability of Customer.	Not applicable	Not applicable.
q. Non-competition covenants during the term of the Agreement.	Not Applicable	Not applicable, subject to state law.
r. Non-competition covenants after the Agreement is terminated or expires	Not Applicable	Not applicable, subject to state law.
s. Modification of the Agreement	Article 9 of BloomNet Technologies Systems Agreement	No modifications without written agreement of both parties.

Provision	Section In Agreements (Exhibits N-1 And N-2)	Summary
t. Integration/merger clause	Article 9 of BloomNet Technologies Systems Agreement	Only the terms of BloomNet Membership Agreement and BloomNet Technologies Systems Agreement are binding (subject to state law). Any representations or promises made outside of this Disclosure Document and BloomNet Membership Agreement and BloomNet Technologies Systems Agreement may not be enforceable. Nothing in the BloomNet Membership Agreement or BloomNet Technologies Systems Agreement is intended to disclaim the representations we made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	Article 9 of BloomNet Technologies Systems Agreement	We both agree to submit disputes to binding arbitration.
v. Choice of forum	Section " <u>Governing Law</u> " BloomNet Membership Agreement	Must be in Nassau County or Suffolk County, New York, in the Supreme Court of the State of New York, Nassau County, or the United States District Court in and for the Eastern District of New York. A right to a jury trial is waived (subject to state law).
w. Choice of law	Article 9 of BloomNet Technologies Systems Agreement	Governed by New York law (subject to state law).

**ITEM 18  
PUBLIC FIGURES**

We do not use any public figure to promote our franchise, except that 1-800-Flowers' founder and Executive Chairman, James McCann, and its Chief Executive Officer, Christopher McCann, do promote our company in media advertisements. They are not compensated for this promotion over and above their normal compensation as Executive Chairman and Chief Executive Officer, respectively, of 1-800 Flowers.

**ITEM 19  
FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the Disclosure Document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance of a particular location or under particular circumstances.

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting our Senior Vice President - Franchising, Vincent J. McVeigh, Two Jericho Plaza,



Suite 200, Jericho, New York 11753, (516) 237-6000, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

**TABLE NO. 1  
SYSTEM WIDE OUTLET SUMMARY  
FOR FISCAL YEARS 2019 TO 2021**

Outlet Type	Year	Outlets At The Start Of The Year	Outlets At The End Of The Year	Net Change* (+ Or -)
<b>Franchised</b>				
	2019	76*	77*	+1
	2020	77*	73*	-4
	2021	73*	65*	-8
<b>Company-Owned</b>				
	2019	1	1	0
	2020	1	1	0
	2021	1	1	0
<b>Total Outlets</b>				
	2019	77*	78*	+1
	2020	78*	74*	-4
	2021	74*	66*	-8

\* 9 design centers are included in the totals.

The Franchised Outlets reflected in this Item 20 include 32 franchisees who co-branded their 35 Existing Flower Shops with 1-800-Flowers in the last 3 years, and 18 franchisees who operate 21 standard retail flower shops and 9 design centers, and 1 company owned retail flower shop operated by Retail. Some of the Franchised Outlets reflected in this Item 20 also include Fruit Bouquets Businesses within them. A Fruit Bouquets Business may only be added into a Franchised Unit. Consequently, we do not count Fruit Bouquets Businesses separately as the Fruit Bouquets Program is currently an add-on program at Franchised Units for our franchisees and not a stand-alone separate franchise.

**TABLE NO. 2  
TRANSFER OF OUTLETS FROM FRANCHISEES TO NEW OWNERS  
(OTHER THAN FRANCHISOR OR AN AFFILIATE)  
FOR FISCAL YEARS 2019 TO 2021**

State	Year	Number Of Transfers
<b>Arizona</b>		
	2019	1
	2020	0
	2021	0
<b>Total Outlets</b>		
	2019	1
	2020	0
	2021	0

**TABLE NO. 3  
STATUS OF FRANCHISED OUTLETS  
FOR FISCAL YEARS 2019 TO 2021**

State	Year	Outlets At Start Of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired By Franchisor	Ceased Operations -Other Reasons	Outlets At End Of The Year
<b>Arizona**</b>								
	2019	3*	1	0	0	0	1	3*
	2020	3*	0	0	0	0	0	3*
	2021	3*	0	0	0	0	0	3*
<b>California**</b>								
	2019	7	1	0	0	0	0	8
	2020	8	0	0	0	0	0	8
	2021	8	0	0	0	0	0	8
<b>Colorado**</b>								
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
<b>Florida**</b>								
	2019	13*	0	0	0	0	0	13*
	2020	13*	0	0	0	0	5	8*
	2021	8*	0	1	0	0	2	5*
<b>Georgia</b>								
	2019	1*	0	0	0	0	0	1*
	2020	1*	0	0	0	0	0	1*
	2021	1*	0	0	0	0	0	1*
<b>Illinois**</b>								
	2019	2	0	0	0	0	0	2
	2020	2	1	0	0	0	0	3
	2021	3	0	0	0	0	0	3
<b>Maryland**</b>								
	2019	4	0	0	0	0	0	4
	2020	4	0	1	0	0	0	3
	2021	3	0	0	0	0	0	3
<b>Massachusetts</b>								
	2019	2*	0	0	0	0	0	2*
	2020	2*	0	0	0	0	0	2*
	2021	2*	0	0	0	0	0	2*
<b>Michigan</b>								
	2019	2*	0	0	0	0	0	2*
	2020	2*	0	0	0	0	0	2*
	2021	2*	0	0	0	0	0	2*
<b>Minnesota**</b>								
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1

State	Year	Outlets At Start Of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired By Franchisor	Ceased Operations -Other Reasons	Outlets At End Of The Year
<b>Nevada**</b>								
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
<b>New Jersey**</b>								
	2019	8*	0	0	0	0	0	8*
	2020	8*	0	0	0	0	0	8*
	2021	8*	0	0	0	0	0	8*
<b>New York**</b>								
	2019	11*	0	0	0	0	0	11*
	2020	11*	0	0	0	0	0	11*
	2021	11*	0	0	0	0	1	10*
<b>Oklahoma**</b>								
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
<b>Oregon**</b>								
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
<b>Pennsylvania**</b>								
	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
<b>Texas**</b>								
	2019	10*	1	0	0	0	1	10*
	2020	10*	0	0	0	0	0	10*
	2021	10*	0	0	2	0	0	8*
<b>Virginia**</b>								
	2019	4*	0	0	0	0	0	4*
	2020	4*	0	0	0	0	0	4*
	2021	4*	0	0	0	0	1	3*
<b>Washington**</b>								
	2019	2	0	0	0	0	0	2
	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
<b>Wisconsin**</b>								
	2019	1	0	0	0	0	0	1
	2020	1	1	0	0	0	0	2
	2021	2	0	0	0	0	1	1
<b>Total Outlets</b>								
	2019	76*	3	0	0	0	2	77*
	2020	77*	2	1	0	0	5	73*
	2021	73*	0	1	2	0	5	65*

\*9 design centers are included in the totals.

\*\* The outlets in these states include Co-Brand retail flower shop locations.

The Franchised Outlets reflected in this Item 20 include franchisees that had existing retail stores who co-branded with 1-800-Flowers within the last 3 years. A list containing the names of all 1-800-Flowers franchisees and the addresses and telephone numbers of all of their Franchised Units is attached as **Exhibit O**. A list of the names and last known home addresses and telephone numbers of every 1-800-Flowers franchisee who has had a Franchised Unit terminated, cancelled, or not renewed, or who otherwise voluntarily or involuntarily ceased to do business under their Franchise Agreement during the period June 29, 2020 through June 27, 2021, is attached as **Exhibit P**. There are no franchisees who have not communicated with us within 10 weeks of the issuance date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the 1-800-Flowers franchise system.

During the last 3 fiscal years, we have signed confidentiality clauses with current or former franchisees. In some instances, current and former franchisees have signed provisions restricting their ability to speak openly about their experience with us. You may wish to speak with current and former franchisees, but be aware that not all of these franchisees will be able to communicate with you.

We have not created, sponsored, endorsed or received a request to include in this Disclosure Document a trademark specific franchisee organization associated with the franchise system being offered.

**TABLE NO. 4  
STATUS OF COMPANY AND AFFILIATE OWNED OUTLETS  
FOR FISCAL YEARS 2019 TO 2021**

State	Year	Outlets At Start Of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold To Franchisee	Outlets At End Of The Year
<b>New York</b>							
	2019	1	0	0	0	0	1
	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
<b>Total Outlets</b>							
	2019	1	0	0	0	0	1
	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1

**Note 1:** All numbers in Tables 1-4 above are as of the end of our fiscal year on June 27, 2021, June 28, 2020, and June 30, 2019, respectively. Our fiscal year ends on the Sunday closest to June 30 of each year.

**Note 2:** We do not operate any company-owned stores; however, our affiliate, Retail, currently operates 1 retail flower shop under the trade name "1-800-Flowers" and 8 retail flower shops under the tradename "1-800-Flowers | Flowerama".

**TABLE NO. 5  
PROJECTED OPENINGS AS OF JUNE 27, 2021**

State	Franchise Agreement Signed But Store Not Open	Projected New Franchised Units In The Next Fiscal Year	Projected Company-Owned Openings In Next Fiscal Year
New York	0	0	0
Total	0	0	0

**ITEM 21  
FINANCIAL STATEMENTS**

Attached to this Disclosure Document as **Exhibit Q** are our audited Financial Statements as of June 27, 2021, June 28, 2020 and June 30, 2019, respectively. Our fiscal year ends on the Sunday closest to June 30 of each year.

**ITEM 22  
CONTRACTS**

Copies of the following Agreements proposed for use in this state regarding the offering of a franchise are attached to this Disclosure Document:

<b>Exhibit A</b>	Franchise Agreement
<b>Exhibit B</b>	Co-Brand Franchise Addendum to Franchise Agreement
<b>Exhibit C</b>	Fruit Bouquets Addendum to Franchise Agreement
<b>Exhibit D</b>	Sublease
<b>Exhibit E</b>	Option to Obtain Lease Assignment
<b>Exhibit F</b>	State Specific Addenda
<b>Exhibit G</b>	Confidentiality Agreement
<b>Exhibit H</b>	General Release
<b>Exhibit I</b>	Promissory Note
<b>Exhibit J</b>	Guarantee of Promissory Note
<b>Exhibit K</b>	Security Agreement
<b>Exhibit L</b>	Franchise Compliance Certificate
<b>Exhibit M-1</b>	Premier Order Fulfillment Agreement
<b>Exhibit M-2</b>	Fruit Bouquets Order Fulfillment Agreement
<b>Exhibit N-1</b>	BloomNet Membership Agreement
<b>Exhibit N-2</b>	BloomNet Technologies Systems Agreement

**ITEM 23  
RECEIPTS**

2 copies of an acknowledgment of your receipt of this Disclosure Document appear as **Exhibit S**. Please return one copy to us and retain the other for your records.

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT A  
FRANCHISE AGREEMENT**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**FRANCHISE AGREEMENT**

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**FRANCHISEE**

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**DATE OF AGREEMENT**

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE AGREEMENT  
TABLE OF CONTENTS**

1.	DEFINITIONS .....	1
2.	GRANT OF FRANCHISE .....	4
3.	FRANCHISED LOCATION.....	5
4.	TERM OF FRANCHISE .....	7
5.	INITIAL FRANCHISE FEE .....	9
6.	NON-EXCLUSIVE GRANT .....	10
7.	CONTINUING FRANCHISE FEES.....	10
8.	MARKETING AND MARKETING FUND.....	13
9.	LEASEHOLD IMPROVEMENTS, FIXTURES AND EQUIPMENT.....	16
10.	STANDARDS OF OPERATION AND OBLIGATIONS OF FRANCHISEE.....	18
11.	SERVICES OF FRANCHISOR .....	27
12.	SUPPLIES AND SUPPLIERS.....	29
13.	INSURANCE.....	31
14.	RECORD KEEPING AND ACCOUNTING.....	33
15.	PROTECTION OF TRADEMARKS AND RELATED PROPRIETARY RIGHTS .....	34
16.	COVENANTS <u>REGARDING OTHER BUSINESS INTERESTS</u> .....	36
17.	TRANSFER OF FRANCHISE .....	38
18.	WEB SITES .....	43
19.	INDEMNIFICATION.....	48
20.	RELATIONSHIP OF THE PARTIES .....	48
21.	DEFAULTS .....	49
22.	OBLIGATIONS FOLLOWING TERMINATION.....	52
23.	MISCELLANEOUS.....	56
24.	ANTI-TERRORISM LAWS.....	61
	SIGNATURES.....	62

**EXHIBITS**

EXHIBIT A	FRANCHISED LOCATION
EXHIBIT B	GUARANTEE OF FRANCHISE AGREEMENT
EXHIBIT C	ENTITY INFORMATION DISCLOSURE



**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** (this "**Agreement**") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), by and between **1-800-FLOWERS.COM FRANCHISE CO., INC.**, a Delaware corporation ("**Franchisor**"), on the one hand, and \_\_\_\_\_ ("**Franchisee**"), on the other hand, who are individually referred to in this Agreement as a "**Party**", and collectively referred to in this Agreement as "**Parties**", with reference to the following facts:

A. 1-800-Flowers.Com, Inc., a Delaware corporation ("**Flowers**"), an Affiliate of Franchisor, is the owner of all right, title and interest in and to the trade names, trademarks and service marks "**1-800-Flowers**", "**1-800-Flowers.Com**", "**fruitbouquets.com**" and other marks (collectively, the "**Marks**"), and has authorized Franchisor to franchise the rights to certain valuable trade practices and all of the designs, phrases, logos, signs, formulas, operating procedures, electronic systems, merchandising methods, cost control, accounting and general business techniques, strategies, routines, copyrights, manuals, training materials, bulletins and all other items now or hereafter owned, used, developed or provided by Franchisor (collectively the "**Trade Practices**") in connection with the retail flower business, all of which may be improved, further developed or otherwise modified from time to time.

B. Franchisor and its Affiliates have developed a chain of retail sales outlets for the sale of flowers, plants, related products and services and gift and sentiment items under the 1-800-Flowers trade names and/or the Marks, which are or will be operated in accordance with uniform standards of operation, including, without limitation, design of building, layout of equipment, interior and exterior decoration, signs, operating methods, purchasing programs, items of standard appearance and design, advertising, sales and general business techniques, personnel management and control systems, Franchisor's web site, and bookkeeping and accounting systems (collectively the "**1-800-Flowers System**") to create and maintain a unique appeal to the public. Franchisee acknowledges and agrees that the Trade Practices, the Marks and the 1-800-Flowers System have been developed by Franchisor by the investment of time, skill, effort and money and are widely recognized by the public and are of substantial value.

C. Franchisee desires to obtain a franchise to operate one 1-800-Flowers unit with an on-site production facility (a "**Franchised Unit**") for the "**Term**" at a retail, fixed-location, geographical site selected and acquired in the manner described in Article 3 of this Agreement (the "**Franchised Location**").

**NOW, THEREFORE, IT IS AGREED:**

1. **DEFINITIONS.**

The capitalized terms in this Agreement that are not defined elsewhere in the text of this Agreement are assigned these definitions:

"**Abandonment**" means (i) Franchisee's failure, for a period of five (5) consecutive days at any time during the Term, to keep the Franchised Unit open and operating for business; (ii) Franchisee's continuous failure to keep the Franchised Unit open and operating for any period after which it is not unreasonable under the facts and circumstances for Franchisor to conclude that Franchisee does not intend to continue to operate the Franchised Unit; (iii) Franchisee's inability to continue operation of the Franchised Unit at the Franchised Location; or (iv) a closure of the Franchised Unit required by Applicable Law.

**“Additional Training Fee”** means the fee of \$1,500 that Franchisee must pay to Franchisor as required by the terms of this Agreement.

**“Affiliate”** or **“Affiliates”** mean any Person or Entity that controls, is controlled by, or is under common control with, a Party to this Agreement. Control of a Person or Entity means the power, direct or indirect, to direct or cause the direction of the management and policies of the Person or Entity whether by contract or otherwise.

**“Applicable Law”** means and includes applicable common law and all statutes, laws, rules, regulations, ordinances, policies and procedures established by any Governmental Authority with jurisdiction over the operation of the Franchised Unit that are in effect on or after the Effective Date, as they may be amended from time to time.

**“Business Judgment”** means that Franchisor is allowed to exercise its judgment however Franchisor believes is appropriate in a given circumstance without limitation, subject to the use of that discretion in any reasonable manner as more fully described in Section 23(v).

**“Co-Branding”** means the operation of an independent business, product line or operating system owned or licensed by another Entity (not Franchisor) that is featured or incorporated within the Franchised Unit and operated in a manner that is likely to cause the public to perceive it to be related to the Franchised Unit. An example would be an independent gift store or counter installed within the Franchised Unit.

**“Competitive Business”** means any business that offers flowers, plants, fresh fruit products, including fresh cut fruit bouquets and related products, cookies, candy, chocolates, gift baskets, gift items, novelty items, personalized gift and novelty items and related products and services, other than a 1-800-Flowers shop operated pursuant to a validly subsisting Franchise Agreement with Franchisor, and any business that looks like, copies, imitates, or operates with similar trade dress or décor to a 1-800-Flowers shop.

**“Constituents”** means past, present and future Affiliates, parents, subsidiaries, divisions, partners, members, trustees, receivers, executors, representatives, administrators, owners, shareholders, distributors, parents, predecessors, officers, directors, agents, managers, principals, employees, insurers, successors, assigns, representatives and attorneys and the past, present and future officers, directors, agents, managers, principals, members, employees, insurers, successors, assigns, representatives and attorneys of each of the foregoing.

**“Crisis Management Event”** means any event that occurs at or about the Franchised Unit that has or may cause harm or injury to customers or employees, including, without limitation, tampering/sabotage, contagious diseases, natural disasters, terrorist acts, shootings, epidemics, pandemics or any other circumstance that may damage the 1-800-Flowers System, the Marks, or the image or reputation of Franchisor or its Affiliates.

**“Default”** means any breach of, or failure to comply with, any of the terms or conditions of an agreement.

**“Entity”** means any limited liability company, partnership, trust, association, corporation or other business entity, which is not an individual. If Franchisee is an entity, the Entity shall conduct no business other than the operation of the Franchised Unit.

**“Equity”** means capital stock, membership interests, partnership rights or other equity ownership interests of an Entity.

**“General Manager”** means an individual who is responsible for overseeing the operation of the Franchised Unit in the absence of the Principal Owner.

**“General Release”** means the form of general release prescribed by Franchisor of any and all claims that Franchisee may have or believes it has against Franchisor and/or its Affiliates and their Constituents, whether asserted or unasserted, known or unknown, suspected or unsuspected, based upon anything that has occurred or existed, or failed to occur or exist, from the beginning of time to the date of the General Release, including, without limitation, all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, arising under federal, state and local laws, rules and ordinances. A General Release will cover future consequences of acts, omissions, events and circumstances predating the date of the General Release, but will not release, in advance, future acts, omissions or events that have not occurred at the time the General Release is executed.

**“Good Standing”** means Franchisee is in substantial compliance with the requirements of this Agreement, the Manuals and all other agreements then in effect between Franchisor, or its Affiliates, and Franchisee, and has substantially cured within the time periods set forth in Article 21 each curable Default for which Franchisor has issued a Notice of Default to Franchisee.

**“Governmental Authority”** means all Federal, state, county, municipal and local governmental and quasi-governmental agencies, commissions and authorities.

**“Gross Sales Price”** means the net of service charges, credits, charge backs, refunds, and taxes for a particular product order.

**“Initial Franchise Fee”** means the \$30,000 initial fee that Franchisee must pay Franchisor for a license to use the Marks and the Trade Practices. If the term of the Franchise Agreement is less than 10 years, then the Initial Franchise Fee may be reduced accordingly.

**“Manuals”** means Franchisor’s Operations Manuals, which may consist of one or more manuals, and any other written directives related to the 1-800-Flowers System, as the same may be amended and revised from time to time, including all bulletins, supplements and ancillary and additional manuals and written directives established by Franchisor.

**“Owner”** means each of the individuals listed on Exhibit C and each future direct or indirect shareholder, member, general or limited partner, trustee or other Equity owner of Franchisee. If Franchisee is an Entity, each Owner and each Owner’s spouse shall jointly and severally guarantee Franchisee’s payment and performance of its obligations under this Agreement under a Guarantee in the form of Exhibit B.

**“Person”** means any Entity or natural born individual person.

**“Principal Owner”** means the individual designated by Franchisee on Exhibit C and accepted by Franchisor to serve as the primary operator of the Franchised Unit, who must own at least a fifty-one percent (51%) interest in the Equity of Franchisee, who shall (i) serve as the authorized representative of Franchisee, (ii) act as Franchisee’s representative in all matters with Franchisor as Franchisee’s liaison with Franchisor and the Owners, and (iii) have the authority to act on behalf of Franchisee during the Term without the active participation of any other Owner.

“**Restricted Person**” means Franchisee, and each of its Owners and Affiliates, and the respective officers, directors, managers and Affiliates of each of them, and the spouse of each of the foregoing that are individuals.

“**Term**” means a period of ten (10) years, unless the Parties agree otherwise. In no event shall the Term be greater than ten (10) years.

“**Then-Current**” means, as the context of this Agreement indicates, (i) the form of agreement then-currently provided by Franchisor to similarly situated prospective 1-800-Flowers franchisees that may contain terms and conditions that are materially different from this Agreement, or if not then being so provided, then a form of agreement selected by Franchisor in its discretion that previously has been delivered to and executed by a 1-800-Flowers franchisee of Franchisor, (ii) the fees then-currently charged by Franchisor or its Affiliates, or (iii) Franchisor’s then-current specifications, standards or the like.

## 2. GRANT OF FRANCHISE.

a. **Grant.** Franchisor hereby grants to Franchisee during the Term, a limited, non-exclusive and personal license to use the Marks, the 1-800-Flowers System and the Trade Practices exclusively in connection with the continuous operation of one 1-800-Flowers Franchised Unit throughout the Term at the Franchised Location identified on **Exhibit A**. Franchisee acknowledges and agrees that this Agreement does not confer upon Franchisee any territorial exclusivity, and that Franchisee may face competition from franchisees of Franchisor and/or its Affiliates, from outlets that Franchisor owns, or from other channels of distribution or competitive brands Franchisor controls.

b. **Restriction on Rights.** Franchisee shall use the Trade Practices solely in connection with and exclusively for the promotion and conduct of the business at the Franchised Unit in accordance with the terms of this Agreement, with the Manuals, and with all manuals, instructions, rules and procedures that may be prescribed by Franchisor from time to time. The Marks, trade names, service marks, trademarks, Internet domain names, URLs, and copyrights, and the “1-800”, “1-888”, “1-866” and “1-877” telephone numbers or other like toll-free telephone numbers that may be utilized by Franchisor, or its Affiliates, and their mnemonics (collectively the “**Telephone Numbers**”), and other identifying marks constituting a part of the Trade Practices shall be used solely as designated and approved by Franchisor. Nothing contained in this Agreement shall be construed to authorize or permit the use by Franchisee of the Trade Practices, the Marks, the Internet domain names, URLs, the Telephone Numbers or any confusingly similar imitations of the same at any other location, on the Internet, or for any other purpose whatsoever. In this connection, Franchisee acknowledges and agrees that Franchisor and its Affiliates have the exclusive right to own and operate a business that sells goods and services over the Internet, including the right to display, access and sell such goods and services to buyers located anywhere.

c. **Rights to Trade Practices.** Franchisee acknowledges and agrees that Franchisor has the sole and exclusive rights to the Trade Practices and that no goodwill associated with any of the Trade Practices shall inure to Franchisee at any time. Franchisee further acknowledges and agrees that many items of the Trade Practices constitute trade secrets of Franchisor that are revealed to Franchisee in confidence and that Franchisee shall not, at any time during the Term, or at any time thereafter: (i) use or attempt to use the Trade Practices in connection with any other Entity or business in which he has an interest, direct or indirect; (ii) disclose, duplicate, reveal, sell or subfranchise the Trade Practices, or any part thereof, or seek to transfer any rights in the Trade Practices, except as authorized in this Agreement; or (iii) use the Marks, or marks similar to the Marks, or any name, domain name, URL or the Telephone Numbers as any part of the name of the Entity

operating Franchisee's Franchised Unit or as any part of the name of any other Entity in which Franchisee now or hereafter has any interest, whether direct or indirect.

d. **Reservation of Rights.** Franchisee acknowledges and agrees that notwithstanding the provisions of Section 2(a), Franchisor shall hold and retain the unrestricted right to develop, own and operate, by itself, through its affiliates, or by their franchisees, and to grant others the right to engage in other activities that this Agreement does not expressly prohibit, including, without limitation, the right to:

(i) Develop, own and/or operate, by itself, through its Affiliates, or by their franchisees, and to grant others the right to develop, own and/or operate and issue licenses and franchises to others to develop, own and/or operate 1-800-Flowers and 1-800-Flowers.Com units and other businesses or systems, including, without limitation, retail flower shops that operate under the marks and trade names of its Affiliates, whether or not utilizing the 1-800-Flowers System and Trade Practices anywhere.

(ii) Develop, own and/or operate, by itself, through its Affiliates, or by their franchisees, and to grant others the right to develop, own and/or operate and issue licenses and franchises to others to develop, own and/or operate other methods and channels of distribution utilizing the Marks, the 1-800-Flowers System and Trade Practices and/or the marks and trade names of its Affiliates, 1-800-Flowers trademarks, trade names and service marks, anywhere, including, without limitation, toll-free "1-800", "1-888", "1-866" and "1-877" telephone numbers, domain names, URLs, on-line computer networks and services, the Internet (including, without limitation, any so-called "**virtual stores**"), kiosks, carts, concessions, design centers, other mobile, remote, limited service or non-permanent facilities or other retail operations as a part of larger retail venues such as department stores, supermarkets, distribution centers, shopping malls or in public areas such as amusement parks, airports, train stations, public facilities, college and school campuses, arenas, stadiums, hospitals, office buildings, convention centers, airlines (in-flight service) and military bases.

(iii) Purchase, merge, acquire or affiliate with an existing Competitive Business or franchise network or a non-competitive business or franchise network, chain or any other business regardless of the location of their facilities, and to operate, franchise or license those Competitive Businesses and non-competitive businesses and/or facilities as 1-800-Flowers businesses operating under the Marks or any other marks following Franchisor's purchase, merger, acquisition or affiliation, regardless of the locations of these facilities, which locations Franchisee acknowledges and agrees may be proximate to the Franchised Unit.

### 3. **FRANCHISED LOCATION.**

a. **Selection of Franchised Location.** Franchisee shall exert Franchisee's best efforts to select the Franchised Location. Franchisee shall diligently exert Franchisee's best efforts to select a Franchised Location in Franchisee's geographic area of interest whether presented by Franchisor or identified by Franchisee, in accordance with Franchisor's site selection criteria. Franchisor will provide Franchisee with Franchisor's site selection criteria following the Effective Date. Franchisee shall submit proposed sites for Franchisor's approval in the manner designated by Franchisor, which may change from time to time. Proposed sites will be submitted to Franchisor only after Franchisee has determined that the site is available on generally acceptable terms. Franchisor will review each proposed site and approve, reject or provide comments to Franchisee regarding the site on or about thirty (30) days after receipt by Franchisor of each site proposal. Franchisor will have the sole and absolute discretion to reject sites it deems inappropriate as a location for a Franchised Unit. Franchisor will bear all expenses in connection with its review of proposed sites only for such period of time as Franchisee, in good faith, submits carefully investigated and selected sites for Franchisor's review and approval. Franchisor may voluntarily, and without obligation, assist Franchisee in selecting an acceptable site for the

Franchised Location. Neither Franchisor's assistance, if any, its acceptance of a proposed site, nor its acceptance of a proposed lease shall be construed to ensure or guarantee the profitable or successful operation of the Franchised Unit at the site selected by Franchisee and Franchisor hereby expressly disclaims any responsibility for such profit or success. Franchisee acknowledges and agrees that Franchisor's participation in the selection and/or approval of a Franchised Location shall not constitute any representation or warranty by Franchisor regarding the profitability or success of the Franchised Unit at the Franchised Location or the suitability of the site as the Franchised Location and that Franchisee has sole responsibility for finding the Franchised Location. If Franchisee has not selected an approved Franchised Location within six (6) months from the Effective Date, or has not opened the Franchised Location within nine (9) months from the Effective Date, Franchisor will have the right, in its discretion, to terminate this Agreement.

b. **Acquisition of Franchised Location.** Following the selection and approval of the site for the Franchised Unit, Franchisor shall, in its sole and absolute discretion, either:

(i) Lease or cause a subsidiary or an Affiliate to lease the Franchised Location from a landlord (the "**Master Landlord**") under a master lease (the "**Master Lease**") and either sublease the Franchised Location to Franchisee in accordance with the terms and conditions of Franchisor's Then-Current Sublease (the "**Sublease**"), which may require Franchisee to pay Franchisor additional rent for acting as the tenant under a Master Lease, or lease the Franchised Location to Franchisee on the same, different or additional terms than those contained in the Master Lease as determined by Franchisor, or its subsidiary or Affiliate, in their sole discretion, independent of the terms of the Master Lease; or

(ii) Require Franchisee to enter into a direct lease (a "**Third-Party Lease**") for the Franchised Location with a landlord (a "**Third-Party Landlord**") of the approved site. At Franchisee's request, Franchisor will provide Franchisee with guidelines for a Third-Party Landlord's proposed Third-Party Lease prior to Franchisee's negotiations finalizing a Third-Party Lease. As a condition of Franchisor's approval of a Third-Party Lease, Franchisor will require Franchisee and the Third-Party Landlord to grant Franchisor an option to assume, or have Franchisor's assignee assume, the obligations of the Third-Party Lease in the event of the termination of the Third-Party Lease or this Agreement in accordance with the terms and conditions of Franchisor's standard-form Option to Obtain Lease Assignment Agreement and to grant Franchisor the right to enter the Franchised Unit and the Franchised Location following a termination of the Third-Party Lease and/or this Agreement to de-identify, remove and modify to Franchisor's satisfaction all distinctive design features and characteristics of the Franchised Unit and the Franchised Location, including distinctive interior designs and surface materials and refrigeration equipment, display fixtures, color décor and interior and exterior signs and all other items identifying the Franchised Location as a 1-800-Flowers Franchised Unit. Franchisee must provide Franchisor with a fully signed copy of any lease, following Franchisor's acceptance of the lease.

(iii) Franchisee hereby authorizes Franchisor to communicate with a Third Party Landlord under a Third-Party Lease (and hereby authorizes a Third Party Landlord to communicate with Franchisor) for any purpose and concerning any topic, including de-identification of the Franchised Location following the termination or expiration of this Agreement, Franchisee's sales, Franchisee's Defaults under this Agreement or the Third-Party Lease, and to negotiate a lease for the Franchised Location following the termination or expiration of Franchisee's Third-Party Lease.

c. **Identification of Franchised Location.** Following the acquisition of the Franchised Location, Franchisor and Franchisee shall complete and execute **Exhibit A** to identify the Franchised Location.

d. **Use of Franchised Location.** Franchisee acknowledges and agrees that the Franchised Location shall be used for no purpose whatsoever other than for the operation of the Franchised Unit. Franchisee shall not operate any other business, of any nature whatsoever, in the Franchised Location.

e. **Relocation of Franchised Unit.** To protect the 1-800-Flowers System, the Marks and the goodwill associated with the same, Franchisee may not relocate the Franchised Unit without Franchisor's prior written consent. If Franchisor consents to a relocation, Franchisee shall de-identify the former Franchised Location in the manner described in Section 22(d) below and shall reimburse and indemnify and hold Franchisor harmless from any direct and indirect losses, costs and expenses, including attorneys' fees, arising out of Franchisee's failure to do so. If Franchisor consents to a relocation of the Franchised Unit during the Term, Franchisee may temporarily cease operating the Franchised Unit at its Franchised Location on a date (the "**Temporary Closure Date**") that is no more than twelve (12) months from the date that Franchisor sent its approval of the new Franchised Location. If, subsequent to the Temporary Closure Date, Franchisee reopens the Franchised Unit for business at the new Franchised Location by or before the date that is twelve (12) months after the Temporary Closure Date (the "**Mandatory Reopen Date**"), Franchisee shall have the right to operate the Franchised Unit at the new Franchised Location until the Expiration Date. However, if Franchisee fails to reopen the Franchised Unit for business at the new Franchised Location by or before the Mandatory Reopen Date, then, for the calendar months following the Mandatory Reopen Date, Franchisor shall have the right to monthly estimate and bill Franchisee for continuing franchise fees based upon the amount of continuing franchise fees Franchisor received for the Franchised Unit, plus an additional ten percent (10%) of such amount, during the identical months of the most recent calendar year during which the Franchised Unit was open for business at its prior Franchised Location or, if the Franchised Unit was not in operation during the identical months of that calendar year, based upon the amount of average continuing franchise fees received for the Franchised Unit, plus an additional ten percent (10%) of that amount, during the months the Franchised Unit was in operation during that calendar year. In the alternative, Franchisor may deem Franchisee's failure to reopen the Franchised Unit for business by the Mandatory Reopen Date as a voluntary Abandonment of the Franchised Unit per Section 21(a)(ii) below and shall have the right in its sole discretion to immediately terminate this Agreement.

#### 4. **TERM OF FRANCHISE.**

a. **Term of Agreement.** The Term shall begin on the date that the Franchised Unit opens for business (the "**Commencement Date**") and shall expire on the tenth (10<sup>th</sup>) anniversary of the Commencement Date, unless the Parties agree otherwise (the "**Expiration Date**"), unless sooner terminated as provided in this Agreement. Franchisee shall have no right or option to extend or renew the Term. Following the Commencement Date or the Assignment of the Franchised Unit to Franchisee, Franchisor and Franchisee shall complete and execute **Exhibit A** to memorialize the Commencement Date and the Expiration Date. If the term of the Master Lease and Sublease or Franchisee's Third-Party Lease is for less than ten (10) years, including any extension of the term, the Term shall be identical to the term of the Master Lease (less one (1) day) or Franchisee's Third-Party Lease, as the case may be; however, even if the term of the Master Lease and Sublease or Franchisee's Third-Party Lease is for less than ten (10) years, at Franchisee's option, this Agreement shall not terminate at the expiration of the Master Lease or the Third-Party Lease if: (i) not less than ninety (90) days prior to the expiration of the Master Lease or Third-Party Lease, Franchisee notifies Franchisor in writing of Franchisee's desire to continue to operate the Franchised Unit after the expiration of such Lease; (ii) within one hundred twenty (120) days after the expiration of the term of the Master Lease or the Third-Party Lease, Franchisee purchases or leases a new site that is acceptable to Franchisor and that is within Franchisee's trade area; and (iii) Franchisee opens the Franchised Unit for business at the new site within ninety (90) days after

executing such purchase or lease. If Franchisee meets these conditions, Franchisee shall have the right to operate the Franchised Unit at the new site until the Expiration Date.

b. **Conditions for Successor Franchise.** Upon expiration of the Term, Franchisor shall have the right, but not the obligation, to extend the Term and to grant Franchisee a successor franchise (a “**Successor Franchise**”) for the Franchised Unit on the terms set forth in Franchisor’s Then-Current form of Franchise Agreement (a “**Successor Franchise Agreement**”) for an additional term of up to ten (10) years, provided that, Franchisee is eligible for a Successor Franchise at such time in accordance with the requirements and policies of Franchisor and provided that each of the following conditions is satisfied: (i) Franchisee shall have been in compliance with the terms and conditions of this Agreement, Franchisee’s Sublease or Third-Party Lease and any other agreement between Franchisor or its Affiliates and Franchisee throughout the Term, as determined by Franchisor, in its sole and absolute discretion, (ii) the Franchised Location remains suitable for the operation of a 1-800-Flowers shop under Franchisor’s Then-Current site criteria and Franchisor (under a Master Lease) or Franchisee (under a Third-Party Lease) maintains a right to possession of the Franchised Location; (iii) Franchisee renovates, refurbishes, redecorates, and/or remodels the Franchised Unit as required by Franchisor to conform to the Then-Current brand standards, specifications, format and style of 1-800-Flowers shops, prior to the Expiration Date; (iv) Franchisee shall comply with Franchisor’s Then-Current qualification and training requirements prior to the Expiration Date; (v) Franchisee shall not have committed three (3) or more material Defaults during any eighteen (18) month period during the Term that were subject to notices of Default issued by Franchisor, whether or not the Defaults were cured; (vi) Franchisee shall continue to comply with the terms and conditions of this Agreement; (vii) Franchisee shall provide Franchisor with a written request to extend the Term of the franchise for the Franchised Location six (6) months prior to the scheduled expiration date of the Term; (viii) Franchisee shall execute Franchisor’s Then-Current Successor Franchise Agreement and shall pay Franchisor the sum of \$30,000 as a successor franchise fee prior to the Expiration Date of the Term (if the term of the Successor Franchise Agreement is less than ten (10) years, then the Successor Franchise Fee may be reduced accordingly); (ix) if Franchisee is an Entity, each Owner and each Owner’s spouse shall execute and deliver to Franchisor Franchisor’s Then-Current form of personal guarantee, jointly and severally guaranteeing Franchisee’s performance of its obligations under the Successor Franchise Agreement; and (x) Franchisee shall execute Franchisor’s Then-Current General Release in favor of Franchisor; provided, however, that all rights enjoyed by Franchisee and any causes of action arising in Franchisee’s favor under the provisions of Article 33 of the New York General Business Law and the regulations issued thereunder shall remain in force, it being the intent of the Parties that the non-waiver provisions in New York General Business Law Sections 687.4 and 687.5 shall be satisfied.

c. **Grant of Successor Franchise.** Provided Franchisee has complied with all the conditions set forth in Section 4(b) above, upon receipt of Franchisee’s written request to extend the Term:

(i) Franchisor shall agree to grant Franchisee a Successor Franchise; or

(ii) Franchisor shall agree to grant Franchisee a Successor Franchise provided that designated deficiencies at the Franchised Unit or in Franchisee’s operation of the Franchised Unit are corrected; or

(iii) Franchisor shall not grant Franchisee a Successor Franchise and this Agreement shall terminate on the Expiration Date, unless otherwise terminated in accordance with the terms of this Agreement.

d. **Relocation of Franchised Unit at End of Term.** If Franchisor grants Franchisee a Successor Franchise, Franchisor shall have the option to require Franchisee to relocate the Franchised Unit at the end of the Term, based upon Franchisor’s analysis of market changes in the trade area of the Franchised Location during the



Term. If Franchisor elects to require Franchisee to relocate the Franchised Unit, Franchisor shall give Franchisee written notice of Franchisor's intention to do so not less than six (6) months prior to the Expiration Date, and Franchisee shall relocate the Franchised Unit at Franchisee's sole expense following the Expiration Date. If Franchisor requires Franchisee to relocate the Franchised Unit, and Franchisee occupied the Franchised Location pursuant to a Sublease with Franchisor, or Franchisor's Affiliate, then that Sublease shall terminate on the date that Franchisor requires Franchisee to cease operating the Franchised Unit at that Franchised Location.

e. **Notice Required by Law.** If Applicable Law requires Franchisor to give notice to Franchisee prior to the expiration of the Term, this Agreement shall remain in effect on a week-to-week basis until Franchisor has given the notice required by such Applicable Law. If Franchisor is not offering new franchises, is in the process of revising, amending or renewing its form of franchise agreement or franchise disclosure document, or is not lawfully able to offer Franchisee its Then-Current form of Successor Franchise Agreement, upon the expiration of the Term, then Franchisor shall have the right, in its discretion, to extend the Term on a week-to-week basis following the expiration of the Term for as long as Franchisor deems necessary or appropriate so that Franchisor may lawfully offer Franchisee its Then-Current form of Successor Franchise Agreement.

f. **Month-to-Month Agreement.** If Franchisee does not sign a Successor Franchise Agreement prior to the Expiration Date and Franchisee continues to accept the benefits of this Agreement after it expires, then at Franchisor's option, this Agreement may be treated either as (i) expired as of the Expiration Date with Franchisee then operating without a license to do so and in violation of Franchisor's rights; or (ii) continued on a month-to-month basis ("**Month-to-Month Agreement**") until Franchisor provides Franchisee with written notice of Franchisor's intent to terminate the Month-to-Month Agreement, in which case the Month-to-Month Agreement will terminate thirty (30) days after receipt of the notice to terminate the Month-to-Month Agreement, or such longer notice period as is required by Applicable Law. In the latter case, all of Franchisee's obligations shall remain in full force and effect during the Month-to-Month Agreement as if this Agreement had not expired, and all obligations and restrictions imposed on Franchisee upon expiration of this Agreement shall be deemed to take effect upon termination of the Month-to-Month Agreement.

## 5. **INITIAL FRANCHISE FEE.**

Franchisee shall pay Franchisor the Initial Franchise Fee on the Effective Date for a license to use the 1-800-Flowers System, the Marks and the Trade Practices in accordance with the terms of this Agreement. Franchisee acknowledges and agrees that in consideration of Franchisor's expenses and administrative costs incurred in connection with this Agreement and in consideration for its lost or deferred opportunities to grant this franchise to others, the grant of this franchise and the undertakings and agreements of Franchisor contained in this Agreement constitute the sole and only consideration for the payment of the Initial Franchise Fee and, as such, Franchisee acknowledges and agrees that the Initial Franchise Fee shall be fully earned by Franchisor upon receipt and shall not be refundable under any circumstances.

6. **NON-EXCLUSIVE GRANT.**

Franchisee expressly acknowledges and agrees that the franchise granted to Franchisee by this Agreement is non-exclusive; that the franchise granted by this Agreement is only for one (1) Franchised Unit only at the Franchised Location; that Franchisee is not granted any area, market, exclusive or protected territorial rights; and that Franchisee shall not have the right to, and shall not, sublicense, sublease, subcontract or enter into any management agreement with any third-party that would provide such third-party the right to operate the Franchised Unit or to use the 1-800-Flowers System under this Agreement.

7. **CONTINUING FRANCHISE FEES.**

a. **Continuing Franchise Fees.** Franchisee shall pay to Franchisor, on the fifth (5<sup>th</sup>) day of each month, without deduction, abatement or offset, as a continuing franchise fee, a sum equal to (i) six percent (6%) of “**Adjusted Gross Sales**” plus (ii) six percent (6%) of the “**referring florist’s**” share of the Gross Sales Price of all orders referred from the Franchised Unit as “**Outgoing Sales**” other than “**BloomNet Outgoing Sales**” plus (iii) six percent (6%) of all “**Outgoing Service Handling Fees**” and/or all other fees or revenues associated with Franchisee’s “**Outgoing Sales**” plus (iv) six percent (6%) of all “**Incoming Sales**” other than “**BloomNet Incoming Sales**” at the Franchised Unit during the preceding calendar month.

b. **Definition of “Adjusted Gross Sales,” “Outgoing Sales,” “BloomNet Outgoing Sales,” “Incoming Sales,” and “BloomNet Incoming Sales”.**

(i) The term “**Adjusted Gross Sales**” as used in this Agreement shall mean the proceeds from all sales made at the Franchised Unit or by Franchisee and all fees for all services rendered by Franchisee at or from the Franchised Unit, including, without limitation, the sale, order, arrangement, provision, delivery, and/or supply of flowers, plants, related accessories and other items connected therewith and of gift and sentiment items ordered from or delivered from the Franchised Unit, whether or not such goods are sold or such services are provided at the Franchised Unit. “**Adjusted Gross Sales**” shall not include the amount of any “**Incoming Sales**” referred to the Franchised Unit, the amount of any “**BloomNet Incoming Sales**” referred to the Franchised Unit, the amount of any “**Outgoing Sales**” referred from the Franchised Unit, the amount of any “**BloomNet Outgoing Sales**” referred from the Franchised Unit, monies spent on purchases of supplies and/or products from Franchisor and/or its Affiliates, money refunded to a customer upon return of merchandise, or sales taxes or other taxes collected from customers and paid over to the appropriate Governmental Authority imposing the tax.

(ii) The term “**Outgoing Sales**” as used in this Agreement shall mean floral and gift orders taken at the Franchised Unit and referred by the Franchised Unit (the “**referring florist**”) to unaffiliated third-party florists and gift providers, other franchised units of franchisees of Franchisor, and to Affiliates of Franchisor, for fulfillment and delivery by these other florists (the “**fulfilling florist**”).

(iii) The term “**BloomNet Outgoing Sales**” as used in this Agreement shall mean floral and gift orders taken at the Franchised Unit and referred by the Franchised Unit for fulfillment and delivery by Flowers and/or its Affiliates through the BloomNet Network.

(iv) The term “**Incoming Sales**” as used in this Agreement shall mean the gross amount of floral and gift orders referred to the Franchised Unit for fulfillment and delivery.

(v) The term “**BloomNet Incoming Sales**” as used in this Agreement shall mean floral and gift orders referred to the Franchised Unit for fulfillment and delivery by Flowers and/or its Affiliates through the BloomNet Network.

c. **Calculation of Continuing Franchise Fees.** Franchisee shall supply Franchisor with all sales data specified by Franchisor in this Agreement, the Manuals, and other directives of Franchisor issued from time to time, and any other sales data required for Franchisor to make the calculation of the continuing franchise fees due and payable by Franchisee to Franchisor. All sales data shall be certified to be true and correct by Franchisee and shall be provided to Franchisor on a monthly basis, by the third day of the following month for the previous month. Franchisor shall review the sales data provided by Franchisee and shall invoice Franchisee for the continuing franchise fees due and owing for the preceding month following its receipt of such data.

(i) If Franchisee shall fail to supply Franchisor with all sales data specified by Franchisor in the form and at the times required by Franchisor, whether specified in this Agreement, the Manuals, or in other directives of Franchisor issued from time to time, for Franchisee’s Adjusted Gross Sales, Incoming Sales and Outgoing Sales at the Franchised Unit required for Franchisor to calculate the continuing franchise fees due and payable by Franchisee to Franchisor for any period(s), then Franchisor shall have the right to estimate and bill Franchisee continuing franchise fees for the missing period(s) based upon Franchisee’s Adjusted Gross Sales, Incoming Sales and Outgoing Sales at the Franchised Unit during the identical period(s) of the immediately preceding calendar year plus an additional ten percent (10%) of such amount or, if the Franchised Unit was not in operation during the identical period of the immediately preceding year, based upon Franchisee’s average Adjusted Gross Sales, Incoming Sales and Outgoing Sales during the number of months the Franchised Unit was in operation during the immediately preceding year plus an additional ten percent (10%) of such amount. If Franchisee believes that Franchisor’s estimate of Franchisee’s continuing franchise fees and marketing fees exceeds Franchisee’s actual continuing franchise fees and marketing fees for any period, Franchisee shall have the right to contest Franchisor’s estimate within the time period set forth in the Manuals and shall pay Franchisor an administrative reconciliation fee of \$250 each time Franchisee requests such a reconciliation of estimated and actual fees. If Franchisee does not contest the amount of Franchisor’s estimate of Franchisee’s continuing franchise fees and marketing fees within the time period set forth in the Manuals, Franchisee waives the right to contest the estimate and Franchisor’s estimate shall be presumed to be correct for all purposes from that date forward. Adjustment for any over-payments made to Franchisor under these procedures shall be made by Franchisor within ninety (90) days following Franchisor’s receipt of all missing sales data from Franchisee or BloomNet or the applicable wire service.

(ii) Franchisee hereby authorizes, directs and instructs BloomNet and all wire services with which Franchisee conducts business at the Franchised Unit to provide Franchisor, upon Franchisor’s written request, with copies of BloomNet and all wire service billing statements and other supporting information that Franchisor may require to calculate Franchisee’s Incoming Sales and Outgoing Sales at the Franchised Unit and the continuing franchise fees due and payable by Franchisee to Franchisor.

d. **Automatic Debit and Direct Payment Deductions.** Franchisee hereby authorizes Franchisor to initiate debit entries and/or credit collection entries to Franchisee’s designated primary business operating checking or savings account for the payment of continuing franchise fees, marketing fees, rent and rent-related expenses and all other sums that may become due to Franchisor or its Affiliates from Franchisee. If Franchisor elects to utilize this method of payment of such obligations, Franchisee shall execute such authorizations as Franchisor, its bank and Franchisee’s bank shall require and shall make funds available for withdrawal by Franchisor by electronic transfer on the fifth (5<sup>th</sup>) day of each month as Franchisor shall designate. Franchisee hereby

authorizes Franchisor and its Affiliates to deduct and retain from any funds due to Franchisee from Franchisor's Affiliates, under any agreement between Franchisee and such Affiliates, an amount equal to all continuing franchise fees, marketing fees, rent and rent-related expenses, and all other sums that may become due from Franchisee to Franchisor and/or its Affiliates.

e. **Processing of Credit Card Sales.** During the Term, Franchisor and its Affiliates shall have the right, upon thirty (30) days' prior notice, to require Franchisee to process through Franchisor or its Affiliates all of Franchisee's credit card sales transactions that occur at the Franchised Unit; provided that, the resulting merchant credit card discounts, authorization charges, fees and other processing costs are not greater than those provided by Franchisee's Then-Current processing costs. In such event, Franchisee hereby authorizes Franchisor and its Affiliates to credit any net amount due to Franchisee following the settlement of such credit card transactions against all continuing franchise fees, marketing fees, rent, rent-related expenses, or other sums that are then due and owing to Franchisor, or its Affiliates, from Franchisee under the Franchise Agreement, any Sublease in effect for the Franchised Unit, or under any other agreement between Franchisor, or its Affiliates, and Franchisee, for any period prior to the settlement of such credit card sales transactions. Franchisor shall bill Franchisee for continuing franchise fees, marketing fees, rent, rent-related expenses, and other sums that may become due to Franchisor, or its Affiliates, which exceed the net credits or will promptly remit to Franchisee any amounts in excess of such expenses that remain after the settlement of such credit card sales transactions, provided that, the merchant credit card discounts, authorization charges, fees and other processing costs are not greater than those provided by Franchisee's Then-Current processing costs. Franchisee shall remit any amount due to Franchisor, or its Affiliates, which exceed the net credits within ten (10) days after billing therefor. Franchisee acknowledges and agrees that any Default by Franchisee under this Section 7(e) shall constitute a Default by Franchisee under this Agreement, any Sublease in effect for the Franchised Location and any other agreement between Franchisor, or its Affiliates, and Franchisee. Franchisee shall defend, indemnify and hold Franchisor, and its Affiliates, harmless from and against all debts, liabilities, claims, demands and causes of action, of any nature or description, which in any way, relate to or arise out of this processing of credit card sales transactions at the Franchised Unit.

f. **Offsets.** Franchisor may retain and apply in any manner determined by Franchisor, in its sole and absolute discretion, any funds collected from or for the account of Franchisee to offset any amounts owed by Franchisee to Franchisor or its Affiliates.

g. **Disclosure of "Adjusted Gross Sales".** Franchisor shall have the right to disclose Franchisee's "Adjusted Gross Sales", "Incoming Sales" and other sales information and data to other franchisees under its general policies to disseminate this information for the practical use and measurement of the results of the operations of the 1-800-Flowers System.

h. **Other Payments.** In addition to all other payments provided for in this Agreement, Franchisee shall pay to Franchisor, its Affiliates and designees, as applicable, promptly when due, all rents and rent-related expenses due under a Sublease, all amounts advanced by Franchisor or which Franchisor has paid, or for which Franchisor has become obligated to pay on behalf of Franchisee for any reason whatsoever and all amounts due for any reason, including on account of purchases of goods, supplies or services relating to the Franchised Unit.

i. **Gross-Up Fees.** To ensure that Franchisor receives a full six percent (6%) of Adjusted Gross Sales, six percent (6%) of the Gross Sales Price of all orders referred from the Franchised Unit as Outgoing Sales, six percent (6%) of all Outgoing Service Handling Fees and/or all other fees or revenues associated with Franchisee's Outgoing Sales, and six percent (6%) of all Incoming Sales, and the full marketing fee to which

Franchisor may be entitled, as the amount thereof may vary from time to time, Franchisee shall pay Franchisor, upon demand, whether in arrears, in advance, in a lump sum or in the same manner as continuing franchise fees and marketing fees are paid to Franchisor, the amount of all taxes paid by Franchisor to any Governmental Authority on revenue earned or collected by Franchisor based upon Franchisee's use of Franchisor's intellectual property or other intangibles or based upon the existence of this Agreement, within the Governmental Authority's domain during each of Franchisor's fiscal years throughout the entire Term.

j. **Security Interest.** Franchisee hereby grants Franchisor a security interest in and to all leasehold improvements, fixtures, furnishings and equipment, inventory, supplies and delivery vehicles located at or used in connection with the Franchised Unit, now or hereafter acquired by Franchisee, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Franchisee to use the Marks, trade names, trade styles, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Franchisee under this Agreement for the use of the Marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights, to secure payment and performance of all debts, liabilities and obligations of any kind, whenever and however incurred, from Franchisee to Franchisor. Franchisee hereby authorizes Franchisor to, prepare and file all Uniform Commercial Code financing statements and other documents necessary or desirable to evidence, perfect and continue the priority of this security interest under the Uniform Commercial Code. If Franchisee is in Good Standing under this Agreement and all other agreements between Franchisor or its Affiliates, and Franchisee, Franchisor shall, upon request of Franchisee, execute a written subordination of its security interest to lenders and/or lessors providing equipment or financing for the Franchised Unit. If Franchisee is in Default of any of the terms and conditions of this Agreement, Franchisor may, in its discretion, exercise its rights with respect to its security interest. In such event, Franchisee shall remain liable for any deficiency remaining due to Franchisor and shall be entitled to recover any surplus that results after the application of the proceeds derived from the enforcement of the security interest.

k. **Payment of Debts.** Franchisee shall be solely responsible for selecting, retaining and paying Franchisee's employees; the payment of all invoices for the purchase of goods and services used in connection with operating the Franchised Unit and determining whether, and on what terms, to obtain any financing or credit that Franchisee deems advisable or necessary for the opening and operation of the Franchised Unit. Franchisee shall pay all obligations and liabilities to suppliers, lessors and creditors on a timely basis. Franchisee shall indemnify Franchisor if Franchisor is held responsible for any debts owed by Franchisee if Franchisor elects to pay any of Franchisee's obligations in order to preserve the relationship between suppliers and Franchisees. Franchisee shall make prompt payment of all federal, state and local taxes, including individual and corporate taxes, sales and use taxes, franchise taxes, gross receipts taxes, employee withholding taxes, FICA taxes, and personal property and real estate taxes arising from Franchisee's operation of the Franchised Unit. Franchisee shall indemnify Franchisor if Franchisor is held responsible for any of these taxes.

## 8. **MARKETING AND MARKETING FUND.**

a. **Marketing Fee.** Following Franchisee's receipt of thirty (30) days' prior written notice from Franchisor that the 1-800-Flowers Franchise, Inc. Marketing Fund (the "**Floral Marketing Fund**") has been reinstated, Franchisee shall begin and continue to pay the Floral Marketing Fund on a monthly basis, as a marketing fee, a sum equal to three percent (3%) of Franchisee's "**Adjusted Gross Sales**" at the Franchised Unit during the immediately preceding calendar month, without deduction, abatement, or offset.

b. **Payment of Marketing Fee.** The marketing fee shall be calculated and paid by Franchisee in the manner described in Sections 7(c) and 7(d) above.

c. **Maintenance of Floral Marketing Fund.** The Floral Marketing Fund shall be maintained and administered by the 1-800-Flowers Marketing and Finance Departments on behalf of Franchisor as follows:

(i) Franchisor shall direct all national and regional marketing programs with sole discretion over the creative concepts, materials and media used in such programs and the placement and allocation thereof. Franchisee acknowledges and agrees that the Floral Marketing Fund is intended to maximize national and regional general public recognition and acceptance of the Marks for the benefit of all 1-800-Flowers units. Franchisee further acknowledges and agrees that Franchisor may, but undertakes no obligation in administering the Floral Marketing Fund, to make expenditures for Franchisee that benefit Franchisee or the Franchised Unit directly.

(ii) Franchisor shall, for each of its Affiliates' company-owned retail units operating under the 1-800-Flowers name in any market or region in which there are five (5) or more franchised units in operation, make contributions to the Floral Marketing Fund equal to the amount required of comparable franchised units within the 1-800-Flowers System.

(iii) Funds in the Floral Marketing Fund may be used to meet any and all costs of maintaining, administering, directing and preparing national and regional marketing programs for the benefit of all 1-800-Flowers units and franchisees, including, without limitation, the cost of preparing and conducting television, radio, outdoor, direct mail, magazine and newspaper advertising campaigns; yellow pages advertising; public relations activities; the development and production of collateral materials; employing advertising agencies, public relations firms, and individuals to assist Franchisor; the support and promotion of toll-free telephone numbers, telemarketing systems, on-line computer networks and services, interactive television or other technological advances; and providing grand opening campaigns, promotional brochures and other marketing materials to franchisees in the 1-800-Flowers System.

(iv) From time to time, national and regional marketing programs may feature special items. Advertisements for such programs may provide a "suggested" sales price or provide that advertised special prices are available only at "participating 1-800-Flowers retail units." Subject to Applicable Law, Franchisor shall have the right to establish pricing guidelines for 1-800-Flowers products and services and Franchisee shall comply with, and be bound by, any prices that may be recommended, suggested, or advertised by Franchisor. Subject to Applicable Law, Franchisee shall honor the terms of all promotional or discount programs that Franchisor may offer to the public for 1-800-Flowers shops and shall comply with all pricing policies that Franchisor may specify, including minimum and maximum price policies, minimum advertised price policies and unilateral price policies. Franchisee shall also provide products and services designated by Franchisor on terms Franchisor specifies, including free-of-charge. Franchisee shall participate in all gift certificate and/or gift card administration programs as may be designated by Franchisor from time to time. Franchisee shall honor all coupons, gift certificates, gift cards and other programs or promotions as directed by Franchisor. Franchisee shall fully participate in all guest loyalty or frequent customer programs now or in the future adopted or approved by Franchisor. Franchisee shall not issue coupons or discounts of any type for use at the Franchised Unit, except as approved by Franchisor in writing, which may be withheld in Franchisor's sole and absolute discretion. Franchisee acknowledges and agrees that Franchisor makes no representation or guarantee that if Franchisee adheres to such recommended, suggested or advertised prices, Franchisee will earn any level of sales or profits.

(v) Franchisor shall receive reimbursement from the Floral Marketing Fund for all actual direct expenses of Franchisor, and its Affiliates (including, without limitation, the salaries and benefits of employees of Franchisor or its Affiliates), incurred in connection with the development, supervision and administration of the 1-800-Flowers national and regional marketing programs and the Floral Marketing Fund and for all indirect expenses incurred or allocable to Franchisor, or its Affiliates, in connection with its development, supervision and administration of the services provided for marketing, promoting and enhancing the 1-800-Flowers System national and regional image.

(vi) Upon Franchisee's written request, Franchisor will prepare an annual accounting of the Floral Marketing Fund and will distribute it to Franchisee, but not more than once a year, that will state the total amount of money collected and spent by the Floral Marketing Fund during the previous year and list, by general category, the manner in which Franchisor spent the money. The report is not audited.

(vii) Franchisor shall have the sole and absolute right to settle any claims with Franchisee and any other franchisee relating to marketing fees, in its sole and absolute discretion, and shall not incur any liability to the Floral Marketing Fund, Franchisee or to other 1-800-Flowers franchisees because of such a settlement.

(viii) Any portion of the Floral Marketing Fund that is not spent during the fiscal year in which it accrues may be spent by the Floral Marketing Fund during any following year.

d. **Additional Marketing by Franchisee.** Subject to, and expressly conditioned upon the terms and conditions set forth in this Agreement, Franchisee shall be free to undertake additional marketing and advertising at Franchisee's own expense during the Term; however, the use of any and all proposed and final display of the Marks in, on, or in association with any signage, marketing, promotion, and advertising ("**Marketing Materials**") by Franchisee in any medium, including all advertisements in all trade publications and directories, BloomNet or wire-service member directory, yellow pages and all white pages listings, shall be: (i) subject to the prior review and written approval, in each and every instance, by Franchisor, within Franchisor's sole and absolute discretion; (ii) conducted in a dignified manner; and (iii) in accordance with the Then-Current standards and specifications of the 1-800-Flowers System, including, without limitation, as set forth in the Manuals.

(i) Franchisee shall submit to Franchisor for written pre-approval the actual proposed and final display of the Marks in, on, or in association with the Marketing Materials, including the exact content and placement of all advertisements in any and all trade publications and directories, BloomNet or wire-service member directory, Yellow Pages and all white pages listings, except with regard to the prices to be charged, prior to any use thereof.

(ii) If written approval of the displays of the Marks in, on, or in association with the Marketing Materials received from Franchisee is not issued by Franchisor within thirty (30) days from the date of the receipt by Franchisor of Franchisee's proposed and final Marketing Materials, Franchisor shall be deemed to have disapproved the use of such Marketing Materials in the manner specified by Franchisee.

(iii) The approval of any Marketing Materials by Franchisor in one instance or for use in one medium shall not constitute approval by Franchisor of the same or similar Marketing Materials at any subsequent time or for use in another medium. Consequently, Franchisee shall be required to submit and/or re-submit all Marketing Materials to Franchisor for written pre-approval prior to any use in each and every case thereof.

e. **Special Programs Service Fee.** Franchisor has the right to, from time to time, develop special programs designed to generate sales for Franchisee. For all gross sales generated by Franchisee from these programs, in addition to Franchisee's continuing franchise fees on those sales, Franchisor may also charge or retain up to six percent (6%) of such sales as a service fee to reimburse the Marketing Fund for any advances that it made for the development of such programs, and to generate revenue to Franchisor.

f. **Grand Opening Campaign.** Franchisor shall develop and provide Franchisee with a promotional campaign for the grand opening of the Franchised Unit for business. We estimate that you will spend between \$2,000 and \$5,000 for such promotional campaign.

g. **Cooperatives.** Franchisor may from time to time establish local, regional or national advertising areas for co-operative advertising ("**Cooperatives**") to coordinate advertising, marketing efforts and programs and maximizing the efficient use of local, regional and/or national advertising media. Franchisor reserves the right to establish general standards concerning the operation of the Cooperatives and shall have the right to change, merge or dissolve the Cooperative in its discretion; however, the Cooperative shall not be dissolved until all of the money in the Cooperative has been spent for advertising and promotional purposes. Any disputes arising among or between Franchisee, other franchisees, and/or the Cooperative may be resolved by Franchisor, whose decision shall be final and binding on all parties.

h. **Cooperation of Franchisee.** Franchisee shall at all times cooperate with Franchisor and other franchisees of Franchisor and shall actively participate in any and all sales, public relations, advertising, cooperative advertising and purchasing programs or promotional programs that may be developed and implemented by Franchisor, which call for the cooperation of Franchisee and other franchisees of Franchisor. Franchisee shall further cooperate in any additional programs that may be established and designated by Franchisor from time to time and, if requested to do so by Franchisor, must participate in market research programs, the test-marketing of new products and other similar programs for the benefit of the 1-800-Flowers System. If Franchisee agrees to participate in such programs, Franchisee shall purchase a reasonable quantity of new products for test-marketing, promote the sale of the tested products and provide Franchisor with timely reports and test results of such programs for its review, analysis and compilation.

i. **Optional Marketing.** Franchisee may, if it chooses, participate in an optional marketing program that Franchisor has established whereby Franchisor will produce and distribute to participating franchisees certain marketing materials, including banners, seasonal advertising and similar items. If Franchisee elects to participate in this optional marketing program, Franchisee agrees to pay Franchisor's Then-Current fee related to Franchisee's participation, which will be billed by Franchisor on a monthly basis. If any payment is not made when due, it is subject to late fees and interest as provided, in this Agreement and is a Default under this Agreement.

## 9. **LEASEHOLD IMPROVEMENTS, FIXTURES AND EQUIPMENT.**

a. **Obligation of Franchisee.** Franchisee shall, at Franchisee's sole expense, construct or make leasehold improvements at the Franchised Location and shall install such fixtures, furniture, equipment and interior and exterior signage at the Franchised Location as required in accordance with Franchisor's Then-Current specifications for franchised units with an on-site production facility, modified only to conform to space and other limitations of the Franchised Location.

b. **Layout and Specifications.** Franchisor will provide Franchisee with a sample layout for the interior of a typical Franchised Unit and with a typical set of preliminary plans and décor specifications promptly



following Franchisee's request for these items following the Effective Date. Franchisee shall, at Franchisee's sole expense, employ architects, designers, engineers or others as may be necessary to complete, adapt, modify or substitute the sample plans and specifications for the Franchised Unit. Franchisee shall submit to Franchisor a complete set of final plans and specifications prior to commencing construction of the Franchised Unit. Franchisor shall review such plans and specifications promptly and approve or provide comments on the plans and specifications to Franchisee within thirty (30) days of its receipt of the same. Franchisee shall not commence construction of the Franchised Unit until Franchisor approves the final plans and specifications to be used in constructing the Franchised Unit in writing. Franchisor must approve any and all changes in the Franchised Unit plans in writing prior to construction of the Franchised Unit or the implementation of such changes. Failure to correct any unauthorized variance from the approved plans and specifications promptly may result in the termination of this Agreement.

c. **Construction and Inspection.** Franchisee shall use a licensed general contractor reasonably satisfactory to Franchisor to perform construction work at the Franchised Unit. Franchisor shall consult with Franchisee, to the extent Franchisor deems necessary, on the construction and equipping of the Franchised Unit, but it shall be and remain the sole responsibility of Franchisee to diligently design, construct, equip and otherwise ready and open the Franchised Unit following the Parties' execution of this Agreement. Franchisor shall not be responsible for delays in the construction, equipping or decoration of the Franchised Unit or for any loss resulting from the design or construction of the Franchised Unit. Franchisor shall have access to the Franchised Unit while work is in progress and may require such reasonable alterations or modifications of the construction of the Franchised Unit as it deems necessary. The failure of Franchisee to select a site for the Franchised Location within six (6) months from the Effective Date, or to have the Franchised Unit built-out and all required signage installed at the Franchised Unit and on vans, as required by the Franchisor, and open for business within nine (9) months from the Effective Date shall be grounds for the termination of this Agreement following expiration of the notice required by Sections 21(a) and 21(b)(ii) below. Franchisor shall make a final inspection of the completed Franchised Unit and may require such corrections and modifications as it deems necessary to bring the Franchised Unit into compliance with approved plans and specifications. The Franchised Unit will not be allowed to open if it does not conform to the plans and specifications approved by Franchisor, including changes thereof approved by Franchisor. Franchisee shall not open the Franchised Unit for business without Franchisor's prior written approval.

d. **Additional Layout Plans.** In the event Franchisee changes the location of the Franchised Unit at any time during the Term or any extensions of this Agreement, Franchisee shall pay Franchisor the amount of any costs it may incur for the preparation and delivery of any suggested layout plans for the new location for Franchisee.

e. **Fixtures, Furniture and Equipment.** Franchisee shall acquire all required fixtures, furniture and equipment at the Franchised Unit from vendors and suppliers designated or approved by Franchisor and shall install all required fixtures, furniture and equipment at the Franchised Unit at Franchisee's sole expense strictly in accordance with the standards and specifications of Franchisor. Franchisee shall not have the right to substitute suppliers or vendors without the prior written consent of Franchisor. Any changes in the design, construction, utilities, or installations necessitated by such substitutions shall be made at the sole expense of Franchisee.

f. **Indemnification of Franchisor.** Franchisee shall be responsible for the acts or omissions of its contractors regarding compliance with this Article 9 and Franchisor shall not be liable for any loss or damage arising from the design or plan of the Franchised Unit by reason of its approval of plans and specifications, or otherwise. Franchisee shall indemnify Franchisor and its Affiliates for any loss, cost or expense, including

attorneys' fees, which may be sustained by Franchisor or its Affiliates because of the acts or omissions of Franchisee's contractors or arising out of the design or construction of the Franchised Unit.

g. **Signs.** Franchisee shall, at all times during the Term, exhibit only such signs (including, without limitation, signs or decals on Franchisee's van and other vehicles) as shall be approved by Franchisor prior to their use. All signs to be used in connection with the Franchised Unit, both exterior and interior, must conform to Franchisor's current sign criteria as to type, color, size, design and location. All signs must be approved in writing by Franchisor prior to installation or display. Notwithstanding the generality of the foregoing, Franchisee acknowledges and agrees that Franchisee shall have the Franchised Unit built-out to Franchisor's specifications, including all the installation of all required signage (including interior and exterior signage for the Franchised Unit and vehicle wraps) and open for business, not later than nine (9) months from the Effective Date. Franchisee acknowledges and agrees that its failure to do so shall be a Default under this Agreement that may result in the termination of this Agreement, in Franchisor's discretion, without affording Franchisee the opportunity to cure the Default.

h. **Maintenance and Repair.** Maintenance and repair of the Franchised Unit is the sole responsibility of Franchisee. Franchisee shall maintain Franchisee's building, equipment, décor, furnishings, fixtures, interior and exterior signage and all other tangible property in the Franchised Unit in excellent condition and repair and shall replace any of these items that become obsolete or mechanically impaired to the extent that they no longer adequately perform the functions for which they were originally intended. Replacement items shall be of the same type and quality as are being used in new 1-800-Flowers shops at the time replacement is required. All replacement items shall comply with Franchisor's Then-Current requirements and specifications.

#### 10. **STANDARDS OF OPERATION AND OBLIGATIONS OF FRANCHISEE.**

In order to provide Franchisor the opportunity to maintain uniform standards of operation for all 1-800-Flowers shops and to protect the goodwill of Franchisor, the Marks and the Trade Practices:

a. **Standards.** Franchisor shall at all times during the Term determine the standards of quality, service, production, merchandising and marketing for the Franchised Unit. Franchisee acknowledges and agrees that Franchisor may require Franchisee to offer and sell certain products, including, but not limited to, cookies, candy, gift baskets and novelty items, and such requirement shall be binding on Franchisee. Franchisee shall at all times during the Term maintain its status as a 1-800 Flowers franchisee in Good Standing. Franchisee acknowledges and agrees that Franchisee alone shall exercise day-to-day control over all operations, activities and elements of the Franchised Unit, including over Franchisee's employees, and that under no circumstance shall Franchisor do so or be deemed to do so. Franchisee further acknowledges and agrees that the various requirements, restrictions, prohibitions, specifications and procedures of the 1-800-Flowers System that Franchisee must comply with under this Agreement, the Manuals or otherwise, do not directly or indirectly constitute, suggest, infer or imply that Franchisor controls any aspect or element of the day-to-day operations of the Franchised Unit, which Franchisee alone controls, but only constitute standards Franchisee must adhere to when exercising Franchisee's control over the day-to-day operations of the Franchised Unit consistent with the policies of Franchisor. Franchisee shall comply with Franchisor's standards and shall operate the Franchised Unit in conformity with the methods, standards, and specifications that Franchisor may from time to time prescribe in the Manuals or otherwise. Franchisee shall refrain from deviating from the standards, specifications and procedures without Franchisor's prior written consent and/or otherwise operating in any manner that reflects adversely on the 1-800-Flowers System or the Marks.

b. **Manuals.** To ensure that the highest degree of quality and service is maintained, Franchisee shall continuously operate the Franchised Unit throughout the Term in compliance with the terms of the Manuals, which may include audio, video, compact disks, computer software, other electronic media and/or written materials and will accept as reasonable any modifications, revisions and additions to the Manuals that Franchisor, in the good faith exercise of its judgment, believes to be necessary or desirable for the 1-800-Flowers System. At Franchisor's option, Franchisor may post some or all of the Manuals on a restricted website, intranet, or extranet to which Franchisee will have access. Changes in the requirements in the Manuals may be made by Franchisor from time to time as deemed advisable by Franchisor. The subject matter of the Manuals may include, without limitation, matters such as: forms, information relating to purchase orders, general operations, labor management, Gross Sales reports, training and accounting; sanitation; design specifications and uniforms; display of signs and notices; authorized and required equipment and fixtures, including specifications therefor; Mark usage; insurance requirements; lease requirements; ownership requirements, décor; standards for management and personnel, hours of operation; yellow page and local advertising formats; standards of maintenance and appearance of the Franchised Unit at the Franchised Location; required posting of notices to customers as to how to contact Franchisor to submit complaints; and such other matters and policies as Franchisor may reasonably elect to include that relate to this Agreement. The Manuals, as modified by Franchisor from time to time, are an integral part of this Agreement and all provisions now or hereafter contained in the Manuals or otherwise communicated to Franchisee in writing are expressly incorporated into this Agreement by this reference and made a part of this Agreement. Franchisee shall treat all information contained in the Manuals as Confidential Information and shall use all reasonable efforts to keep the information confidential. Franchisee shall not, without Franchisor's prior written consent, copy, duplicate, record or otherwise reproduce the Manuals, in whole or in part, or otherwise make them available to any Person not required to have access to their contents in order to carry out their employment functions. Franchisee shall comply with all mandatory requirements now or hereafter included in the Manuals, and acknowledges and agrees that a Default under any mandatory requirement of the Manuals shall constitute a Default under this Agreement and grounds for termination. Franchisee shall ensure that its copy of the Manuals is kept current at all times, and in the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor shall be controlling.

c. **BloomNet Network.** During the Term, Franchisee must be a member of the BloomNet network of florists (the "**BloomNet Network**"), subject to the terms and conditions of the BloomNet Membership Agreement (the "**BloomNet Membership Agreement**") and the BloomNet Technologies Systems Agreement (the "**BloomNet Systems Agreement**") with BloomNet, Inc. ("**BMT**"), both of which Franchisee must execute on the Effective Date. Franchisee's right to fulfill orders generated by Franchisor's Affiliates shall be controlled by the BloomNet Membership Agreement and the Premier Order Fulfillment Agreement, if applicable. Franchisor may also offer Franchisee the opportunity to sign a Fruit Bouquets Addendum to Franchise Agreement. Franchisee's right to fulfill fruit bouquets orders generated by Franchisor's Affiliates, shall be controlled by the Fruit Bouquets Order Fulfillment Agreement.

d. **Renovation or Remodeling of Franchised Unit.** In the event the Franchised Unit is, at any time during the Term, to be renovated, refurbished, redecorated, and/or remodeled, including if additional decorations, fixtures, furniture or equipment are to be installed or substituted, or signs are to be erected or altered, all of such work shall be subject to the prior written approval of Franchisor and, when completed, shall conform to plans and specifications approved by Franchisor. Franchisor may inspect, but shall not be obligated to inspect, such work at any time to determine that the work is done in accordance with Franchisor's approved plans and specifications.

e. **Interior and Exterior Upkeep and Refurbishment.** Franchisee shall at all times maintain the interior and exterior of the Franchised Unit, all signage and the surrounding area in the highest degree of cleanliness, orderliness and sanitation and shall also comply with the requirements of the Manuals regarding the upkeep of the Franchised Unit. Franchisee shall repair, refinish or paint the exterior and interior of the Franchised Unit at Franchisee's own expense at such times as reasonably directed by Franchisor. Franchisee shall immediately comply with all orders and regulations of applicable federal, state and local health and safety administrations. Franchisee shall promptly replace worn-out equipment at Franchisee's expense and shall cause Franchisee's van and other vehicles to be repaired and repainted when appropriate or as designated by Franchisor. In addition, at Franchisor's request, but not more often than once every five (5) years (and in addition to any work that Franchisee may undertake pursuant to other provisions of this Agreement), unless sooner required by Franchisee's Third-Party Lease or Sublease, Franchisee shall remodel, redecorate, renovate, and/or refurbish the Franchised Location, at Franchisee's own expense, to conform to the building design, trade dress, color schemes, and presentation of the Marks in a manner consistent with the Then-Current public image for new or remodeled 1-800-Flowers shops in the 1-800-Flowers System, including, without limitation, replacement or renovation of equipment, remodeling, redecoration, and modifications to existing improvements and reasonable structural changes that Franchisor may reasonably require or that may be required by Applicable Law.

f. **Obligations and Late Charges.** Franchisee shall promptly pay Franchisor all obligations incurred by Franchisee as they become due and payable, including, without limitation, any advances that Franchisor may make for or on behalf of Franchisee. An obligation shall be deemed paid to Franchisor when payment is actually received by Franchisor and such payment irrevocably clears Franchisor's bank. Franchisee acknowledges and agrees that late payment by Franchisee to Franchisor of any sums due under this Agreement will cause Franchisor to incur costs not anticipated by this Agreement, the exact amount of which are extremely difficult to ascertain. These costs include, without limitation, late charges, penalties, processing and accounting charges and other administrative expenses. If any sum due from Franchisee shall not be received by Franchisor within ten (10) days after the amount shall be due, Franchisee shall pay Franchisor a late charge equal to ten percent (10%) of the overdue amount. Franchisee shall, in addition, pay Franchisor interest on the overdue amount at the rate of ten percent (10%) per annum. Franchisor and Franchisee agree that the late charge represents a fair and reasonable estimate of the costs Franchisor will incur by reason of late payment by Franchisee. Acceptance of interest or a late charge by Franchisor shall in no event constitute a waiver of Franchisee's Default with respect to such overdue amount, nor prevent Franchisor from exercising any of the other rights and remedies granted under this Agreement or by Applicable Law. In no event shall Franchisee be required to pay Franchisor interest or late charges that exceed the maximum amount permitted by Applicable Law.

g. **Hours of Operation.** Franchisee shall continuously operate the Franchised Unit upon such days and during such hours as Franchisor shall from time to time reasonably determine to be appropriate to maximize the sales of the Franchised Unit and the 1-800-Flowers System.

h. **Marketing Approval.** All local marketing, promotions or other forms of publicity to be undertaken by Franchisee shall be submitted to Franchisor for approval in accordance with Section 8(d) above prior to use. No marketing or promotion shall be implemented at or for the Franchised Unit without the prior written consent of Franchisor.

i. **Time and Attention.** Franchisee and/or a qualified supervisory or managerial employee shall devote full time, attention and best efforts to the performance of Franchisee's duties under this Agreement, including a minimum of forty (40) hours per week of Franchisee's physical presence at the Franchised Unit during open

and operating hours, and a failure to do so shall constitute a Default under this Agreement. If Franchisee is the owner of any 1-800-Flowers franchised units in addition to the Franchised Unit, Franchisee shall satisfy the requirements of this Section 10(i) so long as Franchisee devotes Franchisee's full time and attention to the management of all Franchised Units during open and operating hours.

j. **Management.** Franchisee acknowledges and agrees that if Franchisee chooses to employ a qualified supervisory or managerial employee, Franchisee will continue to be responsible for ensuring that the Franchised Unit is operated according to the terms of this Agreement, the Manuals, the System and the Trade Practices. The qualified supervisory or managerial employee must be properly trained by Franchisor to supervise the operation of the Franchised Unit and may assume responsibility for the day-to-day management of the operation of the Franchised Unit in the absence of Franchisee.

k. **Best Efforts.** Franchisee shall exert Franchisee's best efforts and facilities to establish, maintain and increase sales of approved products and services under the Marks and shall at all times maintain a supply of such products and a staff of qualified personnel sufficient to meet public demand.

l. **Initial Training, Additional Training and Franchisee Employee Policy.** The Principal Owner and one (1) designated General Manager, or other supervisory or managerial personnel Franchisee may designate, who will assume responsibility for the day-to-day management of the operation of the Franchised Unit in the absence of the Principal Owner, shall attend and successfully complete Franchisor's initial training program (the "**Initial Training Program**") prior to the opening of business at the Franchised Unit. If Franchisee requests Franchisor to provide its Initial Training Program to additional supervisory or managerial employees of Franchisee, Franchisee shall pay Franchisor the Additional Training Fee for each additional trainee for each day of their attendance at the Initial Training Program. With Franchisee's agreement, Franchisor reserves the right to waive the initial training requirement if Franchisee is experienced in the floral business and does not require initial training. Furthermore, Franchisee shall not be required to attend the Initial Training Program if either (i) Franchisee or any Affiliate of Franchisee, or an Owner of either, owns or operates a Franchised Unit as of the Effective Date, or (ii) this Agreement is executed as a Successor Franchise Agreement.

(i) Neither Franchisee nor the General Manager will receive a salary or other compensation from Franchisor during the Initial Training Program and Franchisee shall be responsible for all expenses incurred in connection with Franchisee's and Franchisee's employees' attendance at the Initial Training Program, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages. If the Principal Owner is not the person who will perform the accounting functions required by this Agreement and/or the Manuals, Franchisor may require the Person(s) who are or will be responsible for compliance with the accounting requirements to attend training sessions that deal with the accounting matters.

(ii) Franchisee and the General Manager must attend all sessions of the Initial Training Program in accordance with the training schedule. The Initial Training Program will be offered at the times and locations determined by Franchisor. All missed sessions must be made up at times determined by Franchisor, and Franchisee shall pay Franchisor all reasonable charges, if any, that are associated with make-up sessions. All trainees attending Franchisor's Initial Training Program must take and pass to Franchisor's satisfaction a final exam and achieve training certification from Franchisor. If any trainee does not achieve training certification, Franchisor reserves the right to require such trainee to re-take the Initial Training Program at Franchisee's expense.

(iii) If, during the Term, either the Principal Owner or the General Manager is no longer responsible for the day-to-day management of the operation of the Franchised Unit, the supervisory or managerial Person who replaces the Principal Owner or the General Manager shall attend and successfully complete Franchisor's Initial Training Program prior to assuming responsibility for the management of the Franchised Unit, and Franchisor has the right to charge Franchisee the Additional Training Fee for each day that this Person attends the Initial Training Program. Franchisee shall be responsible for all expenses incurred in connection with the attendance of such Person at the Initial Training Program, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages.

(iv) The Principal Owner shall attend, and if appropriate, shall cause Franchisee's supervisory and managerial employees to attend, the continuing training and education programs and refresher courses provided by Franchisor during the Term. For each day of each such training program that is in-person, Franchisee shall pay Franchisor's Then-Current Additional Training Fee, in order to defray the direct costs of providing these continuing training and education programs and refresher courses. The information provided at the continuing training and education programs and refresher courses will generally be included in amendments to the Manuals and Franchisee shall be responsible for providing Franchisee's employees with the information presented at these continuing training and education programs and refresher courses. Franchisee shall be responsible for all expenses incurred to attend these training and education programs, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages. In addition, the Principal Owner shall attend a refresher training course every five (5) years during the Term to receive training on new items and standard operating procedures as designated by Franchisor.

(v) All supervisory and managerial personnel employed by Franchisee at the Franchised Unit must be trained by Franchisor in accordance with Franchisor's Then-Current training and operations standards and shall maintain such standards of training, competence, cleanliness and demeanor as shall be established by Franchisor. Franchisee must ensure that all personnel performing managerial or supervisory functions, all personnel receiving special training and instruction and all persons employed by Franchisee having access to any of Franchisor's confidential information agree not to disclose, and do not disclose, any confidential information that may be revealed to them during the term of their employment and, upon Franchisor's request, execute a confidentiality agreement, in a form prescribed by Franchisor. Franchisor shall be deemed to be a third-party beneficiary under such confidentiality agreements.

(vi) After the Franchised Unit has opened to the public, Franchisee shall maintain a competent, conscientious, and trained staff, and shall take such steps as are necessary to ensure that Franchisee's employees preserve good customer relations and render competent, prompt, courteous, and knowledgeable service. All employees hired by or working for Franchisee shall be Franchisee's employees, and Franchisee's alone, and shall not, for any purpose, be deemed to be employees of Franchisor or subject to Franchisor's direct or indirect control, most particularly with respect to any mandated or other insurance coverage, tax or contributions, or requirements pertaining to withholdings, levied or fixed by any Governmental Authority. Franchisee and Franchisor will each file their own tax, regulatory and payroll reports, and be responsible for all employee benefits and workers compensation insurance payments with respect to their respective employees and operations. Franchisee acknowledges and agrees that Franchisor will not have the power to hire or fire Franchisee's employees. Franchisee expressly agrees, and will never contend otherwise, that Franchisor's authority under this Agreement to certify Franchisee's supervisory or managerial personnel for qualification to perform certain functions at the Franchised Unit does not directly or indirectly vest in Franchisor the power to hire, fire or control any of Franchisee's personnel. Franchisee alone shall be solely responsible for all hiring and employment decisions and functions relating to the Franchised Unit, including, without limitation, those related to hiring, firing, training, establishing remuneration, compliance with wage

and hour requirements, personnel policies, benefits, recordkeeping, supervision and discipline of employees, regardless of whether Franchisee has received advice from Franchisor on these subjects or not. Franchisee acknowledges and agrees that any guidance Franchisee receives from Franchisor regarding employment policies should be considered as examples that Franchisee alone is responsible for establishing and implementing its own employment policies, and that Franchisee acknowledges and agrees that Franchisee should do so in consultation with local legal counsel experienced in employment law. Franchisee shall take all action necessary to ensure that Franchisee's employees understand and acknowledge that they are not employees of Franchisor, including, without limitation, requiring Franchisee's employees to sign a written acknowledgement that Franchisee is an independently owned and operated franchise and their sole employer in a form specified by Franchisor in the Manuals or otherwise in writing from time to time. Franchisee shall indemnify, defend, reimburse and hold Franchisor harmless from any direct and indirect losses, costs and expenses, including attorneys' fees, arising out of any claim made by or for the benefit of any employee of Franchisee against Franchisor regarding employment decisions and employee functions of the Franchised Unit, including, without limitation, those relating to hiring, firing, training, wages and hour requirements, record keeping, supervision, and discipline of employees.

(vii) Throughout the Term, Franchisee and Franchisee's supervisory and managerial employees must attend remedial training programs as required by Franchisor, which Franchisor shall require if Franchisor determines, in Franchisor's sole discretion, that Franchisee is not meeting Franchisor's minimum performance standards. Franchisor has the right to charge Franchisee the Additional Training Fee for each of Franchisee's attendees for each day of their attendance at each such remedial training program, to defray the direct costs of providing these programs. In addition, Franchisee shall be responsible for all expenses incurred in connection with the attendance of the Principal Owner and the supervisory and managerial employees at such remedial training programs, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages.

m. **Electronic Equipment and Communications and Computer Systems.** Franchisee shall use, upgrade and update electronic point-of-sale systems ("POS System"), fax machines, electronic communications systems and computer hardware and software systems in the Franchised Unit as designated, approved or provided by Franchisor, or its subsidiaries or Affiliates, from time to time. All business records of Franchisee to be maintained in connection with the Franchised Unit shall be kept on forms and in accordance with procedures as prescribed by Franchisor from time to time. All electronic POS Systems, electronic communications systems and computer hardware and software installed at the Franchised Unit must permit Franchisor to poll sales information from the Franchised Unit and to electronically transmit and obtain sales and other data to and from the Franchised Unit. Franchisee shall maintain all POS systems, fax machines, electronic communications systems and computer hardware and software systems in the Franchised Unit in good working order and operating condition and shall establish such service and maintenance relationships with qualified technicians as designated and approved by Franchisor in order to do so.

n. **Opening.** Franchisee shall not open the Franchised Unit to the public unless and until Franchisor certifies in writing that the Franchised Unit is prepared for the opening, and that the Principal Owner and Franchisee's supervisory and managerial employees and other employees have been properly trained (unless otherwise waived pursuant to the terms of this Agreement). Franchisee shall not open the Franchised Unit for business without Franchisor's prior approval.

o. **Permits and Licenses.** Franchisee shall promptly procure and maintain all necessary permits, licenses, certificates and approvals required for the operation of the Franchised Unit. Franchisee further agrees to comply with all Applicable Laws and regulations affecting or applicable to the Franchised Unit.

p. **Sales.** Franchisee shall not sell, dispense, give away or otherwise provide goods, merchandise or services to the public except by retail sale in the Franchised Unit, without Franchisor's prior consent. Franchisee shall offer and sell the goods, merchandise or services specified or approved by Franchisor. Franchisor has the right to change Franchisor's goods, merchandise and service requirements at any time, and Franchisee shall comply with each change Franchisor designates.

q. **Employees of Franchisor.** Franchisee shall not interfere with the employees and agents of Franchisor or the franchisees of Franchisor in the performance of such employees' and agents' duties.

r. **Cooperation.** Franchisee shall cooperate with Franchisor and its Affiliates in taking any action, or refraining from taking any action which, in the judgment of Franchisor, is necessary or desirable to promote and enhance the quality of the Franchised Unit, the service provided by the Franchised Unit or the image of the Franchised Unit in the community. In this regard, Franchisee shall immediately address and resolve customer complaints with all due diligence. If Franchisee fails to do so to the reasonable satisfaction of a customer and to the absolute satisfaction of Franchisor, Franchisor shall have the right to resolve such a customer complaint to Franchisor's satisfaction and to obtain reimbursement from Franchisee for all applicable costs and expenses Franchisor incurs to do so, together with an administration and service charge equal to twenty-five percent (25%) of such costs and expenses, upon demand by Franchisor.

s. **Standard Business Format; No Co-Branding.** A standard business format is required by Franchisor and shall be used by Franchisee. Any changes in the business format to be used at the Franchised Unit shall be approved in writing by Franchisor prior to its use by Franchisee. Franchisee agrees to indemnify and hold Franchisor and its Affiliates, and their respective shareholders, directors, officers, employees and agents, harmless from and against any and all loss, damage, cost or expense, including attorneys' fees, resulting from any change Franchisee makes in the standard business format. Franchisor may change the standard business format at any time and from time to time. Franchisee may not engage in any Co-Branding in or in connection with the Franchised Unit except with Franchisor's prior written consent. Franchisor shall not be required to approve any Co-Branding chain or arrangement except in its discretion, and only if Franchisor has recognized that Co-Branding chain as an approved Co-Brand for operation within 1-800-Flowers stores.

t. **Compliance with Applicable Laws and Standard Procedures.** Franchisee shall operate the Franchised Unit in strict compliance with all Applicable Laws, rules and regulations of duly constituted Governmental Authorities and in strict compliance with the standard procedures established by Franchisor from time to time, including, without limitation, reporting of sales and maintenance of accounting records and financial information, payment procedures, hours of operation, minimum standards and qualifications for supervisory and managerial employees, design and color of uniforms, standards of sanitation, maintenance and repair requirements, and all matters that, in Franchisor's judgment, require standardization and uniformity in all 1-800-Flowers shops for the benefit of the 1-800-Flowers System. All costs that may be incurred in order to maintain and implement such standard procedures shall be borne by Franchisee.

u. **Uniforms.** Franchisor may prescribe standard uniforms and identification for all personnel of Franchisee in order to enhance Franchisor's image, service, products and business format. If so required, Franchisee and Franchisee's employees shall wear uniforms and name tags complying with the 1-800-Flowers System while working in or for the Franchised Unit. The cost for the uniforms and name tags shall be borne solely by Franchisee. Franchisee shall be entitled to obtain the uniforms and name tags from any manufacturer or distributor, provided they are in strict accordance with Franchisor's design, quality and other specifications.



v. **Van.** Franchisee shall supply, at Franchisee's own cost and expense, at least one (1) van for the Franchised Unit, which shall be of a type, condition and appearance that is consistent with Franchisor's current specifications. Franchisee shall cause the van to be in good repair and present a respectable image of the 1-800-Flowers System at all times. The van shall bear appropriate signs and advertising in the form designated by Franchisor, which advertising shall be placed on the van at Franchisee's expense. All required signs and advertising shall be placed on the van prior to any use of the vehicle by Franchisee.

w. **Intoxicating Beverages; Vending or Other Machines.** Franchisee shall not permit any intoxicating beverages of any kind to be sold, dispensed or consumed, in or from the Franchised Unit, without the prior written consent of Franchisor. Except with Franchisor's prior written approval, Franchisee shall not cause or permit vending, gaming machines, pay telephones, automatic teller machines, Internet kiosks or any other mechanical or electrical device to be installed or maintained at the Franchised Location.

x. **Sufficient Inventory and Staff.** Franchisee shall sell no product, service or other item at the Franchised Unit other than products or services approved by Franchisor. All products and services shall be in strict compliance with Franchisor's specifications and requirements as from time to time prescribed by Franchisor. Franchisee shall submit to Franchisor for approval all contemplated product and service changes and all additions to or deletions from the items sold or services provided in or from the Franchised Unit. Franchisee agrees not to make such changes without the prior written consent of Franchisor. If Franchisee fails to remove any unapproved flowers, plants, accessories, gift and sentiment items or other merchandise from the Franchised Unit within five (5) days after Franchisor's issuance of a written notice to Franchisee to do so, Franchisor may enter the Franchised Unit without prior notice and remove any such unapproved flowers, plants, accessories, gift and sentiment items or other merchandise from the Franchised Unit without any liability to Franchisee for doing so. Franchisee shall maintain sufficient inventories of goods and merchandise at the Franchised Unit in accordance with the requirements of the 1-800-Flowers System. Franchisee shall use Franchisor's approved and designated planograms for merchandise placement in the Franchised Unit and shall stock an inventory of these items at the levels Franchisor shall determine from time to time.

y. **Payment of Taxes.** Franchisee shall pay all occupational, business, excise, sales, use, real and personal property and other taxes and assessments levied or imposed upon the Franchised Location or the operation of the Franchised Unit, or charged to Franchisee and arising from or in connection with the Franchised Location or the operation of the Franchised Unit, and shall hold Franchisor harmless from and against any and all liability, costs and expenses, including, without limitation, attorneys' fees, which may be incurred in connection with such taxes and/or assessments.

z. **Procedures.** Franchisee shall comply with all standard policies and requirements of BloomNet or approved wire services used at the Franchised Unit. The use of centralized telephone systems and inter-store and intra-store transmissions of Incoming Sales and Outgoing Sales by Franchisee at, from or to the Franchised Unit are prohibited without the prior written consent of Franchisor. Franchisee acknowledges and agrees that Franchisor shall have the right to require Franchisee to use BloomNet or certain wire services and/or to restrict the wire services Franchisee may use.

aa. **Credit Rating.** Franchisee acknowledges and agrees that Franchisor has the right to access Franchisee's FICO credit score from time to time during the Term. Franchisee shall execute and deliver any documents Franchisor requires in order to obtain such information.

bb. **Business Review Process.** Franchisee shall prepare and submit to Franchisor for approval, not more frequently than once every twelve (12) to eighteen (18) months during the Term, a business review for the

Franchised Unit in a form designated by Franchisor by a date specified by Franchisor and as set forth in the Manuals, as they may from time to time be amended, and in other directives of Franchisor.

cc. **Improvements**. If Franchisee develops any new concept, process or improvement in the 1-800-Flowers System (an “**Improvement**”), Franchisee shall promptly notify Franchisor and provide Franchisor with all necessary related information, without compensation. Any such Improvement shall become Franchisor’s sole property and Franchisor shall be the sole owner of all related intellectual property rights. Franchisee hereby assigns to Franchisor any rights Franchisee may have or acquire in the Improvements, including the right to modify the Improvement, and Franchisee waives and/or releases all rights of restraint and moral rights therein and thereto. Franchisee shall assist Franchisor in obtaining and enforcing the intellectual property rights to any such Improvement in any and all countries and further agrees to execute and provide Franchisor with all necessary documentation for obtaining and enforcing such rights. Franchisee hereby irrevocably designates and appoints Franchisor as Franchisee’s agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of intellectual property rights related to any such Improvement. If the foregoing provisions of this Section 10(cc) are found to be invalid or otherwise unenforceable, Franchisee hereby grants Franchisor a worldwide, perpetual, non-exclusive, fully paid license to use and sublicense the use of the Improvement to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe Franchisee’s rights therein.

dd. **Authorization to Release Information**. Franchisee hereby authorizes (and agrees to execute any other documents deemed necessary to effect such authorization) all banks, financial institutions, businesses, suppliers, manufacturers, contractors, vendors and other persons or entities with whom Franchisee does business to disclose to Franchisor any financial information in their possession relating to Franchisee or the Franchised Unit that Franchisor may request. Franchisee further authorizes Franchisor to disclose to prospective franchisees or other third parties data from Franchisee’s reports if Franchisor determines, in its sole discretion, that such disclosure is necessary or advisable.

ee. **Adequate Reserves and Working Capital**. Franchisee shall, at all times, maintain adequate reserves and working capital sufficient for Franchisee to fulfill all of its obligations under this Agreement and to cover the risks and contingencies of the Franchised Unit for at least three (3) months.

ff. **Notification of Legal Proceedings and Crisis Management Events**. Franchisee shall notify Franchisor in writing within ten (10) days after Franchisee receives actual notice of the commencement of any investigation, action, suit, or other proceeding, or the issuance of any order, writ, injunction, award, or other decree of any court, agency, or other Governmental Authority that pertains to the Franchised Unit at the Franchised Location or that may adversely affect Franchisee’s operation of the Franchised Unit at the Franchised Location or ability to meet its obligations under this Agreement. Upon the occurrence of a Crisis Management Event, Franchisee shall immediately inform Franchisor’s President (or as otherwise instructed in the Manuals) by telephone. Franchisee shall cooperate fully with Franchisor with respect to Franchisor’s response to the Crisis Management Event.

gg. **Data**. All data pertaining to the Franchised Unit and all data created or collected by Franchisee in connection with Franchisee’s operation of the Franchised Unit (including, without limitation, data pertaining to or otherwise concerning the Franchised Unit’s customers) or otherwise provided by Franchisee (including, without limitation, data uploaded to, or downloaded from Franchisee’s POS System and/or computer system) is the sole property of Franchisor and Franchisor shall have the right to use such data in any manner that Franchisor deems appropriate without any compensation to Franchisee. Franchisee shall provide Franchisor with copies and/or originals of such data upon request by Franchisor. Franchisor hereby licenses use of such

data to Franchisee during the Term, at no cost, solely for Franchisee's use in connection with the Franchised Unit.

11. **SERVICES OF FRANCHISOR.**

In addition to the services of Franchisor set forth elsewhere in this Agreement and provided that Franchisee is not in Default of this Agreement or any other agreement between Franchisor or its Affiliates, and Franchisee, Franchisor shall provide Franchisee with the services detailed in this Article 11.

a. **Initial Training Program.** Franchisor shall make the Initial Training Program available to the Principal Owner and a General Manager or other supervisory or managerial personnel designated by Franchisee without charge once during the Term. Franchisor shall train only the Principal Owner and one General Manager without charge, subject to the provisions of this Article 11; however, if Franchisee is a married couple, both spouses will be trained by Franchisor without charge upon request. Within a period of time set by Franchisor prior to the opening of business at the Franchised Unit, Franchisor will arrange to provide the Principal Owner and the General Manager with an Initial Training Program consisting of time spent in a classroom and at a 1-800-Flowers retail store designated by Franchisor. Training will be conducted by those Persons designated by Franchisor. Upon Franchisee's agreement, Franchisor reserves the right to waive this training requirement if Franchisee is experienced in the floral business and does not require initial training. Furthermore, the Initial Training Program shall not be provided if either (i) Franchisee or any Affiliate of Franchisee, or an Owner of either, owns or operates a Franchised Unit as of the Effective Date, or (ii) this Agreement is executed as a Successor Franchise Agreement.

b. **Additional Trainees; Additional Initial Training Programs.** If, whether before or after the Franchised Unit opens for business, Franchisee desires Franchisor to provide the Initial Training Program to any of Franchisee's supervisory and managerial employees in addition to the Principal Owner or General Manager, and Franchisor agrees to do so at Franchisor's discretion, then, except as provided in Section 11(a) above, Franchisor has the right to charge Franchisee the Additional Training Fee for each such additional trainee for each day of their attendance at the Initial Training Program, to defray the direct costs of training such Persons. The training of the additional Persons shall be done at times and at locations determined by Franchisor. The training of a General Manager by Franchisor will generally have priority as to time and location over the training of other Persons. In addition, Franchisee shall be responsible for all expenses incurred in connection with the attendance of the Principal Owner, the General Manager and other supervisory and managerial employees at the additional Initial Training Programs, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages.

c. **Additional/Remedial Training Programs.** Throughout the Term, to the extent and with the frequency that Franchisor deems appropriate in its sole and absolute discretion, Franchisor shall provide Franchisee, and, as appropriate, supervisory and managerial employees of Franchisee, with additional and/or remedial training programs through the use of videos, conventions, workshops and meetings, and the like, and shall provide ongoing and refresher courses in the various aspects of operation of a 1-800-Flowers shop. Franchisee shall be responsible for all expenses incurred in connection with the attendance of the Principal Owner and the supervisory and managerial employees at such training programs, including, without limitation, the costs of transportation, lodging, meals, training materials and any wages.

d. **Updates to Manuals.** Franchisor has the right, from time to time, to update or change the Manuals in Franchisor's sole discretion.

e. **On-Site Assistance.** Franchisor may, in its sole discretion, provide members of its staff, at its expense, at the opening of the Franchised Unit for up to one (1) week following the opening of the Franchised Unit for business; however, all costs and expenses that may be incurred by Franchisor for the wages of any additional staff provided by Franchisor after the expiration of such one (1) week period shall be borne by Franchisee. Franchisor may, in its sole and absolute discretion, provide members of its operations staff to assist Franchisee in the operation of the Franchised Unit and in establishing standard procedures after the opening of the Franchised Unit. Franchisee authorizes Franchisor to install Franchisor's personnel in the Franchised Unit in the event Franchisor, in its sole and absolute discretion, determines that the same are necessary for the proper operation of the Franchised Unit. On-Site Assistance shall not be provided if (i) Franchisee or any Affiliate of Franchisee owns or operates a 1-800-Flowers Franchised Unit as of the Effective Date, or (ii) this Agreement is executed as a Successor Franchise Agreement.

f. **Virtual Training, Assistance and Inspections.** Franchisor may provide any or all portions of the Initial Training Program, Additional Initial Training Program, Additional/Remedial Training Programs, pre and post-opening on-site opening assistance, post-opening consultations and/or post-opening inspections remotely over a virtual communication platform designated by Franchisor.

g. **Store Reviews.** Periodically during the Term, Franchisor shall review the Franchised Unit from time to time to determine the operational status of the Franchised Unit, to grade all elements of the operation of the Franchised Unit, to maintain compliance by Franchisee with the standards and requirements of the 1-800-Flowers System and to enhance uniformity and quality control. Franchisor's personnel shall have the right to enter the Franchised Unit at any reasonable time and from time to time to take photographs or make videos of the Franchised Unit and for the purpose of examination, conferences with Franchisee or Franchisee's supervisory and managerial employees, inspection of the operation and testing of the products and items sold in the Franchised Unit and for all other purposes in connection with a determination that the Franchised Unit is being operated in accordance with the terms of this Agreement, the Manuals and other rules. Franchisee specifically authorizes Franchisor to install Franchisor's personnel or representatives in the Franchised Unit to monitor the operation of the cash registers in the Franchised Unit for such periods of time as Franchisor may determine to be necessary. Franchisee agrees to remedy any defects, deficiencies or other items subject to unsatisfactory grades or other unsatisfactory conditions discovered at the Franchised Unit by Franchisor's personnel immediately upon being advised of same. Franchisee's failure to effectuate any required remedy shall be a Default of this Agreement.

h. **Consultation and Advisory Services.** Franchisor may periodically consult with Franchisee from time to time concerning the operation of the Franchised Unit. Franchisor shall at reasonable times, upon request and at no charge to Franchisee, furnish counseling and advisory services to Franchisee with respect to the planning, opening and operation of the Franchised Unit, including consultation and advice regarding operating problems and procedures, new developments and improvements in the 1-800-Flowers System, customer credit and collection advice, record keeping, purchasing, marketing, promotion and merchandising, business forms and the interpretation of policy as set forth in the Manuals, as the same may from time to time be amended, and other directives of Franchisor. The advice to be rendered pursuant to this Section 11(g) shall be general advice designed to assist Franchisee in the operation of the Franchised Unit. Franchisor's consultation and advice may be provided by telephone, in writing, electronically, in person, or by other means. Franchisee acknowledges and agrees that the results of Franchisee's efforts to operate the Franchised Unit rests solely with Franchisee. Franchisor may make recommendations that it deems appropriate to assist Franchisee's efforts. However, Franchisee alone shall establish all requirements, consistent with the policies of Franchisor, regarding: (i) employment policies, hiring, firing, training, wage and hour requirements, record keeping, supervision, and discipline of employees; (ii) the individuals to whom Franchisee will offer and sell its

products and services; and (iii) the suppliers from whom Franchisee obtains any products or services used in or at the Franchised Unit for which Franchisor has not established approved suppliers. In addition, Franchisor shall exert its best efforts to establish standards for POS Systems and computer hardware and software systems for the Franchised Unit and to provide Franchisee, either directly and/or indirectly through the use of approved third-party vendors, with on-going maintenance and repair services and upgrades and updates for these systems. Franchisee shall be responsible for the entire operation of the Franchised Unit at all times and shall hold Franchisor and its Affiliates and their respective directors, officers, employees and agents, harmless therefrom, and shall not look to Franchisor for performance of regular operational duties. Franchisee acknowledges and agrees that Franchisor, by rendering advice and consultation, does not thereby guarantee the success or profitability of the Franchised Unit.

## 12. **SUPPLIES AND SUPPLIERS.**

Franchisor shall provide Franchisee with a list of its approved and designated suppliers of goods and services for the construction, equipping and operation of the Franchised Unit following the Parties' execution of this Agreement and shall further provide Franchisee with updated lists of such suppliers periodically during the Term.

a. **Inventory.** Franchisee shall be responsible for maintaining at all times at Franchisee's own expense a complete inventory of goods and merchandise at the Franchised Unit, including, without limitation, all specific products required by Franchisor to be obtained by Franchisee from designated suppliers from time to time. All flowers, plants, accessories, gift and sentiment items and other merchandise to be sold from the Franchised Unit must conform to the standards and specifications established by Franchisor from time to time as set forth in the Manuals, company directives or otherwise in writing, in order to protect, maintain and foster the reputation, goodwill and public acceptance of Franchisor, its Affiliates, other franchisees of Franchisor and the 1-800-Flowers System.

b. **Fixtures and Equipment.** Franchisee shall purchase and install, at Franchisee's expense, all fixtures, furnishings, signs and equipment that conform to the standards and specifications established by Franchisor from time to time and as Franchisor may reasonably direct in the Manuals, company directives or otherwise in writing, including without limitation, point-of-sale systems, fax machines, electronic systems and computer hardware and software systems, display counters and equipment, floral preservative systems, refrigeration equipment, signs and all specific products required by Franchisor to be obtained by Franchisee from designated suppliers.

c. **Purchases from Affiliated Suppliers.** Franchisor's Affiliates ("**Affiliated Suppliers**") may offer and sell to Franchisee and provide Franchisee with technical support, upgrades and updates from time to time for computerized cash registers, point-of-sale systems, peripheral equipment and software or other electronic systems for the Franchised Unit, and may offer to sell floral products, inventory items, supplies and equipment, including flowers, plants, planters, vases and other items for the Franchised Unit. Franchisee shall purchase specific products and services Franchisor requires Franchisee to obtain from specific suppliers, including, without limitation, from Affiliated Suppliers.

(i) All goods, products, and supplies purchased from Affiliated Suppliers shall be purchased in accordance with the purchase order format issued from time to time by the Affiliated Supplier, who may change the prices, delivery terms and other terms relating to its sale of goods, services, products and supplies ("**Goods and Services**") at any time. The Affiliated Supplier, in its discretion, may discontinue the sale of any Goods and Services at any time if in its judgment its continued sale becomes unfeasible, unprofitable, or

otherwise undesirable. All product orders by Franchisee shall be subject to acceptance by the Affiliated Supplier at the Affiliated Supplier's designated offices, and the Affiliated Supplier may accept or reject, in whole or in part, any order placed by Franchisee. Franchisee shall submit to the Affiliated Supplier, upon written request, financial statements that contain sufficient information to enable the Affiliated Supplier to determine the credit limits, if any, to be extended to Franchisee. The Affiliated Supplier, in its sole discretion, may establish the credit terms, if any, upon which it will accept Franchisee's orders, and may require Franchisee to pay for orders on a cash-in-advance or cash-on-delivery basis.

(ii) Each order placed by Franchisee, whether oral or written, for any product shall be deemed to incorporate all of the terms and conditions of this Agreement, shall be deemed subordinate to this Agreement in any instance where any term or condition of such order conflicts with any term or condition of this Agreement, and shall include such information as Franchisor may from time to time specify.

(iii) Neither Franchisor nor any Affiliated Supplier shall be liable to Franchisee on account of any delay or failure in the manufacture, delivery or shipment of goods or products caused by events or circumstances beyond their reasonable control, including such events as labor or material shortages, conditions of supply and demand, import/export restrictions, or disruptions in any Affiliated Supplier's supply sources.

(iv) In the event of any Default by Franchisee of this Agreement, neither Franchisor nor any Affiliated Supplier shall be obligated to fill or ship any orders then pending or, in the case of termination or Franchisor's refusal to grant Franchisee a Successor Franchise, made any time thereafter by Franchisee, and Franchisor may notify its Affiliated Suppliers of any impending termination or expiration of this Agreement and may, among other things, instruct such suppliers to deliver only such quantity of products as is reasonably necessary to supply Franchisee's needs prior to the expiration or termination date of this Agreement.

(v) Franchisee hereby agrees that Franchisor and/or its Affiliates may negotiate purchase arrangements with suppliers (including price terms, fees and/or rebates, such as from BloomNet or wire services) for Franchisee's benefit. Franchisor does not provide any material benefits to its franchisees (such as the grant of additional franchises or territories) based on such franchisees' use of approved suppliers.

d. **Paper Goods and Containers.** Franchisee shall purchase all printed paper, paper products and containers required at the Franchised Unit from vendors and suppliers designated or approved by Franchisor strictly in accordance with the standards and specifications of Franchisor. Franchisee shall not have the right to substitute vendors or suppliers without the prior written consent of Franchisor. In addition, Franchisee shall obtain any specific products or services required by Franchisor to be utilized in the Franchised Unit from suppliers designated by Franchisor.

e. **Franchisor's Recommended Suppliers.** Franchisor may suggest recommended suppliers to Franchisee as an accommodation to Franchisee in certain instances. Franchisee shall not be obligated to purchase items from these sources as long as Franchisee maintains the required quality and conforms with Franchisor's standards and requirements.

f. **Franchisee's Recommended Suppliers.** If Franchisee desires to recommend sources of supply for any item or items to Franchisor, Franchisor shall test and evaluate these sources of supply with reasonable promptness, not to exceed ninety (90) days, at Franchisee's expense, and shall approve or disapprove such sources based on Franchisor's tests and evaluations of the products or services and upon the following conditions: (i) Franchisee shall submit a written request to Franchisor for approval of the supplier; (ii) the

supplier must demonstrate to Franchisor's reasonable satisfaction that it is able to supply an item to Franchisee meeting Franchisor's specifications for such item, that it is in good financial standing in the business community and that its products and services are reliable; and (iii) the supplier must demonstrate to Franchisor's reasonable satisfaction that the supplier is of Good Standing in the business community with respect to its financial capabilities and the reliability of its products and service. Franchisee may not use a recommended supplier before Franchisor approves the supplier in writing. Franchisor shall notify Franchisee if and when Franchisor no longer approves a previously approved supplier and all commerce with a disapproved supplier shall immediately cease. A supplier must continually adhere to Franchisor's standards to maintain its approval. Nothing contained in this Agreement shall be deemed to require Franchisor to approve an inordinate number of suppliers of a given item, which, in the reasonable judgment of Franchisor, would result in higher costs to Franchisor's franchisees or prevent effective and economical supervision of suppliers by Franchisor.

g. **Product Standards.** Franchisee acknowledges and agrees that it will be operating the Franchised Unit under the 1-800-Flowers trade name and Marks and that its actions and the manner of the conduct of its business will reflect on the reputation of Franchisor, its Affiliates, other 1-800-Flowers franchisees and the 1-800-Flowers System. Franchisee shall sell all merchandise in a manner reasonably acceptable to Franchisor and similar to the standards established by Franchisor for all of its franchisees. Franchisee's failure to maintain product standards and to properly maintain suitable merchandise (as to both quality and quantity) shall be deemed a Default of this Agreement. Franchisor may require Franchisee to discontinue the use or sale of any product or item, which, in Franchisor's reasonable judgment, does not conform to the image or quality standards of Franchisor and the 1-800-Flowers System.

h. **Trade Accounts.** Franchisee shall maintain its trade accounts in a current status and seek to resolve any disputes with trade suppliers promptly. Should Franchisee not so maintain its trade accounts, Franchisor may, but shall not be required to, pay such accounts on behalf of Franchisee, in which event Franchisee shall immediately repay Franchisor therefor in the manner provided in Section 10(f) above. Failure of Franchisee to keep its trade accounts current or to make the immediate repayment to Franchisor specified in this Agreement shall constitute a Default under this Agreement.

### 13. **INSURANCE.**

a. **Liability, Fire, Business Interruption and Worker's Compensation Insurance.** Franchisee shall obtain and shall maintain in full force and effect during the Term, at Franchisee's expense, insurance coverage in accordance with Franchisor's current insurance requirements with insurance carriers acceptable to Franchisor. Franchisee shall provide Franchisor with a certificate of insurance or other evidence of the required coverage within ten (10) days after the insurance is obtained, but not later than the date the Franchised Unit opens for business. The coverage shall commence when possession of the Franchised Location is delivered to Franchisee for construction or otherwise. The policy or policies shall comply with the requirements of the Master Lease and Sublease for the Franchised Location or Franchisee's Third-Party Lease with the landlord of the Franchised Location, as the case may be; however, Franchisor may require Franchisee to maintain insurance coverage in amounts that exceed the coverage required by the Master Lease or Third-Party Lease and/or the Master Lease or Third-Party Lease may require Franchisee to maintain insurance coverage in amounts that exceed the coverage required by Franchisor. Franchisee shall obtain and maintain coverage for: (i) auto liability for hired and non-owned vehicles and scheduled vehicles (if owned) for a combined single limit of \$1,000,000; (ii) public liability including products liability, covering bodily injury, property damage, and advertising, sidewalks and parking areas and personal injury in the amount of at least \$1,000,000 combined single limit and an aggregate of \$2,000,000 against claims for personal injury, death or property

damage occurring in, on, or about the Franchised Unit; (iii) workers compensation as may be required by Applicable Law; (iv) employer's liability insurance with a limit of \$1,000,000 for each accident or disease; (v) employment practices liability insurance; and (vi) an umbrella policy in the amount of at least \$2,000,000. Franchisee shall also carry fire and extended coverage insurance on the Franchised Unit and its property in an amount adequate to replace it in the event of an insured loss, fire-legal liability insurance in an amount of the value of the Franchised Location and business interruption insurance in sufficient amounts to cover twelve (12) months of continuing franchise fee and marketing fee payments to Franchisor, based upon the average fees paid by Franchisee to Franchisor during the twelve (12) months preceding the event of business interruption, twelve (12) months of rent and other direct site costs for the Franchised Location, and twelve (12) months of insurance premiums and other fixed expenses. Franchisee shall also carry coverage against all forms of liability for death or injury to any individual, and for loss or damage to property. Franchisee's insurance shall provide for primary coverage and not contributory coverage, notwithstanding any other insurance that Franchisor may obtain or maintain. Franchisor reserves the right to change the insurance requirements during the Term of this Agreement, including the types of coverage and the amounts of coverage. Franchisee must comply with any changes to these requirements.

b. **Conditions of Coverage.** Franchisor shall be named as an additional named insured to the extent of its interests on all of Franchisee's insurance policies, except for Franchisee's employment practices liability insurance and worker's compensation insurance, and shall be provided with certificates of insurance evidencing such coverage upon the issuance and each renewal of all of Franchisee's insurance policies. All policies shall provide that Franchisor shall receive at least thirty (30) days' prior written notice of cancellation, lapse, material changes or termination of coverage. Franchisor reserves the right to specify reasonable changes in the types and amounts of insurance coverage required by this Article 13. Franchisee's policies shall provide a waiver of subrogation to the Franchisor and all additional insureds. Franchisee's insurance shall be primary and non-contributory with respect to all additional insureds. Any insurance or self-insurance maintained by Franchisor shall be in excess of the Franchisee's insurance and shall not contribute with it. Franchisee's policies shall not contain any provision, definition or endorsement that would serve to eliminate coverage for third-party action over claims. Franchisee's policies shall not contain any provision, definition or endorsement (including, but not limited to, ISO endorsement Form CG 24 26), which would serve to revise the definition of insured contract to remove coverage for an indemnitee's or additional insured's sole negligence. Franchisee shall provide Franchisor with a certificate of insurance as evidence of Franchisee's insurance coverage prior to, or as soon as practicable after, the execution of this Agreement. The insurance, however, shall be effective as of the Effective Date of this Agreement.

c. **No Limit of Liability.** The insurance requirements under this Agreement shall not limit the liability of Franchisee under this Agreement. Franchisee shall remain responsible for the payment of all amounts due to Franchisor or its Affiliates, notwithstanding the limits of insurance required in this Agreement.

d. **Annual Review.** The limits of all insurance policies shall be reviewed annually and may be increased by an amount that Franchisor, in its sole and absolute discretion, deems necessary to protect it and its Affiliates' interests in the Franchised Unit. In no event, however, shall Franchisee be obligated to obtain and keep in force a policy or policies of insurance covering loss or damage to the Franchised Unit in excess of the full replacement value thereof.

e. **Right to Obtain Coverage.** Should Franchisee fail or refuse to procure the required insurance coverage from an insurance carrier acceptable to Franchisor or to maintain it throughout the Term, Franchisor may procure such coverage for Franchisee, in which event Franchisee agrees to pay the required premiums or to reimburse Franchisor therefor in the manner provided by Section 10(f) above. Failure to maintain the required



insurance or to promptly reimburse Franchisor for any premiums paid on behalf of Franchisee by Franchisor shall constitute a Default under this Agreement.

f. **Destruction**. If the Franchised Unit is damaged or destroyed by an insured or uninsured cause, Franchisee shall repair, restore or rebuild the Franchised Location, provided that, if the cost to do so exceeds the insurance proceeds, Franchisee will be liable for the difference. There shall be no abatement of the obligations of Franchisee by reason of damage or destruction to the Franchised Unit.

g. **Franchisor's Insurance**. Franchisee's obligation to maintain insurance as set forth in this Agreement shall not be in any way diminished or limited by reason of any insurance maintained by Franchisor or its Affiliates, on or in connection with this Agreement, the Franchised Unit or the Franchised Location.

#### 14. **RECORD KEEPING AND ACCOUNTING.**

a. **Uniform System of Accounting**. Franchisee shall keep and maintain complete and accurate books and records of Franchisee's business operations in the manner prescribed by Franchisor in the Manuals and other company directives. Franchisor's uniform system of accounting and record keeping and its standardized forms shall be provided to Franchisee by Franchisor at Franchisor's cost and shall be used by Franchisee. Franchisor's uniform system of accounting and record keeping may be amended or supplemented from time to time by Franchisor and will include, without limitation, the use of designated computer hardware and software, standardized forms for reporting Adjusted Gross Sales, Outgoing Sales and Incoming Sales, continuing franchise fees and marketing fees, profit and loss statements and balance sheets relating to the operation of the Franchised Unit. Franchisee shall be solely responsible for performing all record keeping duties for the Franchised Unit and for the cost for all such services and all computer hardware and software necessary or required to perform all record keeping duties.

b. **Records and Audits**. Franchisee shall maintain and preserve accurate books, sales records and tax returns of Franchisee's business operations at the Franchised Unit, and all related supporting materials, including, without limitation, all daily detail register tapes, daily summary register tapes, copies of deposit slips and supporting information (including cash count sheets), invoices with validation (*i.e.*, Outgoing Sales, Incoming Sales, delivery, will call, house charges and voided invoices), delivery receipts, bank statements and all supporting detail customarily included with bank statements, credit card batch totals, complete BloomNet or wire service billing statements, invoices from vendors and suppliers, all check registers for all checking accounts maintained for the Franchised Unit, payroll journals, sales tax returns, federal and state income tax returns, over-ring and paid-outs support, returns and allowances support, support for all checks returned for insufficient funds, customer charge account aging reports, customer account payment reports and detail, and such other data that may be required by the Manuals or other directives issued by Franchisor, for at least five (5) years.

(i) All books, records, tax returns and supporting materials described in this Section 14(b) or in the Manuals or other directives, shall be made available by Franchisee for inspection, examination or audit by Franchisor at all reasonable times. An examination or audit shall be at Franchisor's cost and expense, unless it is disclosed that Adjusted Gross Sales and/or Incoming Sales as submitted by Franchisee are in error to the extent of three percent (3%) or more in Franchisee's favor, in which case these costs and expenses shall be borne by Franchisee. Franchisee shall also immediately pay Franchisor any deficiency in continuing franchise fees or marketing fees that are disclosed by such audit or examination, together with interest at the maximum rate permitted by Applicable Law or ten percent (10%) per annum, whichever is greater, from the date of the underpayment, plus a penalty of twenty-five percent (25%) of the amount of underpayment. If Franchisee

understates Adjusted Gross Sales and/or Incoming Sales more than once during the Term, Franchisor shall have the right to terminate this Agreement.

(ii) Franchisee shall only use bookkeepers and accountants who have been approved by Franchisor from time to time to assist Franchisee in its performance of its record keeping and financial reporting obligations required under Sections 14(a), 14(b) and 14(c) and under the Manuals. Franchisee shall submit its bookkeepers and accountants for Franchisor's approval at least thirty (30) days prior to the opening of the Franchised Unit for business. In addition, Franchisee shall have the right to recommend bookkeepers and accountants in accordance with the procedures set forth in Section 12(e) above.

c. **Financial Statements and Tax Returns.** Franchisee shall prepare and submit to Franchisor financial statements, in a form designated by Franchisor, which shall include a balance sheet and a profit and loss statement prepared by a certified public accountant, within forty-five (45) days of the end of each calendar quarter during the Term. Franchisee shall also submit to Franchisor copies of Franchisee's annual federal, state and city, if any, income tax and sales tax returns within ten (10) days following a demand by Franchisor to do so, and Franchisee hereby waives any privilege pertaining thereto. Franchisee shall prepare and submit to Franchisor daily and/or weekly revenue reports, which shall be submitted to Franchisor electronically or via such other means identified by Franchisor.

d. **Right to Enter.** Franchisor and its authorized representatives shall have the right, at all reasonable times following reasonable notice, to enter the Franchised Unit to examine Franchisee's books and records for any purpose related to this Agreement, provided that, Franchisee or Franchisee's manager is present at the Franchised Unit at such time.

e. **Credit Cards.** Franchisee shall honor all credit, charge, courtesy and cash cards approved by Franchisor in writing. To the extent Franchisee stores, processes, transmits or otherwise accesses or possesses cardholder data in connection with the sale of authorized BloomNet/Flowerama/Fruit Bouquet products, Franchisee shall maintain the security of cardholder data and adhere to the Then-Current Payment Card Industry Data Security Standards ("**PCI DSS**"), currently found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org), for the protection of cardholder data throughout the Term. Franchisee shall be and remain responsible for the security of cardholder data in the possession or control of any subcontractors Franchisee engages to process credit cards. All subcontractors must be identified to and approved by Franchisor in writing prior to sharing cardholder data with the subcontractor. Franchisee shall, if Franchisor requests Franchisee to do so, provide appropriate documentation to Franchisor to demonstrate compliance with applicable PCI DSS requirements by Franchisee and all identified subcontractors.

## 15. **PROTECTION OF TRADEMARKS AND RELATED PROPRIETARY RIGHTS.**

a. **Notice of Claim.** In the event of any claim of infringement of or challenge to Franchisee's use of the Marks, Franchisee shall immediately notify Franchisor in writing of the facts of such claim or challenge. Franchisor shall use commercially reasonable efforts to protect and defend Franchisee's use of the Marks as licensed under this Agreement.

b. **Reimbursement of Franchisee.** Franchisor shall cause the Floral Marketing Fund to reimburse Franchisee for all damages for which Franchisee is held liable in any proceeding described in Section 15(a) related to the Marks; however, the foregoing obligation of Franchisor to protect, defend and cause the Floral Marketing Fund to reimburse Franchisee will exist only if Franchisee has used the Marks that are the subject of the controversy in strict accordance with the provisions of this Agreement and the rules, regulations,

procedures, requirements and instructions of Franchisor and has notified Franchisor of the challenge as required by Section 15(a).

c. **Control of Franchisor**. Any action to be taken in the event of a claim or challenge to any of the Marks shall be solely in the discretion of Franchisor. Franchisor shall have the sole right to control any legal actions or proceedings resulting therefrom. Any actions taken to protect the Marks shall also be within the sole discretion and control of Franchisor. Franchisee agrees to cooperate fully with Franchisor in the prosecution or defense of any claim or challenge concerning any of the Marks.

d. **Discontinued Use**. In the event it becomes advisable or desirable at any time, in the sole and absolute discretion of Franchisor, for Franchisee, alone or in conjunction with other franchisees of Franchisor, to modify or discontinue the use, in whole or in part, of any one or more of the Marks, or to use one or more additional or substitute marks, Franchisee agrees to immediately comply with the instructions of Franchisor in that regard. Franchisee shall be responsible for all costs that may be incurred to comply with this obligation.

e. **Notice**. Franchisee shall indicate the required trademark, service mark or copyright notices in the form specified by Franchisor in connection with Franchisee's use of Franchisor's trademarked and copyrighted items.

f. **Property of Franchisor**. Franchisee acknowledges and agrees that, at all times and in all respects, the Marks are the sole property of Franchisor and/or its Affiliates and that Franchisee has only a license to use the Marks according to the provisions of this Agreement. Franchisee shall not acquire any proprietary rights of ownership in any of the Marks, it being the intention of the Parties that all use of the Marks by Franchisee shall at all times inure to the benefit of Franchisor. Franchisee shall make no application for registration of any Mark and shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Franchisor in and to the Marks without the prior written consent of, and upon terms and conditions satisfactory to, Franchisor. Franchisee's right to use the Marks is derived solely from this Agreement and is limited to Franchisee's operation of the Franchised Unit pursuant to and in compliance with this Agreement and all system standards that Franchisor may prescribe from time to time. Any unauthorized use of the Marks shall constitute a Default under this Agreement. Franchisee agrees to take no action that will interfere with the Marks. Franchisee also agrees: (i) Franchisee will not use any marks that are confusingly similar to the Marks; (ii) Franchisee will not seek to register any marks that are confusingly similar to the Marks; (iii) Franchisee will not seek to register a composite mark incorporating any of the Marks, or any part thereof; and (iv) Franchisee will not challenge the validity of the Marks.

g. **Quality Control and Inspection**. Franchisee undertakes to use the Marks solely in accordance with the standards, specifications and instructions approved and set by Franchisor and only in relation to such goods and/or services as approved by Franchisor. Franchisor shall have the right, at all reasonable times, at the Franchised Unit and elsewhere, to inspect the products and services on which the Marks shall be used as Franchisor considers necessary to carry out the purposes of inspection as part of appropriate quality control. Upon request, Franchisee shall submit to Franchisor all packages, labels, advertising, displays, advertising brochures and other materials used in connection with the goods and/or services bearing the Marks and Franchisee specifically undertakes to amend to the satisfaction of Franchisor any such package, labels, advertising displays, advertising brochures and other materials that are not approved by Franchisor. If Franchisee makes any unauthorized use of the Marks, Franchisee shall pay Franchisor the sum of \$1,000 per infraction upon Franchisor's demand.

h. **Modifications.** Franchisee acknowledges and agrees that from time to time Franchisor may change or modify the Trade Practices and the 1-800-Flowers System, including the adoption and use of new or modified trade names, trademarks, service marks or copyrighted materials, new products, new equipment or new techniques. Franchisee shall, either alone, or in conjunction with other franchisees of Franchisor, accept, use and display any such changes in the Trade Practices and the 1-800-Flowers System, including new or modified trade names, trademarks, service marks or copyrighted materials, new products, new equipment or new techniques, as if they were in effect at the time of Franchisee's execution of this Agreement. Franchisee shall make such expenditures as such changes or modifications may require and shall do so within the time set forth by Franchisor, or if no time is specified, within a reasonable time.

i. **Reimbursement of Franchisor.** Franchisor shall be entitled to receive reimbursement from the Floral Marketing Fund for any legal fees and costs that are incurred in connection with the review and/or litigation of matters relating to the use or dissemination of signs or other written materials displaying the Marks that are developed for the marketing, promotion and enhancement of the 1-800-Flowers System.

16. **COVENANTS REGARDING OTHER BUSINESS INTERESTS.**

a. **Ownership during Term.** During the Term of this franchise, neither Franchisee nor any of its Owners shall directly or indirectly engage or be financially involved in (except for ownership of not more than five percent (5%) of the outstanding stock, voting and non-voting, of a corporation, the stock of which is traded on a national securities exchange), or be employed by any Competitive Business.

b. **Ownership Following Termination.** Franchisee specifically acknowledges and agrees that, pursuant to this Agreement, Franchisee will receive valuable specialized training and Confidential Information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques for the operation of 1-800-Flowers retail sales outlets, and of Franchisor and the 1-800-Flowers System. In addition, Franchisee specifically acknowledges and agrees that prior to becoming a 1-800-Flowers franchisee, Franchisee had no experience, information or knowledge whatsoever about the operation of 1-800-Flowers retail sales outlets or a Franchised Unit and that Franchisee's knowledge of the Confidential Information was obtained solely from Franchisor, following Franchisee's training by Franchisor and Franchisee's subsequent operation of the Franchised Unit under this Agreement. Therefore, commencing on the termination or expiration of this Agreement and for two (2) years after the termination or expiration of this Agreement, none of the Restricted Persons shall engage in any Competitive Business located at the Franchised Unit or within a ten (10) mile radius of any 1-800-Flowers shop or the Franchised Unit; provided, however, should this restriction violate the laws of the state whose laws govern this Agreement, the maximum restriction permitted in that state shall govern this provision.

c. **Violation of Non-Compete.** If Franchisee commits any violation of Section 16(b), with or without Franchisor's permission, during the two (2) year period following (i) a transfer permitted under Article 17; (ii) expiration of this Agreement; (iii) termination of this Agreement (regardless of the cause for termination); or (iv) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of Section 16(b), then, in addition to all other remedies available to Franchisor, Franchisee shall pay Franchisor, throughout the two (2) year period, five percent (5%) of all revenue derived from the operation of the Competitive Business, including the sale of any merchandise, other products and services at or from the Competitive Business, and all other income of every kind and nature of the Competitive Business ("**Post-Termination Gross Revenue**") in violation of Section 16(b).

d. **Confidential Information.** Nothing contained in this Agreement shall be construed to require Franchisor to divulge to Franchisee any secrets, except the material contained in the Manuals and training materials. Franchisee acknowledges and agrees that Franchisee's knowledge of Franchisor's know-how, processes, products, techniques, information and other proprietary data are derived entirely from information disclosed to Franchisee by Franchisor and that such information is proprietary, confidential and a trade secret of Franchisor and its Affiliates, and includes, without limitation, tangible and intangible information (whether or not in electronic form) relating to Franchisor's business operations, products and services, sources of materials and equipment, client management and other software data, other content, formulations, patterns, compilations, programs, devices and processes, business relationships, contact information for industry professionals, designs, developmental or experimental work and services, improvements, discoveries, plans for research, potential new or supplemental products and services, websites, advertisements or ancillary products and services, marketing and selling methods and/or plans, business plans, budgets and unpublished financial statements, licenses, prices and costs, vendors, collaborators, current customer and prospective customer names and addresses, information regarding credit extensions to customers, customer service purchasing histories and prices charged to customers, information regarding the skills and compensation of Franchisor's employees and contractors of Franchisor, designs, drawings, specifications, source code, object code, documentation, diagrams, flowcharts, research, development, marketing techniques and materials, trademarks, trade secrets, sales/license techniques, inventions, copyrightable material, trademarkable material, databases, relationships between Franchisor and other companies, persons or entities, knowledge or know-how concerning the methods of operation of the Franchised Unit that may be communicated to Franchisee, or of which Franchisee may be apprised, by virtue of Franchisee's operation of the Franchised Unit under the terms of this Agreement, and any other information or material considered proprietary by Franchisor whether or not designated as confidential information by Franchisor, that is not generally known by the public, or which derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor or its Affiliates and which is the subject of efforts by Franchisor that are reasonable under the circumstances to maintain its secrecy, and any other information in oral, written, graphic or electronic form, which, given the circumstances surrounding its disclosure, would be considered confidential (collectively, the "**Confidential Information**"). Franchisee agrees to adhere fully and strictly to all confidentiality of such information and to exercise the highest degree of diligence in safeguarding Franchisor's trade secrets and Confidential Information during and after the Term. Franchisee shall divulge such material only to Franchisee's supervisory and managerial employees and only to the extent necessary to permit the effective operation of the Franchised Unit.

e. **Value.** Franchisee acknowledges and agrees the Confidential Information is not generally known by the public or parties other than Franchisor, its Affiliates, its franchisees and Franchisee; derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor or Franchisee; and is the subject of efforts by Franchisor that are reasonable under the circumstances to maintain the secrecy of the Confidential Information, including, without limitation: (i) not revealing the Confidential Information to unauthorized parties; (ii) requiring its franchisees to acknowledge and agree in writing that the Confidential Information is confidential; (iii) requiring its franchisees to agree in writing to maintain the confidentiality of the Confidential Information; (iv) monitoring electronic access to the Confidential Information by the use of passwords and other restrictions so that electronic access to the Confidential Information is limited to authorized parties; and (v) requiring its franchisees to return all Confidential Information to Franchisor upon the expiration or termination of their Franchise Agreements.

f. **Maintain Confidentiality.** Franchisee shall not, during the Term or thereafter, communicate, divulge, or use for the benefit of anyone else, any information that Franchisor considers its trade secrets and/or Confidential Information. Franchisee shall divulge such Confidential Information only to such of its

supervisory and managerial employees who must have access to it in order to perform their employment responsibilities.

g. **Irreparable Injury from Disclosure of Confidential Information.** Franchisee acknowledges and agrees that failure to comply with the requirements of this Article 16 will result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to the requirements of this Article 16.

h. **Confidentiality Covenants from Individuals Associated with Franchisee.** Franchisee may require any employee who may have access to any Confidential Information of Franchisor to execute covenants that they will maintain the confidentiality of the Confidential Information they receive in connection with their association with Franchisee. Such covenants shall be in a form satisfactory to Franchisor, including, without limitation, specific identification of Franchisor as a third-party beneficiary of such covenants with the independent right to enforce them.

i. **Use of Trade Practices.** Franchisee shall not, during the Term or thereafter, use or assist another in the use of any of the Trade Practices in any other business of Franchisee or of any other Person or Entity.

j. **Confidentiality and Press Releases.** Franchisee shall not disclose the substance of this Agreement to any third party except as necessary to inform Third Party Landlords from which it is seeking Leases or Third Party Landlords that are parties to Third-Party Leases in order to obtain renewals of, or avoid terminations of, such Third-Party Leases or as necessary to obtain any permits or other approvals, or to the extent required by the lawful order of any court of competent jurisdiction or federal, state, or local agency having jurisdiction over Franchisee, provided that, Franchisee shall give Franchisor prior notice of such disclosure. Unless disclosure is required by Applicable Law, no public communication, press release or announcement regarding this Agreement, the transactions contemplated hereby or the operation of the Franchised Unit at the Franchised Location shall be made by Franchisee without the written approval of Franchisor in advance of such press release announcement, or public communication.

## 17. **TRANSFER OF FRANCHISE.**

a. **Transfer by Franchisor.** Franchisor shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any Person or legal Entity without the consent or approval of Franchisee. With respect to any assignment that results in the subsequent performance by the assignee of all of Franchisor's obligations under this Agreement, the assignee shall expressly assume and agree to perform the obligations, and shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment. Franchisor may sell its assets, the Marks or the 1-800-Flowers System, may sell securities in a public offering or in a private placement, may merge, acquire other corporations, or be acquired by another corporation, and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring, all without the consent or approval of Franchisee. With regard to any of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands or damages arising from or related to the loss of Franchisor's name, the Marks (or any variation thereof) or the 1-800-Flowers System and/or the loss of association with, or identification of, Franchisor as franchisor under this Agreement. Franchisee specifically waives any and all other claims, demands or damages arising from or related to the foregoing merger, acquisition and other business combination activities, including, without limitation, any claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract

or breach of the implied covenant of good faith and fair dealing. Franchisee agrees that Franchisor has the right, now or in the future, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business's facilities, and to operate, franchise or license those businesses and/or facilities as the Franchised Units operating under the Marks or any other marks following Franchisor's purchase, merger, acquisition or affiliation, regardless of the location of these facilities, which Franchisee acknowledges and agrees may be proximate to the Franchised Unit.

b. **Assignment by Franchisee.** Franchisee acknowledges and agrees that the rights granted to Franchisee under this Agreement are personal and are granted in reliance upon, among other considerations, the individual or collective character, skill, aptitude, attitude, experience, business ability and financial condition and capacity of Franchisee and, if Franchisee is an Entity, that of the Owners listed on **Exhibit C** and each future direct or indirect shareholder, member, general or limited partner, trustor, trustee, beneficiary or other Equity Owner of Franchisee. Accordingly, to protect the reputation and goodwill of Franchisor, to maintain uniform standards of the merchandise, services, and operations offered and sold under the Marks, and to promote the goodwill of all 1-800-Flowers shops, the Marks and the 1-800-Flowers System, Franchisee shall not offer, sell, or negotiate the sale of its rights under this Agreement to any third party, either in Franchisee's own name or in the name and/or on behalf of Franchisor, except as otherwise provided in this Agreement. Franchisee acknowledges and agrees that Franchisee has no right, by operation of law or otherwise, to sell, assign, transfer, pledge, donate, encumber or otherwise deal with, directly or indirectly, (i) any interest in this Agreement, or (ii) the right to use the 1-800-Flowers System or the Marks (an "Assignment") without Franchisor's prior written consent.

(i) Franchisee shall not, without Franchisor's prior written consent, which may be withheld by Franchisor in its discretion, offer for sale or transfer at public or private auction any of the rights of Franchisee under this Agreement or directly or indirectly, pledge, encumber, hypothecate or otherwise grant any third party a security interest in this Agreement in any manner whatsoever. To the extent that the foregoing prohibition may be ineffective under Applicable Law, Franchisee shall provide not less than ten (10) days' prior written notice (which notice shall contain the name and address of the secured party and the terms of the pledge, encumbrance, hypothecation or security interest) of any pledge, encumbrance, hypothecation or security interest in this Agreement.

(ii) For purposes of this Agreement, each of the following events is an Assignment subject to the conditions to transfer identified in this Agreement: (i) the death or incapacity of any Owner, (b) the offer or sale of securities of Franchisee pursuant to a transaction subject to registration under applicable securities laws or by private placement pursuant to a written offering memorandum, (c) any sale, assignment, transfer, conveyance, gift, pledge, mortgage, or other encumbrance of any interest in Franchisee, the Franchised Business or this Agreement, (d) the issuance of any securities by Franchisee, which itself or in combination with any other transactions, results in the Owners, as constituted on the Effective Date, owning less than 100% of the outstanding Equity or voting power of Franchisee, and (e) any merger, stock redemption, consolidation, reorganization, recapitalization or other transfer of control of the Franchisee, however effected. Franchisee shall promptly provide Franchisor with written notice (stating the information that Franchisor may from time to time require) of each and every transfer, Assignment and encumbrance by any Owner of any direct or indirect Equity or voting rights in Franchisee.

(iii) Neither Franchisor's right of first refusal nor the other conditions of Assignment shall apply to a transfer by Franchisee of all of Franchisee's rights under this Agreement to a newly-formed corporation,

limited liability company or other business Entity; provided that, all of the Equity or voting interests of the new business Entity are owned by the same Owners (a “**Qualified Assignment**”).

(iv) Any attempted or purported Assignment that fails to comply with the requirements of this Article 17 shall be null and void and shall constitute a Default under this Agreement.

c. **Right of First Refusal.** Except with respect to a “Qualified Assignment”, if Franchisee or an Owner receives a bona fide written offer (“**Third Party Offer**”) from a third party (the “**Proposed Buyer**”) to purchase or otherwise acquire any interest in Franchisee that will result in an Assignment within the meaning of this Agreement, Franchisee or the Proposed Buyer, shall, within fourteen (14) days after receiving the Third Party Offer and before accepting it, apply to Franchisor in writing for Franchisor’s consent to the proposed Assignment.

(i) Franchisee, or the Proposed Buyer, shall attach to its application for consent to the Assignment a copy of the Third Party Offer together with (i) information relating to the proposed transferee’s experience and qualifications; (ii) a copy of the proposed transferee’s current financial statement; and (iii) any other information material to the Third Party Offer, proposed transferee and proposed Assignment or that Franchisor requests.

(ii) Franchisor or its nominee shall have the right, exercisable by written notice (“**Purchase Notice**”) given to Franchisee or the Proposed Buyer, within thirty (30) days following receipt of the application for consent to the Assignment and all supporting information, to notify Franchisee or the Proposed Buyer that it will purchase or acquire the rights, assets, Equity or interests proposed to be assigned on the same terms and conditions set forth in the Third Party Offer, except that Franchisor may (i) substitute cash for any form of payment proposed in the offer discounted to present value based upon the rate of interest stated in the Third Party Offer, and (ii) deduct from the purchase price all amounts then due and owing from Franchisee to Franchisor under this Agreement or otherwise.

(iii) If Franchisor or its nominee elects to purchase or acquire the rights, assets, Equity or interests proposed to be assigned to the Proposed Buyer, the closing shall take place no later than sixty (60) days following the date that the Purchase Notice was issued by Franchisor.

(iv) If Franchisor does not elect to purchase or acquire the rights, assets, Equity or interests proposed to be assigned to the Proposed Buyer, the closing of the sale to the Proposed Buyer shall take place no later than ninety (90) days following the date that the Third Party Offer was received by Franchisee. If there is any material change in the terms of the Third Party Offer before the closing of the sale, Franchisor shall have a right of first refusal to accept the new terms subject to the conditions stated in this Section 17(c).

d. **Conditions of Assignment to Third Party.** As a condition to obtaining Franchisor’s consent to an Assignment, all of the following conditions must be satisfied:

(i) The Proposed Buyer must submit a completed franchise application to Franchisor and meet Franchisor’s Then-Current qualifications for new 1-800-Flowers franchisees, including qualifications pertaining to financial condition, credit rating, experience, moral character and reputation.

(ii) Franchisee must be in Good Standing on the date consent is requested and until the date of closing of the Assignment.



(iii) The sales price of the interest to be conveyed must not be so high, or the terms of the sale so onerous, that, in the judgment of Franchisor, the Proposed Buyer will be unlikely to meet the Proposed Buyer's financial and other obligations to Franchisor, third party suppliers and creditors following the closing. Franchisor shall have no liability to either Franchisee or the Proposed Buyer if Franchisor approves the Assignment and the Proposed Buyer thereafter experiences financial difficulties.

(iv) The Proposed Buyer must sign Franchisor's Then-Current form of Franchise Agreement, the terms of which may differ materially from any and all of the terms contained in this Agreement, and which shall supersede this Agreement in all respects, except that the term of the replacement Franchise Agreement shall be the remaining Term. In exchange for signing the Then-Current Franchise Agreement, the Proposed Buyer shall receive the rights provided for in this Agreement. If the Proposed Buyer is an Entity, each Owner and each Owner's spouse of the Proposed Buyer shall jointly and severally guarantee the Proposed Buyer's performance of its obligations in the Then-Current Franchise Agreement under a Guarantee in substantially the form of **Exhibit B**. If Franchisor is not offering new 1-800-Flowers franchises, is in the process of revising, amending or renewing Franchisor's form of Franchise Agreement or its Franchise Disclosure Document or is not lawfully able to offer Franchisor's Then-Current form of Franchise Agreement at the time of an Assignment, Franchisor may offer to amend this Agreement, upon terms and conditions that will be established by Franchisor and the Proposed Buyer at that time, or may offer to amend the Term on substantially the same terms and conditions set forth in this Agreement on a month-to-month basis for as long as Franchisor deems necessary or appropriate so that Franchisor may subsequently offer and utilize a Then-Current form of Franchise Agreement.

(v) Franchisee will remain subject to all obligations stated in this Agreement that expressly, or by implication due to their nature, survive the transfer, termination or expiration of this Agreement, including, without limitation, the provisions prohibiting competition, non-interference and non-disclosure of Confidential Information.

(vi) Franchisee and the Proposed Buyer shall execute a General Release in favor of Franchisor in a form acceptable to Franchisor.

(vii) Franchisee shall pay Franchisor a Transfer Fee of \$10,000 and, at Franchisor's request, shall reimburse Franchisor for Franchisor's out of pocket costs incurred to process the Assignment, including attorneys' fees.

(viii) Franchisee must simultaneously transfer its rights to all contracts for which continuation is necessary for operation of the Franchised Unit to the Proposed Buyer and satisfy any separate conditions to obtain any third-party consents required for the transfer of Franchisee's rights to the Proposed Buyer. The Proposed Buyer must execute all other documents and agreements required by Franchisor to consummate the Assignment. All required third party consents to the Assignment must be obtained.

(ix) Franchisee's right to receive the sales proceeds from the Proposed Buyer in consideration of the Assignment shall be subordinate to the Proposed Buyer's obligations owed to Franchisor and its Affiliates under, or pursuant to, this Agreement or any other agreement. All contracts by and between Franchisee and the Proposed Buyer shall expressly include a subordination provision permitting payment of the sales proceeds to Franchisee only after any outstanding obligations owed to Franchisor and its Affiliates are fully satisfied.

(x) Except when the transferee is an existing Franchisee or franchisee of Franchisor, the Proposed

Buyer and a supervisory or managerial employee of the Proposed Buyer who will have general management and supervisory responsibilities for the Franchised Unit who is acceptable to Franchisor, must complete, to Franchisor's sole satisfaction, the Initial Training Program prior to the effective date of the Assignment.

(xi) The Proposed Buyer must remodel, renovate, redecorate, and/or refurbish the Franchised Unit to conform with Franchisor's Then-Current appearance and design standards and equipment specifications applicable to new 1-800-Flowers shops.

e. **Death or Incapacity.** In the event of the death or incapacity of an Owner, the spouse, heirs or personal representative of the deceased or incapacitated Owner, or the remaining Owners (the "Successor") shall have one hundred eighty (180) days from the date of death or incapacity in which to (i) purchase the interest of the deceased or incapacitated Owner, or (ii) complete an Assignment of the interest of the deceased or incapacitated Owner to a qualified, approved third party, subject to the provisions of this Article 17. If a Successor has not purchased the interest of the deceased or incapacitated Owner or completed an Assignment of the interest of the deceased or incapacitated Owner to a qualified, approved third party within one hundred eighty (180) days from the date of death or incapacity, Franchisor may terminate this Agreement.

f. **Transfer by Franchisee in Bankruptcy.** If, for any reason, this Agreement is not terminated pursuant to Section 21(a)(iv) below and this Agreement is to be assumed by, and assigned to, any Person or Entity who has made a bona fide offer to accept an assignment of this Agreement pursuant to the United States Bankruptcy Code, notice of the proposed assignment or assumption, setting forth (i) the name and address of the Proposed Buyer; and (ii) all of the terms and conditions of the proposed assignment and assumption, shall be given to Franchisor within twenty (20) days after receipt of the Proposed Buyer's offer to accept assignment of this Agreement, and, in any event, within ten (10) days prior to the date application is made to a court of competent jurisdiction for authority and approval to enter into the assignment and assumption. Franchisor shall thereupon have the prior right and option, to be exercised by notice given at any time prior to the effective date of the proposed assignment and assumption, to accept an assignment of this Agreement to itself upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the Proposed Buyer.

g. **Restriction on Publicly Traded and Private Securities.** Securities, partnership or other ownership interests in Franchisee may not be offered to the public under the Securities Act of 1933, as amended, nor may they be registered under the Securities Exchange Act of 1934, as amended, or any comparable federal, state or foreign law, rule or regulation. Such interests may be offered by private offering or otherwise only with the prior written consent of Franchisor, which consent shall not be unreasonably withheld. All materials required for any private offering by federal or state law shall be submitted to Franchisor for a limited review as discussed below prior to being filed with any governmental agency; and any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by Franchisee shall imply that Franchisor is participating in an underwriting, issuance or offering of securities of Franchisee or Franchisor, and Franchisor's review of any offering materials shall be limited solely to the subject of the relationship between Franchisee and Franchisor, and its Affiliates. Franchisor may, at its option, require Franchisee's offering materials to contain a written statement prescribed by Franchisor concerning the limitations described in the preceding sentence. Franchisee, its Owners and other participants in the offering must fully agree in writing to defend and indemnify Franchisor, its Affiliates, their respective partners and the officers, directors, manager(s) (if a limited liability company), shareholders, members, partners, agents, representatives, independent contractors, servants and employees of each of them, from and against any and all losses, costs and liability in connection with the offering and shall execute any documentation required by Franchisor to further evidence this indemnity. For each proposed offering, Franchisee shall pay to Franchisor

a non-refundable fee of \$10,000, which shall be in addition to any Transfer Fee under any Franchise Agreement or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering, including without limitation, legal and accounting fees. Franchisee shall give Franchisor written notice at least thirty (30) days prior to the date of commencement of any offering or other transaction covered by this Article.

18. **WEB SITES.**

a. **Definitions.** For the purposes of this Agreement, the following words and phrases shall have the meanings set forth in this Section 18(a):

(i) **“Content”** means all text, images, sounds, files, video, designs, animations, layout, color schemes, trade dress, concepts, methods, techniques, processes and data used in connection with, displayed on, or collected from or through Franchisor’s Web Site.

(ii) **“Deep Link”** means a Link to the content of a Web site. Typically, a deep link is to an interior page of a Web site (*i.e.*, bypassing the front page of the Web site).

(iii) **“Electronic Commerce”** means offering and selling merchandise and services associated with the Marks, and receiving and accepting orders and payment for that merchandise and services, directly or indirectly, through any means of electronic communication, including receiving and accepting orders over the Internet.

(iv) **“Frame”** refers to a feature which, when used in conjunction with certain browsers, allows visitors of a Web site to view content from other Web sites without actually leaving the first page.

(v) **“Franchisee’s Web Page”** means one or more interior pages of Franchisor’s Web Site that Franchisor may dedicate, in whole or in part, to the Franchised Unit.

(vi) **“Franchisor’s Web Site”** means one or more Internet Web sites that Franchisor may develop, in its sole discretion, and may be used to, among other things, facilitate orders, provide information about the 1-800-Flowers System and the products and services that are offered on the Web site and at franchised units operated under the Marks; Franchisee’s Web Page may be part of the Franchisor Web site.

(vii) **“Internet”** means any means of electronic communication that employs inter-connected computer networks to communicate information (of any kind) by fiber optics, wire, radio or other methods of transmission, including the myriad of computers, telecommunications facilities and similar means (both equipment and software) that comprise the interconnected worldwide network of networks that employ the TCP/IP (Transmission Control Protocol/Internet Protocol) or any predecessor or successor protocols to that protocol.

(viii) **“Intranet”** means a private method of communication for use only by employees and franchisees of Franchisor; the Franchisor’s Intranet may be either a “true” intranet (a series of inter-connected computers that use the same type of software as the Internet, but that are not technically part of the Internet and do not use the Internet to transmit material to one another) or an extranet (which will actually transmit information over the Internet, but require a password to access data on the servers used by Franchisor).

(ix) “**Link**” means a cross-reference which, with the aid of an interactive browser program, allows the end-user to move or connect easily from one document (including, another Web site or page on a Web site) to another.

(x) “**Software**” means all computer programs and computer code (e.g., HTML, Java) used for or on the Web site, excluding any Software owned by third parties.

(xi) “**URL**” means uniform resource locator, the unique address assigned to each page of a Web site.

(xii) “**Web site**” means a series of inter-connected “**pages**” on the World Wide Web section of the Internet (the “**World Wide Web**” is the portion of the Internet that features graphics-rich pages using the HTTP and HTML protocols).

b. **Use of Marks on Internet.** Except as provided in this Agreement, Franchisee shall not develop, create, generate, own, license, lease or use in any manner any computer medium or electronic medium (including, any URL, Internet home page, e-mail address, Web site, bulletin board, newsgroup or other Internet-related medium) that in any way uses or displays, in whole or in part, the Marks, or any of them, or any words, symbols or terms confusingly similar thereto other than Franchisee’s Web Page, if established by Franchisor, in its sole discretion, and in accordance with this Agreement, such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time and only so long as Franchisee is not in Default of this Agreement or any other Agreement between Franchisor, its Affiliates and Franchisee. Without limiting the generality of the foregoing, Franchisee shall not cause, permit or allow the Marks, or any of them, or any words, symbols or terms confusingly similar thereto, to be used or displayed in whole or part: (a) as, or as a part of, an Internet domain name; (b) as, or as a part of, a URL (at any level or address); or (c) on or in connection with any Internet home page, Web site, bulletin board, newsgroup, chat-group, buddy list, instant messenger, meta-tag, keyword, search term, or the comparable identifier in any future technology) or other internet-related activity other than Franchisee’s Web Page and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time. Franchisee shall not Link to or frame Franchisor’s Web Site (including Franchisee’s Web Page, if any) to any other Web site or authorize any third party to Link to or frame the Web site (including Franchisee’s Web Page, if any) without Franchisor’s express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

(i) Except as provided in Section 18(d) below, Franchisee shall not use, nor authorize any third party to use, the Marks to advertise, promote, offer or sell any goods or services through the Internet. Franchisee may, however, use the Marks to sell such goods or services through the Internet in compliance with Section 18(d) or with Franchisor’s prior written consent, the granting of which shall be within the sole discretion of Franchisor, but then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

(ii) Franchisor will own and will retain all right, title and interest in and to the Marks and the use thereof in any and all manners and to all existing and future domain names, URLs, addresses and sub-addresses established by Franchisor (including Franchisee’s Web Page sub-addresses), which may or may not include the Marks; all Software; all Content prepared for, or used on, Franchisor’s Web Site; and all intellectual property rights in or to any of them.

(iii) Franchisee acknowledges and agrees that it is strictly prohibited from using the Marks to promote its Franchised Unit in any manner on any social and/or networking Websites, such as Facebook, LinkedIn, Instagram and Twitter, without Franchisor's prior written consent.

c. **Franchisor's Web Site.** Franchisor may, but shall not be obligated to, establish and maintain from time to time Franchisor's Web Site to provide information about the 1-800-Flowers System and the goods and services that 1-800-Flowers shops provide. Franchisor's Web Site may, directly or indirectly, compete with Franchisee. Franchisor has sole discretion and control over the establishment, design and content of Franchisor's Web Site, except that Franchisor may, but shall not be obligated to, configure the site to accommodate Franchisee's Web Page as described in Section 18(c)(ii) below. Franchisor may, at its sole option, from time to time, without prior notice to Franchisee: (a) change, revise, or eliminate the design, content and functionality of Franchisor's Web Site; (b) make operational changes to Franchisor's Web Site; (c) change or modify the URL and/or domain name of Franchisor's Web Site; (d) substitute, modify, or rearrange Franchisor's Web Site, at Franchisor's sole option, including in any manner that Franchisor considers necessary or desirable to, among other things, (1) comply with Applicable Laws, (2) respond to changes in market conditions or technology and respond to any other circumstances; or (3) limit or restrict end-user access (in whole or in part) to Franchisor's Web Site; and (e) disable or terminate Franchisor's Web Site without any liability to Franchisee; and (f) as an alternative to establishing Franchisor's Web Site and Franchisee's Web Page, Franchisor may permit Franchisee to use Franchisee's existing web site and domain name for the purposes described in this Article 18, provided that, if any part of Franchisee's domain name or URL contains any of the Marks, Franchisee must transfer the domain name or URL to Franchisor when Franchisor directs or upon termination or expiration of this Agreement.

(i) Franchisor's Web Site may include a series of interior pages that may identify participating 1-800-Flowers shops by, among other things, name, geographic region, address, telephone number and/or e-mail address. Franchisor may, but shall not be obligated to, permit Franchisee to customize or post certain information to Franchisee's Web Page, subject to Franchisee's compliance with the procedures, policies, standards and specifications that Franchisor may establish in the Manuals from time to time, which may require the Franchisee to pay a reasonable fee for the privilege of having Franchisee's Web Page, and may include, without limitation, specifications and limitations for the data or information to be posted to Franchisee's Web Page, customization specifications, the basic template for design of Franchisee's Web Page, parameters and deadlines specified by Franchisor, disclaimers, and such other standards and specifications and rights and obligations of the Parties as Franchisor may establish from time to time. Any modifications (including customizations, alterations, submissions or updates) to the Content made by Franchisee for any purpose will be deemed to be a "**work made for hire**" under the copyright laws, and therefore, Franchisor shall own the intellectual property rights in and to such modifications. To the extent any modification does not qualify as a work made for hire as outlined above, Franchisee hereby assigns those modifications to Franchisor for no additional consideration and with no further action required and shall execute such further assignments(s) as Franchisor may request. Franchisee may not modify Franchisee's Web Page, except in coordination with Franchisor's webmaster and in compliance with Franchisor's policies and procedures. Franchisee shall contribute a reasonable fee toward the cost of the Web Site's maintenance, which may vary from year to year during the Term and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time. If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's Affiliates, or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's Affiliates, Franchisor may disable Franchisee's Web Page, without prior notice and without any liability or recourse as against Franchisor, or its Affiliates, until such time as Franchisee pays its outstanding obligations in full. Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and

authority for the sole purpose of disabling Franchisee's Web Page. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effect until the termination or expiration of this Agreement.

(ii) Franchisor may Link Franchisor's Web Site to the Web sites of third parties, including, electronic service providers, Franchisor's Affiliates and other providers of goods and services. Franchisor may also permit third parties to Link (including Deep Links to any interior page of Franchisor's Web Site, including Franchisee's Web Page) and frame Franchisor's Web Site (including Franchisee's Web Page). Franchisor may place legal notices, disclaimers, Franchisor's corporate logos and slogans, advertisements, endorsements, trademarks, and other identifying information on Franchisor's Web Site, all of which may be modified, expanded, or eliminated at Franchisor's option and sole discretion. Further, Franchisor may establish or participate in programs whereby Franchisor refers end-users to other Web sites, or Franchisor receives referrals from other Web sites. All consideration (monetary and non-monetary) received by Franchisor on account of the placement or sale of advertisements, endorsements, and sponsorships on Franchisor's Web Site (including any Franchisee Web Page), and all consideration (monetary and non-monetary) received by Franchisor on account of Affiliate programs, will belong exclusively to Franchisor. Franchisor may also establish programs that encourage repeat visits and business by end-users.

(iii) Without limiting Franchisor's general unrestricted right to permit, deny and regulate Franchisee's participation on Franchisor's Web Site in Franchisor's sole discretion, if Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's Affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's Affiliates, Franchisor may disable or terminate Franchisee's Web Page, without prior notice and without any liability or recourse as against Franchisor, or its Affiliates, and remove all references to the Franchised Unit on Franchisor's Web Site until the Default is cured.

(iv) Franchisor has no control over the stability or maintenance of the Internet generally; as a result, Franchisor is not responsible for damage or loss caused by errors or failures of the Internet. Furthermore, Franchisor is not liable for any direct, indirect, special, incidental, exemplary or consequential damages arising out of the use of, or the inability to use, Franchisor's Web Site or the Internet, including loss of profits, goodwill, or savings; downtime; or damage to or replacement of programs and data, whether known or unknown, based in contract, tort, product liability, or otherwise.

d. **Electronic Commerce.** Franchisee will not use the Marks to advertise, promote or sell any services or merchandise through the Internet, nor will Franchisee offer or sell any service that is identified with the Marks or any memorabilia or other merchandise that bears the Marks through the Internet, except in compliance with Section 18(b) above, this Section 18(d) and the Manuals. Franchisee's breach of this restriction will constitute willful trademark infringement and a material Default of this Agreement.

(i) Franchisor may, at its discretion, use the Web site described in Section 18(c) above or may establish another facility on the Internet for the purpose of engaging in Electronic Commerce with respect to products and services that are identified with the Marks.

(ii) If Franchisor decides to engage in Electronic Commerce, it will: (a) establish uniform procedures, policies and protocols to govern electronic communications between Franchisor and its customers and the use and dissemination of information that Franchisor obtains with respect to customers' identities, purchasing habits and other commercially relevant matters; (b) develop a secure site on the facility through which Franchisor can accept credit card and other Confidential Information from its customers; (c) establish a

central administration center through which customer orders are processed, customer complaints are handled, sales taxes (if any) are remitted, and records of sales transactions are created and maintained; (d) establish a central fulfillment center through which all customer orders are filled; and (e) establish the terms and conditions under which members of the 1-800-Flowers System may participate in Franchisor's Electronic Commerce program.

(iii) In the event that Franchisor initiates, in its sole discretion, an Electronic Commerce program, Franchisee may have the opportunity to participate in the program, provided that, Franchisee is in Good Standing under this Agreement and any other agreement with Franchisor or Franchisor's Affiliates. The Electronic Commerce program set forth in the Manuals may (a) state the terms on which Franchisor and participating franchisees of Franchisor may share program revenues and expenses, (b) obligate Franchisee to adhere to Franchisor's procedures, policies and protocols that govern electronic communications and the use and dissemination of customer information, (c) authorize Franchisor from time to time to modify the procedures, policies and protocols that govern the Electronic Commerce program, and (d) release Franchisor from liability to Franchisee and its customers for theft or disclosure of confidential customer information or breach of Franchisor's privacy standards, unless the proximate cause of such theft, disclosure or breach is Franchisor's gross negligence or willful misconduct.

(iv) If Franchisee declines to participate in the Electronic Commerce program on the terms stated in the Manuals, Franchisee will have no right to share in program revenues, nor will Franchisee have any responsibility to bear or pay any program expenses.

(v) If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's Affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's Affiliates, Franchisee hereby authorizes Franchisor to disable or terminate the end-user's ability to place pick-up and delivery orders with Franchisee, without prior notice and without any liability or recourse as against Franchisor, or its Affiliates, until the breach is cured.

(vi) Electronic Commerce transactions may include, but are not limited to, electronic funds transfer, web-based marketing, management of Franchisor's supply chain, online transaction processing, electronic data interchange, inventory management systems, automated data collection and other similar transactions.

e. **Franchisor's Intranet.** Franchisor may, at its sole discretion and option, establish and maintain, an Intranet through which Franchisor, franchisees of Franchisor and Franchisor's employees may communicate with each other, and through which Franchisor may disseminate the Manuals, updates thereto and other confidential information. Franchisor shall have sole discretion and control over all aspects of the Intranet, including the content and functionality thereof. Franchisor will have no obligation to maintain any such Intranet indefinitely and may dismantle it at any time without liability to Franchisee.

(i) If Franchisor establishes an Intranet, Franchisee shall have the privilege to use the Intranet, subject to Franchisee's strict compliance with the standards and specifications, protocols and restrictions that Franchisor may establish from time to time. Such standards and specifications, protocols and restrictions may relate to, among other things: (a) the use of abusive, slanderous or otherwise offensive language in electronic communications; (b) communications between or among franchisees that endorse or encourage breach of any franchisee's Franchise Agreement; (c) confidential treatment of materials that Franchisor transmits via the Intranet; (d) password protocols and other security precautions; (d) grounds and procedures for Franchisor's suspending or revoking a franchisee's access to the Intranet; and (f) a privacy policy governing Franchisor's

access to and use of electronic communications that franchisees post to the Intranet. Franchisee acknowledges and agrees that, as administrator of the Intranet, Franchisor can technically access and shall be entitled to view any communication that any Person posts on the Intranet. Franchisee further acknowledges and agrees that the Intranet facility and all communications that are posted to it will become Franchisor's property, free of any claims of privacy or privilege that Franchisee or any other Person may assert.

(ii) Upon receipt of notice from Franchisor that Franchisor has established the Intranet, Franchisee shall establish and continually maintain (during all times that the Intranet shall be established and until the termination of this Agreement) an electronic connection (the standards and specifications of which shall be specified in the Manuals) with the Intranet that allows Franchisor to send messages to and receive messages from Franchisee, subject to such standards and specifications. Franchisee shall contribute a reasonable amount toward the cost of the Intranet's maintenance, which may vary from time to time during the Term and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time.

(iii) If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's Affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's Affiliates, Franchisor may, without prior notice and without any liability or recourse as against Franchisor, or its Affiliates, temporarily disable or terminate Franchisee's access to the Intranet until such time as Franchisee pays its outstanding obligation in full without Franchisor having any liability to Franchisee, in which case, Franchisor shall only be required to provide Franchisee a paper copy of the Manuals and any updates thereto, if none have been previously provided to Franchisee, unless Franchisee is not otherwise entitled to the Manuals.

#### 19. **INDEMNIFICATION.**

Franchisee shall defend at Franchisee's own cost and indemnify and hold harmless Franchisor and its Affiliates, and their respective shareholders, directors, officers, employees and agents, and each of them, from and against any and all loss, costs, expenses (including attorneys' fees), claims, damages and liabilities, however caused, resulting directly or indirectly from or pertaining to the use, condition, or construction, equipping, maintenance, administration, supervision or operation of the Franchised Unit, including those resulting from claims arising under this Agreement, a Sublease or a Third-Party Lease, as applicable. Such loss, claims, costs, expenses, damages and liabilities shall include, without limitation, those arising from latent or other defects in the Franchised Unit, whether or not discoverable by Franchisor, and those arising from the death or injury to any Person or arising from damage to the property of Franchisee or Franchisor, their agents or employees, or any third Person, firm or corporation, whether or not such losses, claims, costs, expenses, damages, or liabilities were actually or allegedly caused wholly or in part through the active or passive negligence of Franchisor or its Affiliates or their respective shareholders, directors, officers, employees or agents or from any strict liability imposed on Franchisor, its Affiliates, or their respective shareholders, directors, officers, employees or agents.

#### 20. **RELATIONSHIP OF THE PARTIES.**

In all matters pertaining to the operation of the Franchised Unit, Franchisee is and shall be an independent contractor. No employee of Franchisee shall be deemed to be an employee of Franchisor nor shall Franchisor have any responsibility whatsoever for the acts or omissions to act, intentional, negligent or otherwise, of the employees of Franchisee. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency between Franchisee and Franchisor. Neither Party shall be liable for the debts or obligations of the



other unless expressly assumed in writing. Franchisee shall have no right to bind Franchisor, transact business in Franchisor's name or in any manner make any promises or representations on behalf of Franchisor, nor contract any debts or obligations on behalf of Franchisor, or its Affiliates.

21. **DEFAULTS.**

Franchisee acknowledges and agrees that complete performance of all the terms of this Agreement is necessary for the protection of Franchisor and the Trade Practices and that complete and exact performance by Franchisee of each of Franchisee's promises contained in this Agreement is a condition to the continuance of this franchise. In addition to all other remedies that may be available to Franchisor, Franchisor shall have the right to terminate this Agreement upon the occurrence of any of the following events:

a. **Grounds for Immediate Termination.** Termination shall be effective immediately and automatically, with no right to cure, where the grounds for termination are:

(i) The expiration of the Term or the expiration or termination of a Sublease or Third-Party Lease, except as otherwise provided in Section 4(b) above.

(ii) The voluntary Abandonment of the Franchised Unit, the Franchised Location or the franchise relationship by Franchisee.

(iii) The conviction of Franchisee, or any of its Owners if it is an Entity, in a court of competent jurisdiction of any offense directly related to the business conducted pursuant to this franchise or any offense that may tend to adversely affect the goodwill or reputation of Franchisor or its Affiliates, Franchisee or the 1-800-Flowers System, or the commission of any offense directly related to the business conducted pursuant to this franchise or any offense that may tend to adversely affect the goodwill or reputation of Franchisor or its Affiliates, Franchisee or the 1-800-Flowers System.

(iv) Any affirmative act of bankruptcy or insolvency by Franchisee, or any of its Owners if it is an Entity, or the filing by Franchisee, or any of its Owners if it is an Entity, of any petition or action in bankruptcy or insolvency, or for appointment of a receiver or trustee, or an assignment by Franchisee, or any of its Owners if it is an Entity, for the benefit of creditors, or the failure to vacate or dismiss within sixty (60) days after filing any such proceedings commenced against Franchisee, or any of its Owners, by a third party.

(v) The failure of Franchisee to maintain reasonable and satisfactory procedures to record Franchisee's Adjusted Gross Sales and Incoming Sales at the Franchised Unit or to accurately report Franchisee's Adjusted Gross Sales and Incoming Sales at the Franchised Unit to Franchisor, or the failure of Franchisee to make available to Franchisor upon Franchisor's request, any of the sales records for the Franchised Unit described in Section 14(b) above or in the Manuals, within five (5) years of their generation, or the disclosure by Franchisor by an examination or audit of Franchisee's financial books and records and supporting materials, of an understatement of Adjusted Gross Sales of three percent (3%) or more, which results in a deficiency in Franchisee's payment of all continuing franchise fees and/or marketing fees due to Franchisor under the terms of this Agreement, or the disclosure of the use of a centralized telephone system or of any inter-store or intra-store transmission of Incoming Sales or Outgoing Sales by Franchisee, at, to or from the Franchised Unit without the prior written consent of Franchisor, or the disclosure of the use of the same by Franchisee without the prior written consent of Franchisor, which results in an understatement of Adjusted Gross Sales, Incoming Sales or Outgoing Sales and a deficiency in Franchisee's payment of all continuing franchise fees and/or marketing fees due to Franchisor under the terms of this Agreement or any

other use of inter-store or intra-store transmissions of Incoming Sales or Outgoing Sales to understate Adjusted Gross Sales, Incoming Sales or Outgoing Sales.

(vi) The purported assignment, transfer, or subfranchise of this franchise, or any right under this Agreement by Franchisee, without the prior written consent of Franchisor.

(vii) Franchisee's understatement of Adjusted Gross Sales and/or Incoming Sales more than once during the Term.

(viii) The failure of Franchisee to select a site for the Franchised Location within six (6) months from the Effective Date, or to have the Franchised Unit built-out and all required signage installed at the Franchised Unit and/or on vehicles, as required by the Franchisor, and open for business within nine (9) months from the Effective Date.

(ix) Disclosure of the contents of the Manuals by Franchisee or any Owner.

(x) The failure of Franchisee to make available to Franchisor upon Franchisor's request, any of the sales records for the Franchised Unit described in Sections 14(b) and 14(c) above or in the Manuals within five (5) years of their generation.

(xi) Franchisee's Default in any obligation under this Agreement or any other agreement between Franchisee and Franchisor that is not by its nature capable of being cured by Franchisee.

(xii) If Franchisee or the Owners use abusive language when communicating with Franchisor, Franchisor's staff or with customers or suppliers, engage in any illegal activity or abusive or threatening behavior towards Franchisor, Franchisor's staff or customers or suppliers, or denigrate the 1-800-Flowers System or portray it in an unflattering light on the Internet or otherwise.

(xiii) The attachment of any involuntary lien in the sum of \$1,000 or more upon any of the business assets or property of Franchisee, which lien is not promptly removed.

(xiv) Franchisee's Default under the Sublease for the Franchised Location, if applicable, or any other agreement between Franchisor or its Affiliates, and Franchisee, including, without limitation, a Default by Franchisee under the BloomNet Membership Agreement with BMT, or Default under a Third-Party Lease, which Default is not cured within the period required in said agreement.

(xv) Franchisee's conduct of the business of the Franchised Unit in such a manner so as to affect materially and adversely the goodwill or reputation of Franchisor or its products.

(xvi) If, during the Term or any extension thereof, or during the term of any subsequent Successor Franchise, the right to occupy the Franchised Location is lost and a new site satisfactory to Franchisor and Franchisee is not leased within one hundred twenty (120) days.

(xvii) If, at any time prior to the completion of Franchisee's training program, Franchisor for any reason whatsoever, determines, in its sole and absolute discretion that Franchisee should not be a franchisee.

(xviii) The failure of Franchisee to operate the Franchised Unit during such days and hours as may be specified in accordance with this Agreement for a period of five (5) days after having received notification of noncompliance from Franchisor.

(xix) The failure of Franchisee to make timely payment to Franchisor of any and all continuing franchise fees and marketing fees payable pursuant to this Agreement for a period of five (5) days after having received notification of noncompliance from Franchisor.

(xx) The failure of Franchisee to make timely payments upon any obligation of Franchisee upon which Franchisor has advanced any funds for or on behalf of Franchisee, or upon which Franchisor is acting as a guarantor of Franchisee, or Default upon or breach of any provision of any promissory note or other evidence of indebtedness or any agreement relating thereto concerning any obligation of Franchisee that arises from the Franchised Unit within five (5) days after having received notification of noncompliance from Franchisor.

(xxi) The failure of Franchisee to comply with Applicable Law related to the operation of the Franchised Unit for a period of ten (10) days after having received notification of noncompliance from Franchisor or any governmental or quasi-governmental agency or authority.

(xxii) Franchisee's Default in the repayment or performance of any obligation or financing transaction with third parties where this franchise, the Franchised Unit, the Franchised Location or any asset of Franchisee pertaining to this franchise is pledged as security for Franchisee's performance for a period of ten (10) days after having received notification of noncompliance from Franchisor.

(xxiii) The repeated failure of Franchisee to comply with the terms of this Agreement, or any of them, of any nature, cured or uncured, after notice from Franchisor.

b. **Right to Cure.** If Franchisee shall be in Default in the performance of any of the terms of this Agreement other than any of the Defaults listed in Section 21(a) above, then Franchisor, in addition to all other remedies available to it at law or in equity, may declare this Agreement automatically terminated unless:

(i) The Default is cured within ten (10) days after written notice thereof from Franchisor to Franchisee, if the Default complained of is the payment of an obligation due to Franchisor, its Affiliates or to a third party such as a landlord or trade vendor.

(ii) The Default is cured within thirty (30) days after written notice thereof from Franchisor to Franchisee, if the Default complained of is a non-monetary Default not included in Section 21(a); however, if a qualifying non-monetary Default is of a nature that more than thirty (30) days are reasonably required to cure, Franchisee shall commence to cure the Default within said thirty (30) day period and shall proceed with such cure with due diligence and within the period, if any, designated by Franchisor as the allowable additional time within which the cure must be accomplished.

c. **Notice Required By Law.** Notwithstanding anything to the contrary contained in this Article 21, in the event any valid, Applicable Law of a competent Governmental Authority having jurisdiction over this Agreement and the Parties shall limit Franchisor's rights of termination under this Agreement or shall require longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the minimum notice periods or restrictions upon termination required by such laws and regulations. Franchisor shall not, however, be precluded from contesting the validity, enforceability or application of such laws or

regulations in any action, arbitration, hearing or dispute relating to this Agreement or the termination of this Agreement.

d. **Cross-Default.** Any Default by Franchisee under the terms and conditions of this Agreement, any Lease, or any other agreement between Franchisor or its Affiliates and Franchisee shall be deemed to be a Default of each and every other agreement. In the event of termination, for any cause, of this Agreement or any other agreement between the Parties, Franchisor may, at its option, terminate any or all said agreements.

## 22. **OBLIGATIONS FOLLOWING TERMINATION.**

### a. **Obligations of Franchisee.**

(i) Following termination of Franchisee's rights to use the Marks and/or the "1-800-FLOWERS" service mark and trade name as part of the name of the Franchised Unit, Franchisee shall not operate or do business utilizing the "1-800-FLOWERS" service mark and trade name or any of the Marks or do business in any manner that might tend to give the public the impression that Franchisee has any right to use the "1-800-FLOWERS" service mark and trade name or any of the Marks.

(ii) Following termination of this Agreement, Franchisee shall not:

(aa) Operate or do business under any name or in any manner that might tend to give the general public, suppliers, wire services, credit card processing services or the like, the impression that this Agreement is still in force or that Franchisee has any right to use the Marks, the Trade Practices or is a franchisee in the 1-800-Flowers System.

(bb) Make use of or avail himself or itself of any of the Marks or Trade Practices or information received from Franchisor in the operation of the Franchised Unit or disclose or reveal any such information or any portion thereof to anyone not employed by Franchisor.

(cc) Solicit any customers of the Franchised Unit, either directly or indirectly, or retain any list of such customers.

(dd) Assist anyone in the development or operation of any business that incorporates any of the features or equipment layout or product displays that are identifying characteristics of the 1-800-Flowers System.

(iii) Following termination of this Agreement, Franchisee shall comply with all covenants in Article 16 above.

b. **Discontinue Use of Trade Practices.** In the event of the termination of this Agreement, whether by reason of a Default, lapse of time or other cause, Franchisee shall immediately discontinue the use of the Trade Practices and trade names, shall return to Franchisor all Manuals, training films, training materials and other property of Franchisor, and shall not thereafter operate or do business under any name or in any manner that might tend to give the general public the impression that Franchisee is dispensing, selling or servicing any of the products developed by Franchisor or that Franchisee is operating a flower shop similar to the 1-800-Flowers shops established by Franchisor. Franchisee shall immediately cease use of the Marks and shall remove, destroy, or otherwise obliterate all signs, placards, posters, stationery, banners, advertising or lettering that utilizes the Marks, or any part thereof, by the date upon which termination becomes effective.

Franchisee shall permit Franchisor to enter the Franchised Unit to ensure that the foregoing has been completed upon reasonable advance notice. Franchisee's failure to immediately cease the use of the Marks upon termination of this Agreement will result in irreparable harm and injury to Franchisor. If the Sublease for the Franchised Location or Franchisee's Third-Party Lease is also terminated, or if Franchisor has been granted the right to assume, or have its assignee assume, the obligations of a Third-Party Lease and elects to do so, Franchisee shall vacate the Franchised Location promptly and completely.

c. **Return of Manuals.** Immediately upon the termination of this Agreement, for whatever reason, Franchisee agrees to cease and forever abstain from using the Trade Practices or any part thereof or any proprietary information contained therein, to return to Franchisor all copies of the Manuals and all other documents, instructions, display items, advertising material, training and other tangible property connected with the franchise and to remove all signs and other items tending to identify the Franchised Unit as being connected with Franchisor or the 1-800-Flowers System.

d. **De-Identification.** In the event that Franchisee's Third-Party Lease will not be terminated or if Franchisee will otherwise remain in possession of the Franchised Location following the termination of this Agreement, upon demand by Franchisor, Franchisee shall, on or before the effective date of the termination of this Agreement, remove and/or modify to Franchisor's satisfaction any or all distinctive design features and characteristics of the Franchised Unit, including, without limitation, distinctive interior designs and surface materials and refrigeration equipment, display fixtures, color décor, stained glass windows, interior, exterior and reader-board signs and any other items in, or on, the Franchised Unit and Franchisee's delivery van and other vehicles that contain the Marks, cease use of any web site URL that contains the Marks and any other reference to the Marks theretofore used by Franchisee on the Internet, and all other items identifying the Franchised Location as a 1-800-Flowers shop or otherwise affiliated with the 1-800-Flowers System. In the event that Franchisee fails to so de-identify the Franchised Unit prior to the effective date of the termination of this Agreement, Franchisor shall have the right to do so or cause the same to be done at the expense of Franchisee. In addition to the foregoing, Franchisee's failure to complete the proper de-identification of the Franchised Unit to Franchisor's satisfaction shall be considered a misuse of the Marks, and Franchisee shall pay to Franchisor the \$1,000 fee specified in Section 15(g) above. In addition to such fee, Franchisee agrees that Franchisor has the right to require Franchisee to continue paying the continuing franchise fees until all 1-800-Flowers signage is removed from the Franchised Location and delivery vehicles. Such fees shall be in addition to any other remedies available to Franchisor at law.

e. **Electronic Communications and Media.** The goodwill associated with all telephone and fax numbers, email addresses, domain names, Websites or web pages, social media and other Internet addresses and URLs used in operation of the Franchised Unit ("**Electronic Communications and Media**") is an asset that belongs to Franchisor. Franchisor shall have the option, exercisable by written notice within thirty (30) days after the cancellation, termination or expiration of this Agreement, to take an assignment of all Electronic Communications and Media for the Franchised Unit. If Franchisor exercises this option, Franchisee will be deemed to have assigned to Franchisor or Franchisor's designee all right, title and interest in and to these Electronic Communications and Media and/or services associated with the same. Franchisee shall notify the telephone company, domain name registrars and all listing agencies of the cancellation, termination or expiration of Franchisee's right to use the Electronic Communications and Media associated with the Franchised Unit, and shall authorize their transfer to Franchisor. Franchisee appoints Franchisor as its true and lawful agent and attorney-in-fact with full power and authority, for the sole purpose of taking such action as may be necessary to effect an assignment of all Electronic Communications and Media for the Franchised Unit. This power of attorney is coupled with an interest and shall survive the cancellation, termination or expiration of this Agreement. Franchisee, by executing this Agreement, authorizes Franchisor and hereby

appoints Franchisor and all of Franchisor's officers as Franchisee's attorney-in-fact to direct the telephone, company, domain name registrars and all listing agencies to transfer the same to Franchisor, should Franchisee fail or refuse to do so. The telephone company, domain name registrars, and all listing agencies may accept this Agreement as conclusive evidence of Franchisor's exclusive rights to the Electronic Communications and Media and Franchisor's authority to direct their transfer. Franchisee must sign the instruments Franchisor requests to confirm the assignments and transfers to Franchisor. Franchisee shall not be entitled to any compensation from Franchisor if Franchisor exercises this option.

f. **Monetary Obligations.** In the event of termination, Franchisor may retain all fees paid pursuant to this Agreement. In addition, all obligations of Franchisor to Franchisee and all rights of Franchisee under this Agreement shall automatically terminate; however, any obligations of Franchisee to take, or abstain from taking, any action upon termination pursuant to this Agreement shall not be affected by such termination, including the payment to Franchisor, or its Affiliates, of all sums due from Franchisee at the time of termination and all sums that would have become due to Franchisor, or its Affiliates, from Franchisee during the remaining Term had this Agreement not been terminated prior to the expiration of the Term of this Agreement.

g. **Right to Purchase.** Upon termination of this Agreement, Franchisor shall have the option, in its sole and absolute discretion, to purchase the tangible assets at the Franchised Unit and any off-site production facility operated by Franchisee on the following terms and conditions:

(i) Franchisor shall give written notice to Franchisee of its exercise of its option to purchase the "tangible assets" at the Franchised Unit, or any portion thereof, if at all, within thirty (30) days following the date of termination of this Agreement. For purposes of this Section 22(g), the term "tangible assets" shall mean only the leasehold improvements, furniture, fixtures, equipment and interior and exterior signs at the Franchised Unit.

(ii) The purchase price for the tangible assets shall be their Then-Current fair market value less the amount of all fees and obligations due to Franchisor, or its Affiliates, from Franchisee and less the amount of any current and long term liabilities of the Franchised Unit to be assumed by Franchisor as described in Section 22(g)(iv) below. The purchase price shall not contain any amount for "goodwill", "going concern value" or Initial Franchise Fees, continuing franchise fees, marketing fees or any other sums paid to Franchisor by Franchisee prior to the termination of this Agreement. In addition, the purchase price shall not include payment for any inventory or supplies or leasehold improvements, equipment, fixtures or signs that Franchisor deems obsolete or has theretofore designated as failing to meet quality standards for the 1-800-Flowers System.

(iii) The amount of the purchase price shall be included by Franchisor in its notice of its exercise of the option to purchase the tangible assets. If Franchisee does not accept Franchisor's purchase price for the tangible assets within twenty (20) days following the date of Franchisor's notice under Section 22(g)(i) above, the purchase price shall be determined as follows:

(aa) Within ten (10) days thereafter, each Party shall name an appraiser to independently ascertain the purchase price in accordance with the criteria set forth in Sections 22(g)(i) and 22(g)(ii) above. If the two appraisals are in "substantial agreement," the "average" of the two appraisals will be the purchase price. For this purpose, the term "substantial agreement" means a difference in the two appraisals of less than fifteen percent (15%) of the higher appraisal and the term "average" means one-half (1/2) of the sum of the two appraisals.

(bb) If the two appraisals are not in substantial agreement, the two appraisers will jointly choose a third appraiser within ten (10) days of the date that the last appraisal is delivered to the Parties who shall conduct his or its appraisal of the tangible assets within thirty (30) days. If a third appraiser is utilized, the purchase price will be the average of the two appraisals that are closest to each other.

(cc) The Parties shall share equally the fees and expenses of the third appraiser, but each Party shall be responsible for the fees and expenses of his or its appraiser. Each Party shall bear its own expenses in presenting evidence to the appraisers.

(dd) In determining the purchase price of the tangible assets, the appraisers shall consider all relevant material submitted to them by the Parties or otherwise obtained by them and shall set forth their determinations in writing, together with their opinions and the considerations on which the opinions are based, with a signed counterpart to be delivered to each Party within thirty (30) days.

(iv) The purchase price of the tangible assets shall be reduced by the current and long term liabilities of the Franchised Unit (except liabilities owed to Franchisee or its Owners) to be assumed by Franchisor, up to the amount of the purchase price.

(v) The balance of the purchase price remaining after the deductions described in Section 22(g)(iv) above shall be payable to Franchisee as follows:

(aa) Ten percent (10%) of the balance due will be paid in cash as a down payment on the date of the close of escrow.

(bb) The amount remaining due will be evidenced by a promissory note providing for payment of this sum, together with interest at a rate equal to the prime lending rate then charged by Franchisor's principal bank determined as of the date of the close of escrow, in sixty (60) equal monthly installments of principal and interest commencing on the first day of the second calendar month following the date of the close of escrow and continuing on the same day of each consecutive month until paid in full.

(vi) The close of escrow shall occur within forty-five (45) days after the final determination of the purchase price for the tangible assets. Bulk transfer costs shall be paid by Franchisee. Escrow costs shall be shared equally by Franchisor and Franchisee.

(vii) If Franchisor purchases the tangible assets, Franchisee and Franchisor shall terminate the Sublease for the Franchised Location, if applicable, or Franchisee shall, at Franchisor's request, immediately assign to Franchisor any interest that Franchisee has in any Third-Party Lease for the Franchised Location. If Franchisee fails or refuses to comply with the requirements of this Section 22(g)(vii) following Franchisor's demand that Franchisee do so, Franchisor shall have the right to immediately enter into negotiations with the Third Party Landlord regarding assignment and assumption of the Third-Party Lease and to enter the Franchised Location and conduct business at the Franchised Unit, without being guilty of trespass or any other tort. In addition, Franchisor may make or cause to be made such changes to the Franchised Unit as may be required to enable Franchisor, or its Affiliates, or another franchisee of Franchisor, to continue the operation of a 1-800-Flowers shop at the Franchised Location, all at the expense of Franchisee, which expense Franchisee shall pay to Franchisor upon demand.

(viii) Franchisor shall have the right to assign its option to purchase the tangible assets at the Franchised Unit and to obtain an assignment of any Third-Party Lease to an assignee of Franchisor's choice.

h. **Paper Goods.** Upon termination of this Agreement, Franchisor shall have the option for a period of thirty (30) days to purchase all paper goods, containers and all other items bearing the Marks at the Franchised Unit at their cost or fair market value, whichever is less.

i. **Survival of Obligations.** Termination or expiration of this Agreement shall be without prejudice to any other rights or remedies that Franchisor shall have at law or in equity, including, without limitation, the right to recover benefit of the bargain damages. In no event shall a termination or expiration of this Agreement affect Franchisee's obligations to take or abstain from taking any action in accordance with this Agreement. The provisions of this Agreement, which by their nature or expressly constitute post-termination (or post-expiration) covenants and agreements, shall survive the termination or expiration of this Agreement.

23. **MISCELLANEOUS.**

a. **Injunction.** Franchisee recognizes the unique value and secondary meaning attached to the 1-800-Flowers System, the Marks, standards of operation and the Trade Practices and agrees that any noncompliance with the terms of this Agreement or any unauthorized or improper use of the Marks or the Trade Practices will cause irreparable damage to Franchisor and its franchisees. Franchisee therefore agrees that if he or it should engage in any such unauthorized or improper use, during or after the Term, Franchisor shall be entitled to both permanent and temporary injunctive relief from any court of competent jurisdiction in addition to any other remedies prescribed by Applicable Law.

b. **Further Acts.** The Parties agree to execute such other documents and perform such further acts as may be necessary or desirable to carry out the purposes of this Agreement.

c. **Heirs and Successors.** Except as otherwise provided in this Agreement, this Agreement shall be binding upon and inure to the benefit of the Parties, their heirs, successors and permitted assigns.

d. **Entire Agreement.** This Agreement, the Manuals, the Exhibits to this Agreement and any documents incorporated into this Agreement by reference, represent the entire understanding between the Parties regarding the subject matter of this Agreement and supersede all other negotiations, agreements, representations and covenants, oral or written, except any other agreement executed by Franchisor, or its Affiliates, and Franchisee. This Agreement may not be modified except by a written instrument signed by all Parties. The Parties intend this Agreement to be the entire integration of all of their agreements of any nature regarding the subject matter of this Agreement. No other agreements, representations, promises, commitments or the like, of any nature, exist between the Parties. By placing Franchisee's initials at the end of this Section 23(d), Franchisee acknowledges the accuracy of the provisions of this Section 23(d). Notwithstanding the foregoing, nothing in this Agreement or any related agreement is intended to disclaim representations Franchisor made to Franchisee in the Franchise Disclosure Document or in any related document that Franchisor heretofore furnished to Franchisee.

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**Initials**

e. **No Warranties.** Franchisee acknowledges and agrees that Franchisor has made no promises, representations, warranties or assurances to Franchisee that are inconsistent with the terms of this Agreement or Franchisor's Franchise Disclosure Document, concerning the profitability or likelihood of success of the Franchised Unit at the Franchised Location, that he has been informed by Franchisor that there can be no guarantee of success of the Franchised Unit and that Franchisee's business ability and aptitude is primary in



determining Franchisee's success. By placing Franchisee's initials at the end of this Section 23(e), Franchisee acknowledges the accuracy of the provisions of this Section 23(e).

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**Initials**

f. **Waiver.** Failure by either Party to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Any waiver, including a waiver of Default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance. Any acceptance of money or other performance by Franchisor from Franchisee shall not constitute a waiver of any Default, except as to the payment of the particular payment or performance so received.

g. **No Uniformity.** Franchisor has made no warranty or representation that all Franchise Agreements previously issued or issued after this Franchise Agreement by Franchisor do or will contain terms substantially similar to those contained in this Franchise Agreement. Franchisor may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Franchise Agreements previously executed or executed after the Effective Date with other 1-800-Flowers franchisees in a non-uniform manner.

h. **Interest.** Any monies past due to Franchisor from Franchisee shall bear interest at the maximum rate permitted by the state whose Applicable Law governs this Agreement, or in the absence of a maximum rate specified by state law, ten percent (10%). The foregoing shall not affect any other right or remedy of Franchisor arising from any delinquency.

i. **Validity.** Any invalidity of any portion of this Agreement shall not affect the validity of the remaining portions and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in full force and effect.

j. **Headings, Table of Contents, Gender and Recitals.** The headings and Table of Contents used in this Agreement are for purposes of convenience only and shall not be used in construing the provisions of this Agreement. As used in this Agreement, the male gender shall include the female and neuter genders, the singular shall include the plural and the plural, the singular. Recitals A through C are true and correct and are incorporated into the text of this Agreement.

k. **Effectiveness.** The submission of this Agreement does not constitute an offer to franchise and this Agreement shall become effective only upon execution thereof by Franchisor and Franchisee.

l. **Execution by Franchisor.** This Agreement shall not be binding on Franchisor unless and until it shall have been accepted and signed by authorized officers of Franchisor.

m. **Counterparts and Electronic Transmission; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this Agreement with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this Agreement for all purposes, provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this Agreement. In addition, this Agreement and all Exhibits to this Agreement may be signed electronically by the Parties and electronic signatures appearing on this Agreement and the Exhibits shall be

deemed to be the same as handwritten signatures for the purposes of the validity, enforceability and admissibility of this Agreement and the Exhibits.

n. **Third Parties**. The Parties intend to confer no benefit or right on any Person or Entity not a party to this Agreement and no third party shall have the right to claim the benefit of any provision of this Agreement as a third-party beneficiary.

o. **Attorneys' Fees**. If Franchisor becomes a party to any legal proceedings concerning this Agreement, the Franchised Location or the Franchised Unit by reason of any act or omission of Franchisee or its authorized representatives, Franchisee shall be liable to Franchisor for the reasonable attorneys' fees and court costs incurred by Franchisor in the legal proceedings.

p. **Responsibility**. The term "Franchisee" as used in this Agreement shall refer to each Person executing this Agreement as Franchisee, whether or not such Person is one of the spouses, partners, shareholders, trustees, trustors or beneficiaries or persons specified in this Section 23(p) as included in "Franchisee," and shall apply to each such Person as if he, she, or it were the only named Franchisee in this Agreement.

(i) If Franchisee is a married Person, any spouse of such Person shall be liable for all obligations and duties of Franchisee under this Agreement.

(ii) If Franchisee is a partnership or if more than one Person executes this Agreement as Franchisee, each partner in the partnership, each Person executing this Agreement, and any spouse of any such partner or Person, shall be liable for all the obligations and duties of Franchisee under this Agreement.

(iii) If Franchisee is a trust, each trustee, trustor and beneficiary of the trust, and any spouse of any such trustee, trustor, and beneficiary shall be liable for all of the obligations and duties of Franchisee under this Agreement.

(iv) If Franchisee is a limited liability company, all members of the limited liability company and any spouses of any such members shall be liable for the obligations and duties of Franchisee under this Agreement.

(v) If Franchisee is a corporation, all shareholders of the corporation and any spouses of any such shareholders shall be liable for all obligations and duties of Franchisee under this Agreement.

(vi) If Franchisee is in Default under this Agreement, Franchisor may proceed directly against each such spouse, partner, signatory to this Agreement, shareholder, trustee, trustor or beneficiary without first proceeding against Franchisee and without proceeding against or naming in such suit any other Franchisee, partner, signatory to this Agreement, shareholder, trustee, trustor or beneficiary. The obligations of Franchisee and each such spouse, partner, Person executing this Agreement, shareholder, trustee, trustor and beneficiary shall be joint and several.

(vii) Notice to or demand upon one spouse, partner, Person signing this Agreement, shareholder, trustee, trustor or beneficiary shall be deemed notice to or demand upon Franchisee and all such spouses, partners, persons signing this Agreement, shareholders, trustees, trustors and beneficiaries, and no notice or demand need be made to or upon all such Franchisee's spouses, partners, persons executing this Agreement, shareholders, trustees, trustors or beneficiaries.

(viii) The cessation of or release from liability of Franchisee, or any such spouse, partner, Person executing this Agreement, shareholder, trustee, trustor or beneficiary shall not relieve any other Franchisee, spouse, partner, Person executing this Agreement, shareholder, trustee, trustor or beneficiary from liability under this Agreement, except to the extent that the Default has been remedied or monies owed have been paid.

q. **Cumulative Remedies.** Any specific right or remedy set forth in this Agreement, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth in this Agreement or allowed or allowable by Applicable Law.

r. **Notices.** All notices or demands shall be in writing and shall be served in Person, by Express Mail, by certified mail, by private overnight delivery or by electronic transmission (fax). Service shall be deemed conclusively made: (i) at the time of service, if personally served; (ii) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (iii) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail; (iv) twenty-four (24) hours after delivery by the Party giving the notice, statement or demand if by private overnight delivery; and (v) at the time of electronic transmission, if such transmission occurs prior to 5:00 P.M. on a business day and a copy of such notice is mailed within twenty-four (24) hours after the transmission.

Any notice or demand to Franchisor shall be given to:

1-800-Flowers.Com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-7797  
Attention: Senior Vice President, Retail Operations

With a copy to:

1-800-Flowers.Com, Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-6101  
Attention: General Counsel/Corporate Secretary

Any notice or demand to Franchisee shall be given to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Either Party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner set forth above to the other Party.

s. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. In the event of any conflict of law, the law of New York shall prevail, without regard to the application of New York conflict of laws rules. Venue for purposes of any legal proceedings brought in connection with or arising out of this Agreement shall be conclusively presumed to be in the State of New York, County of Nassau or County of Suffolk. Franchisee hereby submits to the exclusive jurisdiction of the Supreme Court of the State of New York, County of Nassau, and of the United States District Court in and for the Eastern District of the State of New York. THE PARTIES SPECIFICALLY WAIVE TRIAL BY JURY.

t. **Consultation with Advisors.** Franchisee acknowledges that Franchisee has carefully read this Agreement and all other related documents to be executed concurrently or in conjunction with the execution of this Agreement, that Franchisee has obtained the advice of counsel in connection with entering into this Agreement, that Franchisee understands the nature of this Agreement, and that Franchisee intends to comply herewith and be bound hereby. Franchisee acknowledges that it has read and understood this Agreement, the Exhibits to this Agreement, and agreements relating thereto, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

u. **Entity Franchisee.** If Franchisee, as Franchisee, is an "Entity", including a limited liability company, partnership, trust, association, corporation or other Entity that is not an individual, then Franchisee shall complete and sign the Entity Information Disclosure attached to this Agreement as **Exhibit C** and the Owners of Franchisee shall sign the Guarantee attached to this Agreement as **Exhibit B**.

v **Business Judgment.** Notwithstanding any provision in this Agreement to the contrary, Franchisee and the Owners acknowledge and agree that:

(i) This Agreement (and the relationship of the Parties which arises from this Agreement) grants Franchisor the discretion to make decisions, take actions or refrain from taking actions not inconsistent with the explicit rights and obligations of Franchisee and the Owners hereunder that may affect Franchisee and the Owners' interests favorably or adversely. Franchisor shall use its Business Judgment in exercising such discretion based on its assessment of its own interests and balancing those interests against the interests, promotion, and benefit of the 1-800-Flowers System and other 1-800-Flowers Franchisees, 1-800-Flowers Franchised Units generally, and specifically without considering the individual interests of Franchisee or the Owners or the individual interests of any other 1-800-Flowers Franchisee. Franchisee and the Owners acknowledge and agree that Franchisor shall have no liability to Franchisee or the Owners for the exercise of its discretion in this manner; and even if Franchisor has numerous motives for a particular action or decision, so long as at least one motive is a reasonable business justification, no trier of fact in any legal action shall substitute his or her judgment for Franchisor's judgment so exercised and no such action or decision shall be subject to challenge for abuse of discretion. If Franchisor takes any action or Franchisor chooses not to take any action in its discretion with regard to any matter related to this Agreement and its actions or inaction are challenged for any reason, the Parties expressly direct the trier of fact to find that Franchisor's reliance on a business reason in the exercise of its discretion is to be viewed as a reasonable and proper exercise of its discretion, without regard to whether other reasons for its decision may exist and without regard to whether the trier of fact would independently accord the same weight to the business reason.

(ii) In granting its approval of the Franchised Location, designating suppliers, setting standards and the like, Franchisor shall exercise its Business Judgment. However, in the exercise of its Business Judgment, Franchisor shall not be liable to Franchisee or the Owners or anyone else, if Franchisor's exercise of its Business Judgment results in a business loss or if the products or services provided fail to meet the

expectations of Franchisor, Franchisee, the Owners or other parties. Franchisor disclaims all warranties and liability for the acts or omissions of any contractors, vendors, suppliers, products or employees that Franchisee uses, purchases, retains or hires pursuant to Franchisor's exercise of its Business Judgment.

24. **ANTI-TERRORISM LAWS.**

Franchisee and its officers, directors, members and shareholders shall comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its officers, directors, members and shareholders certify, represent, and warrant that none of the property or interests of Franchisee or its officers, directors, members and shareholders is subject to being "**blocked**" under any of the Anti-Terrorism Laws and that Franchisee and its officers, directors, members and shareholders are not otherwise in violation of any of the Anti-Terrorism Laws.

a. **Definitions.** For the purposes of this Article 24, "**Anti-Terrorism Laws**" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA Patriot Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

b. **Not Listed.** Franchisee and its officers, directors, members and shareholders certify that none of its employees, or anyone associated with Franchisee or its officers, directors, members and shareholders are listed in the Annex to Executive Order 13224. Franchisee agrees not to hire any individual listed in the Annex. The Annex is available at:

[www.treas.gov/offices/enforcement/ofac/sdn](http://www.treas.gov/offices/enforcement/ofac/sdn)

c. **No Association.** Franchisee certifies that Franchisee has no knowledge or information that, if generally known, would result in Franchisee, its officers, directors, members and shareholders, its employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.

d. **Responsibility of Franchisee.** Franchisee shall be solely responsible for ascertaining what actions must be taken by Franchisee to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that Franchisee's indemnification responsibilities set forth in this Agreement pertain to Franchisee's obligations under this Article 24.

e. **Termination of Agreement.** Any misrepresentation by Franchisee under this Article 24 or any violation of the Anti-Terrorism Laws by Franchisee, its officers, directors, members and shareholders, or Franchisee's employees shall constitute grounds for immediate termination of this Agreement and any other Agreement Franchisee has entered with Franchisor or an Affiliate of Franchisor, in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement at Jericho, New York, on the Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.,**  
A Delaware corporation

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

\_\_\_\_\_

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

\_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**  
**FRANCHISED LOCATION**

The following site has been selected and approved as the “**Franchised Location**” for the “**Franchised Unit**” in accordance with the Franchise Agreement entered into between Franchisor and Franchisee and dated \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_

The Commencement Date of this Agreement is \_\_\_\_\_. The Expiration Date of this Agreement is \_\_\_\_\_, unless sooner terminated in accordance with this Agreement.

This **Exhibit A** may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this **Exhibit A** with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this **Exhibit A** for all purposes, provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this **Exhibit A**.

**IN WITNESS WHEREOF**, the Parties have executed this **Exhibit A** at Jericho, New York on \_\_\_\_\_. The Parties acknowledge and agree that they shall execute updated versions of this **Exhibit A** in the event that any information contained in this Agreement is modified during the Term of the Franchise Agreement.

**FRANCHISOR:**

**FRANCHISEE:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**,  
A Delaware corporation

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

\_\_\_\_\_

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

\_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT B**  
**GUARANTEE OF FRANCHISE AGREEMENT**

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement, and any revisions, modifications and amendments thereto (hereinafter collectively the “**Agreement**”) dated \_\_\_\_\_, by and between 1-800-FLOWERS.COM FRANCHISE CO., INC., a Delaware corporation (hereinafter the “**Franchisor**”), and \_\_\_\_\_ (hereinafter the “**Franchisee**”), each of the undersigned Guarantors hereby grant this guarantee (“**Guarantee**”) in favor of Franchisor and agree as follows:

1. The Guarantors do hereby jointly and severally unconditionally guarantee the full, prompt and complete performance of Franchisee under the terms, covenants and conditions of the Agreement, including, without limitation, the complete and prompt payment of all indebtedness to Franchisor under the Agreement. The word “indebtedness” is used in this Guarantee in its most comprehensive sense and includes, without limitation, any and all advances, debts, obligations and liabilities of Franchisee, now or hereafter incurred, either voluntarily or involuntarily, and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, or whether recovery thereof may be now or hereafter barred by any statute of limitation or is otherwise unenforceable.

2. The obligations of the Guarantors are independent of the obligations of Franchisee and a separate action or actions may be brought and prosecuted against any or all of the Guarantors, whether or not actions are brought against Franchisee or whether Franchisee is joined in any such action.

3. If Franchisee is a corporation, partnership or limited liability company, Franchisor shall not be obligated to inquire into the power or authority of Franchisee or its partners or the officers, directors, agents, members or managers acting or purporting to act on Franchisee’s behalf and any obligation or indebtedness made or created in reliance upon the exercise of such power and authority shall be guaranteed under this Guarantee. Where the Guarantors are corporations or partnerships, it shall be conclusively presumed that the partners, agents, officers and directors acting on their behalf have the express authority to bind such corporations or partnerships and that such corporations or partnerships have the express power to act as the Guarantors pursuant to this Guarantee and that such action directly promotes the business and is in the interest of such corporations or partnerships.

4. Franchisor, its successors and assigns, may from time to time, without notice to the undersigned: (a) resort to the undersigned for payment of any of the indebtedness, whether or not it or its successors have resorted to any property securing any of the indebtedness or proceeded against any other of the undersigned or any party primarily or secondarily liable on any of the indebtedness; (b) release or compromise any indebtedness of any of the undersigned under this Guarantee or any indebtedness of any party or parties primarily or secondarily liable on any of the indebtedness; (c) extend, renew or credit any of the indebtedness for any period (whether or not longer than the original period); (d) alter, amend or exchange any of the indebtedness; or (e) give any other form of indulgence, whether under the Agreement or otherwise.

5. The undersigned further waive presentment, demand, notice of dishonor, protest, nonpayment and all other notices whatsoever, including without limitation: notice of acceptance of this Guarantee; notice of all contracts and commitments; notice of the existence or creation of any liabilities under the Guarantee and of the amount and terms thereof; and notice of all Defaults, disputes or controversies between Franchisee and Franchisor resulting from the Guarantee or otherwise, and the settlement, compromise or adjustment thereof.



6. This Guarantee shall be enforceable by and against the respective administrators, executors, successors and assigns of the Guarantors and the death of any Guarantor shall not terminate the liability of Guarantor or limit the liability of the other Guarantors under this Guarantee.

7. If more than one Person has executed this Guarantee, the term the “undersigned” as used in this Guarantee shall refer to each such Person, and the liability of each of the undersigned under this Guarantee shall be joint and several and primary as sureties.

8. In each case where the spouse of a Guarantor has executed any documents in connection with the granting of the Agreement, and Franchisee subsequently divorces from such spouse, then, in the event that Franchisee subsequently remarries, the new spouse of such Franchisee must execute, and agree to be bound by the provisions of, each of the documents previously executed by Franchisee’s original spouse. Guarantors acknowledge and agree that Guarantors shall, and hereby are, bound by each and all of the confidentiality and non-competition provisions of the Franchise Agreement.

9. This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. In the event of any conflict of law, the law of New York shall prevail, without regard to the application of New York conflict of laws rules. Venue for purposes of any legal proceedings brought in connection with or arising out of this Guarantee shall be conclusively presumed to be in the State of New York, County of Nassau or County of Suffolk. Guarantor hereby submits to the exclusive jurisdiction of the Supreme Court of the State of New York, County of Nassau, and of the United States District Court in and for the Eastern District of the State of New York. **GUARANTORS SPECIFICALLY WAIVE TRIAL BY JURY.**

10. This Guarantee may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this Guarantee with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this Guarantee for all purposes, provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this Guarantee.

**(Signature page follows)**

IN WITNESS WHEREOF, each of the undersigned has executed this Guarantee under seal effective

\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Spouse (if married)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Home Telephone

\_\_\_\_\_  
Home Telephone

\_\_\_\_\_  
Business Telephone

\_\_\_\_\_  
Business Telephone

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT C**  
**ENTITY INFORMATION DISCLOSURE**

Franchisee represents and warrants that the following information is accurate and complete in all material respects:

(1) Franchisee is a (check as applicable):

- corporation
- limited liability company
- general partnership
- limited partnership
- Other (specify): \_\_\_\_\_

Name of Entity: \_\_\_\_\_

State of incorporation/organization: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

(2) Franchisee shall provide to Franchisor concurrently with the execution of this Agreement true and accurate copies of its charter documents, including Articles of Incorporation/Organization, Bylaws, Operating Agreement, Partnership Agreement, resolutions authorizing the execution of this Agreement and any amendments to the foregoing (the “**Entity Documents**”).

(3) Franchisee promptly shall provide all additional information that Franchisor may from time to time request concerning all persons who may have any, direct or indirect, financial interest in Franchisee.

(4) The name and address of each of Franchisee’s Owners, members, shareholders or general and limited partners are:

NAME	ADDRESS	NUMBER OF SHARES OR PERCENTAGE INTEREST

(5) The names, addresses and titles of the Owner of Franchisee who will be devoting their full time to the Franchised Unit are:

NAME	ADDRESS	TITLE

(6) The address where Franchisee’s financial records and Entity Documents are maintained is: \_\_\_\_\_.

(7) The Principal Owner of Franchisee is \_\_\_\_\_.

(8) Franchisee represents and warrants to Franchisor, as an inducement to Franchisor's execution of the Franchise Agreement, that the information set forth in this Entity Information Disclosure is true, accurate and complete in all material respects on the Effective Date and that Franchisee shall provide Franchisor with all additional information Franchisor may request with respect to the Owners and the ownership of Franchisee. In addition, Franchisee shall notify Franchisor within ten (10) days of any change in the information set forth in the Entity Information Disclosure and shall provide Franchisor with a revised Entity Information Disclosure certified by Franchisee to be true, correct and complete in all material respects. Franchisor grants Franchisee the rights in the Franchise Agreement in reliance upon each and all of the terms of this Entity Information Disclosure.

(9) This **Exhibit C** may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this **Exhibit C** with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this **Exhibit C** for all purposes, provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this **Exhibit C**. In addition, this **Exhibit C** may be signed electronically by the Parties and electronic signatures appearing on this **Exhibit C** shall be deemed to be the same as handwritten signatures for the purposes of the validity, enforceability and admissibility of this **Exhibit C**. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Agreement.

IN WITNESS WHEREOF, the Parties have executed this **Exhibit C** on the Effective Date.

**FRANCHISOR:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

A Delaware corporation

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

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

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

**FRANCHISEE:**

A \_\_\_\_\_

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

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

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

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT B  
CO-BRAND FRANCHISE ADDENDUM TO FRANCHISE AGREEMENT

1-800-FLOWERS.COM FRANCHISE CO., INC.

CO-BRAND FRANCHISE ADDENDUM TO FRANCHISE AGREEMENT

THIS CO-BRAND FRANCHISE ADDENDUM TO FRANCHISE AGREEMENT (this "Addendum") is executed on \_\_\_\_\_ and is intended to be a part of, and by this reference is incorporated into, that certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between 1-800-FLOWERS.COM FRANCHISE CO., INC., a Delaware corporation ("Franchisor"), on the one hand, and \_\_\_\_\_, a \_\_\_\_\_ ("Franchisee"), on the other hand, who are individually referred to in this Agreement as a "Party", and collectively referred to in this Agreement as "Parties". Where and to the extent that any of the provisions of this Addendum are contrary to, in conflict with or inconsistent with any provision contained in the Franchise Agreement, the provisions contained in this Addendum shall control.

1. GRANT AND CO-BRAND REQUIREMENTS.

Franchisor hereby grants Franchisee a limited, non-exclusive, non-transferable, revocable and personal license to use the trade name "1-800-Flowers | \_\_\_\_\_" (the "Co-Brand Trade Name") exclusively in connection with the operation of the 1-800-Flowers | \_\_\_\_\_ retail flower shop (the "Co-Brand Franchised Unit") located at \_\_\_\_\_ (the "Co-Brand Franchised Location") during the term of the Franchise Agreement. Immediately following the Effective Date, Franchisee shall take all action necessary to comply with Franchisor's co-brand requirements (the "Co-Brand Requirements") and shall complete the Co-Brand Requirements, to Franchisor's satisfaction, and commence doing business at the Co-Brand Franchised Unit under the Co-Brand Trade Name within ninety (90) days after the Effective Date.

2. AMENDMENTS TO FRANCHISE AGREEMENT.

2.1 Defined terms contained in the Franchise Agreement shall have the identical meanings in this Addendum; however, all references to the "Franchised Unit" in the Franchise Agreement and this Addendum shall mean and refer to the Co-Brand Franchised Unit and all references to the "Franchised Location" in the Franchise Agreement shall mean and refer to the Co-Brand Franchised Location, unless the context indicates otherwise.

2.2 Sections 3(a) through 3(d) of the Franchise Agreement are deleted in their entirety and are replaced with the following:

**Franchised Location.** By Franchisor's offer of this Addendum to Franchise Agreement to Franchisee, Franchisor shall be deemed to have approved Franchisee's existing location to become a Co-Brand Franchised Unit. The Co-Brand Franchised Location has been identified on Exhibit A attached to the Franchise Agreement. Franchisee acknowledges and agrees that Franchisor's approval of the Co-Brand Franchised Location shall not constitute any representation or warranty by Franchisor regarding the profitability or success of the Co-Brand Franchised Unit at the Co-Brand Franchised Location or the suitability of the site as the Co-Brand Franchised Location. Franchisee acknowledges and agrees that the Co-Brand Franchised Location shall be used for no purpose whatsoever other than for the operation of the Co-Brand Franchised Unit. Franchisee shall not operate any other business, of any nature whatsoever, in the Co-Brand Franchised Location. Franchisor will provide Franchisee with a

typical set of preliminary plans and décor specifications for a Co-Brand Franchised Unit within thirty (30) days of Franchisee's written request for these items.

2.3 Section 4(b)(viii) of the Franchise Agreement is deleted in its entirety and is replaced with the following:

(viii) Franchisee shall execute Franchisor's then-current Franchise Agreement and Co-Brand Addendum, if and as required by Franchisor, and shall pay Franchisor the sum of \$20,000 as a successor franchise fee prior to the scheduled Expiration Date of the Term of this Agreement.

2.4 Article 5 of the Franchise Agreement, titled "**INITIAL FRANCHISE FEE**", is deleted in its entirety and is replaced with the following:

**INITIAL FRANCHISE FEE.** On the Effective Date, Franchisee shall pay Franchisor an Initial Franchise Fee of \$20,000 in a lump sum for a license to use the 1-800-Flowers System, the Marks and the Trade Practices in accordance with the terms of this Agreement. Franchisee acknowledges and agrees that in consideration of Franchisor's expenses and administrative costs incurred in connection with this franchise, the grant of this franchise and the undertakings and agreements of Franchisor contained in this Agreement constitute the sole and only consideration for the payment of the Initial Franchise Fee and, as such, Franchisee acknowledges and agrees that the Initial Franchise Fee shall be fully earned by Franchisor upon receipt and shall not be refundable under any circumstances.

2.5 Section 7(a) of the Franchise Agreement, titled "**Continuing Franchise Fee**", is deleted in its entirety and is replaced with the following:

a. **Continuing Franchise Fee.** Franchisee shall pay to Franchisor, on the fifth (5<sup>th</sup>) day of each month and without deduction, abatement or offset, a continuing franchise fee. The starting amount of the continuing franchise fee and the amounts of the scheduled annual increases to the continuing franchise fee shall be determined, in accordance with the chart that immediately follows this paragraph, based on the volume of floral sales from Franchisee's existing flower shop at the Franchised Location during the calendar year immediately preceding the Effective Date. Franchisee's obligation to pay the continuing franchise fee to Franchisor begins when the 1-800-Flowers co-branded signage is installed at the Franchised Unit or sixty (60) days after the Effective Date, whichever occurs first (the "**Commencement Date**"). After the termination or expiration of this Agreement, Franchisor shall have the right to require Franchisee to continue paying the continuing franchise fees until all 1-800-Flowers signage, and/or any other designated branding (if applicable) is removed from the Franchised Unit and Franchisee's delivery vehicles. Franchisee's obligation to pay these continuing franchise fees is in addition to Franchisor's right to assess a fee for misuse of the marks as described in Section 15(g) below, to assess damages for Franchisee's unauthorized continuing use of the Marks, and to require Franchisee to de-identify the Franchised Unit and delivery vehicles, at Franchisee's expense.

	Annual Volume (\$)	Franchise Agreement Term (Year)									
		1	2	3	4	5	6	7	8	9	10
Monthly	250,000 - 299,999	850	850	850	850	1,000	1,000	1,250	1,250	1,500	1,500
Continuing	300,000 - 449,999	850	850	1,000	1,000	1,000	1,000	1,250	1,250	1,500	1,500
Franchise	450,000 - 599,999	850	850	1,000	1,000	1,250	1,250	1,500	1,500	1,500	1,500
Fee (\$)	600,000 +	1,000	1,000	1,250	1,250	1,500	1,500	1,500	1,500	1,500	1,500

2.6 Section 8(a) of the Franchise Agreement, titled “**Marketing Fee**”, is deleted in its entirety and is replaced with the following:

a. **Marketing Fee.** Following Franchisee’s receipt of thirty (30) days’ prior written notice from Franchisor that the 1-800-Flowers Franchise, Inc. Floral Marketing Fund (the “**Floral Marketing Fund**”) has been reinstated, Franchisee shall begin and continue to pay the Floral Marketing Fund on the fifth (5<sup>th</sup>) day of each month, as a marketing fee, the sum of \$250 per month, without deduction, abatement or offset. Franchisor reserves the right to increase the marketing fee to \$750 per month upon thirty (30) days’ prior notice to Franchisee.

2.7 Section 8(f) of the Franchise Agreement, titled “**Grand Opening Campaign**”, is deleted in its entirety and is replaced with the following:

f. **Grand Opening Campaign.** Franchisor shall develop and provide Franchisee with a promotional campaign for the grand opening of the Franchised Unit for business, and Franchisee agrees to spend between \$500 and \$2,000 for such promotional campaign.

2.8 Sections 9(b) through 9(d) of the Franchise Agreement are deleted in their entirety and are replaced with the following:

b. **Length of Time to Re-Open.** Franchisee must complete the co-branding of Franchisee’s existing flower shop at the Franchised Location, including any leasehold improvements required and the installation of the signage that Franchisor designates and/or approves (including interior and exterior signage for the Co-Brand Franchised Unit and any required vehicle wrap), and must then re-open the Franchised Location as a Co-Brand Franchised Unit, not later than ninety (90) days after Franchisee signs the Franchise Agreement and Co-Brand Addendum. Franchisee’s failure to re-open the Franchised Location for business as a Co-Brand Franchised Unit by such time shall be deemed a default under this Agreement and shall be grounds for the termination of this Agreement by Franchisor upon Franchisor sending notice to Franchisee. Franchisee shall have no right to cure such default.

2.9 Section 9(g) of the Franchise Agreement, titled “**Signs**”, is deleted in its entirety and is replaced with the following:

g. **Signs.** Franchisee shall, at all times during the Term of this Agreement, exhibit such signs (including, without limitation, signs or decals on Franchisee’s delivery van) as shall be required by Franchisor. All signs to be used in connection with the Franchised Unit, both exterior and interior, must conform to Franchisor’s current sign criteria as to type, color, size, design and location. All signs must be approved in writing by Franchisor prior to installation or display. Notwithstanding the generality of the foregoing, Franchisee understands and



agrees that Franchisee shall complete the Co-Brand Requirements, including installation of all interior and exterior signage for the Franchised Unit and vehicle wraps, to Franchisor's satisfaction, and commence doing business at the Co-Brand Franchised Unit under the Co-Brand Trade Name within ninety (90) days after the Effective Date. If Franchisee adds a Fruit Bouquets Business into the Franchised Unit, the Co-Brand Franchised Unit must be equipped and ready to offer fruit bouquets not later than six (6) months after Franchisee signs the Fruit Bouquets Addendum. Franchisee acknowledges that Franchisee's failure to do so shall be a default under this Agreement and may result, in Franchisor's discretion, in the termination of this Agreement without affording Franchisee the opportunity to cure the default. During the Term, Franchisee shall be permitted to continue to use Franchisee's former trade name in combination with the Marks in accordance with the standards and conditions established by Franchisor, and subject to Franchisor's prior inspection and prior written approval.

2.10 The following is appended to the end of Section 10(m) of the Franchise Agreement, titled "**Electronic Equipment and Communications and Computer Systems**":

Franchisor and Franchisee agree that Franchisee may use Franchisee's existing computer or point of sale system in the operation of the Franchised Unit. Notwithstanding the foregoing, Franchisee acknowledges and agrees that Franchisor shall have the right at any time during the term of this Agreement to specify the computer or point of sale system Franchisee must use in the Franchised Unit and to change Franchisor's specifications for such computer or point of sale system at any time and from time to time.

2.11 Section 10(s) of the Franchise Agreement, titled "**Standard Business Format; No Co-Branding**", is amended to reflect that Franchisee may use the Co-Brand Trade Name so long as Franchisee adheres to the Co-Brand Requirements.

2.12 Section 16(a) of the Franchise Agreement, titled "**Ownership during Term**", is deleted in its entirety and is replaced with the following:

a. **Ownership during Term.** During the Term of this franchise, neither Franchisee nor any of Franchisee's principals shall directly or indirectly engage or be financially involved in (except for ownership of not more than five percent (5%) of the outstanding stock, voting and non-voting, of a corporation, the stock of which is traded on a national securities exchange), or be employed by any business, other than the Franchised Unit or another 1-800-Flowers shop, which sells flowers, plants or related products as a significant aspect of its operation.

2.13 Section 16(b) of the Franchise Agreement, titled "**Ownership Following Termination**", is deleted in its entirety and is replaced with the following:

b. **Ownership Following Termination.** Franchisee specifically acknowledges and agrees that, pursuant to this Agreement, Franchisee will receive valuable specialized training and Confidential Information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques for the operation of 1-800-Flowers retail sales outlets, and of the 1-800-Flowers System. In addition, Franchisee specifically acknowledges and agrees that prior to becoming a 1-800-Flowers franchisee, Franchisee had no experience, information or knowledge whatsoever about the operation of 1-800 Flowers retail sales outlets or a Franchised Unit and that Franchisee's knowledge of the Confidential Information was obtained solely from Franchisor, following Franchisee's

training by Franchisor and/or Franchisee's subsequent operation of the Franchised Unit under this Agreement. Following the expiration or termination of this Agreement for any reason, Franchisee agrees that Franchisee will not utilize any of Franchisor's Marks, Trade Secrets or Confidential Information.

2.14 Section 17(d)(vii) of the Franchise Agreement is deleted in its entirety and is replaced with the following:

(vii) Franchisee shall pay Franchisor a transfer fee of \$5,000 and, at Franchisor's request, shall reimburse Franchisor for Franchisor's out of pocket costs incurred to process the Assignment, including attorneys' fees.

2.15 Section 18(b)(i) of the Franchise Agreement is deleted in its entirety and is replaced with the following:

(i) Franchisor acknowledges that Franchisee has established a website relating to Franchisee's floral business at the URL www.\_\_\_\_\_ .com (the "**Pre-Existing Website**"). Franchisee may continue to use the Pre-Existing Website to generate leads and/or conduct business during the Term; provided, however, that Franchisee shall not solicit or accept orders via the Pre-Existing Website for 1-800-Flowers or its subsidiaries' products without Franchisor's prior written consent. Franchisee shall, pursuant to Franchisor's instructions and specifications, ensure that the Pre-Existing Website contains the appropriate references to the Marks and includes any links required by Franchisor to Franchisor's Website. Any sales made directly by Franchisee via the Pre-Existing Website for non-1-800-Flowers products shall be fulfilled solely by Franchisee. Franchisee acknowledges and agrees that Franchisor and its affiliates have the right to own, operate, sell goods and services over the Internet, including the right to display, access and sell such goods and services to buyers anywhere and everywhere, and that Franchisee's right to fulfill orders generated by Franchisor's Website shall be controlled by the BloomNet Membership Agreement. Before Franchisee may utilize the Marks, the Pre-Existing Website will be subject to Franchisor's review and prior written approval. As a condition to granting Franchisor's approval, Franchisor shall have the right to establish any requirement that Franchisor deems appropriate. Franchisee's use and continued use of the Pre-Existing Website shall be subject to Franchisor's continuing right of approval of the form and content of the Pre-Existing Website and the manner in which the Marks are used in conjunction with Franchisee's previous trade name.

2.16 The following is added as Section 18(f) of the Franchise Agreement:

f. **Modification of Franchisee's Website upon Termination or Expiration.** Franchisee shall, within fifteen (15) days after termination or expiration of this Agreement, remove all Marks, Links or other references to the 1-800-Flowers System from Franchisee's currently Pre-Existing Website and shall certify to Franchisors in writing that such removal has been completed. Franchisee hereby appoints Franchisor as its attorney-in-fact with full power and authority for the sole purpose of making or causing to be made these changes to the Pre-Existing Website. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effect until the termination or expiration of this Agreement.

2.17 The first sentence of Section 22(e) of the Franchise Agreement, titled “**Electronic Communications and Media**”, is deleted in its entirety and is replaced with the following.

e. **Electronic Communications and Media.** The goodwill associated with all telephone and fax numbers, email addresses, domain names, Websites or web pages, social media and other Internet addresses and URLs used in operation of the Franchised Unit that contain the Marks (“**Electronic Communications and Media**”) is an asset that belongs to Franchisor.

2.18 Section 22(g) of the Franchise Agreement, titled “**Right to Purchase**”, is deleted in its entirety and is replaced with the following:

g. **Right to Purchase.** Upon termination of this Agreement, Franchisor shall not be required to purchase any assets at or used by the Franchised Unit.

2.19 Section 22(h) of the Franchise Agreement, titled “**Paper Goods**”, is deleted in its entirety.

### 3. **ENTIRE AGREEMENT.**

This Addendum represents the entire understanding between the Parties regarding the subject matter of this Addendum and supersedes all other negotiations, agreements, representations and covenants, oral or written regarding the same. The Parties intend this Addendum to be the entire integration of all of their agreements of any nature regarding the subject matter of this Addendum. Other than the Franchise Agreement, no other agreements, representations, promises, commitments or the like, of any nature, exist between the Parties. Except as modified by this Addendum, all terms and obligations of this Franchise Agreement are hereby ratified, affirmed and approved.

### 4. **NO UNIFORMITY.**

Franchisor has made no warranty or representation to Franchisee that all Co-Brand Franchise Addenda previously issued or issued after this Addendum by Franchisor do or will contain terms substantially similar to those contained in this Addendum. Franchisor may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Co-Brand Franchise Addenda previously executed or executed after the Effective Date with other 1-800-Flowers franchisees in a non-uniform manner.

### 5. **CONSULTATION WITH ADVISORS.**

Franchisee acknowledges that Franchisee has carefully read this Addendum and all other related documents to be executed concurrently or in conjunction with the execution hereof, that Franchisee has obtained the advice of counsel in connection with entering into this Addendum, that Franchisee understands the nature of this Addendum, and that Franchisee intends to comply herewith and be bound hereby. Franchisee acknowledges that it has read and understood this Addendum, the Exhibits hereto, and agreements relating thereto, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee’s own choosing about the potential benefits and risks of entering into this Addendum.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the Effective Date.

**FRANCHISOR:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

A Delaware corporation

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

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

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

**FRANCHISEE:**

\_\_\_\_\_

A \_\_\_\_\_

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

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

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

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT C  
FRUIT BOUQUETS ADDENDUM TO FRANCHISE AGREEMENT

1-800-FLOWERS.COM FRANCHISE CO., INC.

ADDENDUM TO FRANCHISE AGREEMENT FOR FRUIT BOUQUETS PROGRAM

THIS ADDENDUM TO FRANCHISE AGREEMENT FOR FRUIT BOUQUETS PROGRAM (this “**Addendum**”) dated \_\_\_\_\_, hereby amends and modifies the 1-800-FLOWERS.COM FRANCHISE CO., INC. Franchise Agreement dated \_\_\_\_\_ (the “**Franchise Agreement**”), by and between 1-800-FLOWERS.COM FRANCHISE CO., INC., a Delaware corporation (hereinafter “**we**”, “**us**” or “**Franchisor**”), and \_\_\_\_\_ (“**you**” or “**Franchisee**”).

The parties hereby amend the Franchise Agreement in accordance with the following, in addition to the deletions, additions and modifications (which shall control in the event of any ambiguity between any of them and the terms of the pre-printed form), that appear on the pre-printed form of agreement to which this Addendum is attached. In the event of any conflict or ambiguity between the terms of this Addendum and the Franchise Agreement, the terms of this Addendum shall control. All capitalized terms used in this Addendum that are not specifically defined shall have the meanings ascribed to them in the Franchise Agreement. The term “**Manuals**” shall be deemed to specifically include the Fruit Bouquets Operations and Brand Standards Manual and Fruit Bouquets Pricing Guide. The term “**Marks**” shall be deemed to specifically include “**Fruit Bouquets by 1-800-Flowers.com**” and other proprietary marks authorized to be used related to such program.

1. Section 2(a) titled “**Grant**” shall be amended by adding the following paragraph at the end thereof:

“During the Term, provided that Franchisee is and remains in good standing under this Agreement and all other agreements between Franchisor or Franchisor’s Affiliates and Franchisee, Franchisee shall have the right to offer and sell fresh fruit products, fresh cut fruit arrangements and related products (“**fruit bouquets**”).”

2. Section 2(d)(i) under “**Reservation of Rights**” is deleted in its entirety and is replaced by the following:

“(i) Develop, own and operate, by itself, through its Affiliates, or by their franchisees, and to grant others the right to develop, own and operate and issue licenses and franchises to others to develop, own and operate 1-800-Flowers and 1-800-Flowers.Com units, shops and other businesses or systems including, without limitation, retail flower shops that operate under the marks and trade names of its Affiliates, whether or not utilizing the 1-800-Flowers System and Trade Practices, shops that operate under the “**Fruit Bouquets by 1-800-Flowers.com**” and “**Fruit Bouquets.com**” marks and trade names, and shops operating under any other marks or trade names designated by Franchisor, utilizing the 1-800-Flowers System and Trade Practices, anywhere.”

3. Franchisee’s execution of this Addendum shall not serve to modify or extend the term of the Franchise Agreement, as set forth in Article 4 thereof.

4. Section 4(b)(viii) under “**Conditions for Successor Franchise**” shall be amended to reflect that in addition to payment of the Successor Franchise Fee and execution of Franchisor’s Then-Current form of Franchise Agreement, Franchisee shall also pay to Franchisor the amount of \$7,500 as a Successor Franchise Fee for renewal of the Fruit Bouquets Program for the term of the Successor Franchise Agreement and, at Franchisor’s request, shall execute Franchisor’s Then-Current form of Fruit Bouquets Addendum.

5. Article 5 titled “**INITIAL FRANCHISE FEE**” shall be amended to reflect that, in addition to the initial franchise fee set forth in such section, for the rights to offer and sell fruit bouquets Franchisee shall pay to

Franchisor an additional initial franchise fee in the amount of \$7,500. If this Addendum is for Franchisee's second (2<sup>nd</sup>) or later purchase of the Fruit Bouquets Program for a second (2<sup>nd</sup>) or later shop for which Franchisee has executed a Franchise Agreement, then the initial franchise fee payable hereunder shall be reduced to \$3,500. If Franchisee signs a Franchise Agreement and a Fruit Bouquets Addendum to the Franchise Agreement on or before October 1, 2022, Franchisor will waive payment of the entire Fruit Bouquets initial franchise fee.

6. Section 7(a) titled "**Continuing Franchise Fees**" shall be amended to reflect that, in addition to the continuing franchise fees set forth in such section, Franchisee shall pay to Franchisor a continuing franchise fee in an amount equal to six percent (6%) of Fruit Bouquets Gross Sales from the Franchised Unit each month.

7. Section 7(b) shall be amended to reflect that the definition of "**Adjusted Gross Sales**" shall specifically exclude "**Fruit Bouquets Gross Sales**", as defined below.

8. Section 7(b) shall be further amended by adding the following at the end thereof:

"(vi) The term "**Fruit Bouquets Gross Sales**" as used in this Agreement means all revenues from operating the Fruit Bouquets franchise, including from the sale of all products and services by Franchisee, in, upon or from the Franchised Location or through or by any means of the business conducted at the Franchised Location, including any orders received from a third party for fulfillment, except for orders forwarded for fulfillment by 800-Flowers pursuant to the terms of the Fruit Bouquet Order Fulfillment Agreement. "Fruit Bouquets Gross Sales" excludes (a) sales or service taxes collected from customers and paid to the appropriate taxing authority, and (b) all customer refunds, adjustments and credits given to customers in good faith."

9. Section 8(a) titled "**Marketing Fee**" shall be amended to reflect that, in addition to the marketing fee set forth in such section, Franchisee shall pay to Franchisor a marketing fee based on Franchisee's monthly sales of Fruit Bouquets in an amount equal to two percent (2%) of Fruit Bouquets Gross Sales each month. All Marketing Fees payable pursuant to this Section shall be placed in a "Fruit Bouquets Marketing Fund", which shall be held separate and apart from the Floral Marketing Fund designated in the Franchise Agreement. Such Fruit Bouquets Marketing Fund shall be used for the benefit of 1-800-Flowers franchisees offering the Fruit Bouquets Program and is intended to maximize general public recognition in all media, of the Fruit Bouquets Marks, patronage of retail outlets participating in the Fruit Bouquets Program, and the availability of fruit bouquets offered at 1-800-Flowers Franchised Units and elsewhere. Once the Fruit Bouquets Marketing Fund is established, Franchisor has the right to begin collecting Fruit Bouquets Marketing Fund contributions from Franchisee upon 30 days' advance written notice. The Fruit Bouquets Marketing Fund shall be administered in the same manner as the Floral Bouquets Marketing Fund, as described in Article 8 of the Franchise Agreement.

10. Section 10(l) titled "**Initial Training, Additional Training and Franchisee Employee Policy**" shall be amended to reflect that Franchisor shall provide, and Franchisee must attend, two (2) days of initial training in the Fruit Bouquets Program, and such training is typically held at Franchisee's existing Franchised Unit.

11. Section 10(o) titled "**Permits and Licenses**" shall be amended to reflect that for the offer and sale of fruit bouquets, Franchisee shall obtain and maintain any permits, licenses, certificates and approvals required by applicable law related to this activity.

12. Section 11(b) titled "**Additional Trainees, Additional Initial Training Programs**" shall be amended to reflect that, in addition to requesting additional training or assistance related to the floral business,

Franchisee may also request additional training or assistance related to the fulfillment of fruit bouquets orders. If Franchisor, at its sole discretion, agrees to provide such training, Franchisor will provide the training at no additional charge.

13. Article 12 titled “**Supplies and Suppliers**” shall be amended to reflect that Franchisee shall have additional expenses for required equipment, signage and supplies, such as are contained in a fruit bouquets starter kit, which includes tools, packaging and containers. In some cases, Franchisee may purchase certain equipment from Franchisor or its affiliates.

14. Section 15(b) titled “**Reimbursement of Franchisee**” shall be amended to reflect that if Franchisee is held liable in any proceeding described in Paragraph 15(a) related to the “Fruit Bouquets by 1-800-Flowers” Marks, such reimbursement as described in Paragraph 15(b) shall be made from the Fruit Bouquets Marketing Fund.

15. Article 16 titled “**COVENANTS**” shall be amended to reflect that all of its terms shall also apply to fruit bouquets and any other products offered by Franchisor or Franchisor’s affiliates.

16. Section 17(d)(vii), under “**Conditions of Assignment to Third Party**”, shall be amended to reflect that in addition to the transfer fee payable pursuant to such section for the Franchise, Franchisee shall also pay to Franchisor the amount of \$5,000 plus Franchisor’s out of pocket costs associated with the transfer of the Fruit Bouquets program, including costs of attorneys’ fees associated with the transfer.

17. Section 21(d) titled “**Cross-Default**” shall be amended to reflect that, upon termination or expiration of the Franchise Agreement, this Addendum and the Fruit Bouquets Order Fulfillment Agreement shall also terminate and Franchisee shall no longer have the right to offer fruit bouquets or to use the “Fruit Bouquets by 1-800-Flowers.com” marks or trade names.

18. Section 22(a) titled “**Obligations of Franchisee**” shall be amended by adding the following paragraph at the end thereof:

“In addition, following termination of this Agreement, Franchisee shall comply with all non-competition restrictions contained in Article 14 of the Fruit Bouquets Order Fulfillment Agreement, which restrictions are deemed incorporated into this Agreement as if fully set forth herein.”

**IN WITNESS WHEREOF**, the parties have executed this Addendum at Jericho, New York, on the date first shown above.

**FRANCHISOR:**

**FRANCHISEE:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**,  
A Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT D  
SUBLEASE

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**1-800-FLOWERS RETAIL, INC.**

**SUBLEASE**

**1-800-FLOWERS RETAIL, INC.  
SUBLEASE  
TABLE OF CONTENTS**

1.	INCORPORATION OF RECITALS.....	2
2.	SUBLEASE OF PREMISES.....	2
3.	CONSTRUCTION OR REMODELING OF PREMISES.....	3
4.	TERM.....	3
5.	RENT. ....	4
6.	PAYMENT FOR IMPROVEMENTS TO THE FRANCHISED LOCATION. ....	5
7.	USE AND CONDITION OF PREMISES.....	5
8.	MAINTENANCE, REPAIRS AND ALTERATIONS.....	6
9.	INSURANCE.....	7
10.	INDEMNITY.....	9
11.	ASSIGNMENT AND SUBLETTING. ....	9
12.	EVENTS OF DEFAULT.....	9
13.	GENERAL PROVISIONS.....	11
	SIGNATURES.....	17

**EXHIBITS**

**EXHIBIT A                    MASTER LEASE**

**1-800-FLOWERS RETAIL, INC.**  
**SUBLEASE**

**THIS SUBLEASE** (this "**Sublease**") is made \_\_\_\_\_, by and between **1-800-FLOWERS RETAIL, INC.**, a Delaware corporation ("**Sublessor**"), and \_\_\_\_\_ ("**Sublessee**"), with reference to the following facts:

A. 1-800-FLOWERS.COM, INC., a Delaware corporation, an affiliate of Sublessor, is the owner of all right, title and interest in and to the trade name, trademark and service mark 1-800-FLOWERS and other marks and has authorized 1-800-Flowers Franchise Co., Inc., a Delaware corporation ("**Franchisor**"), as franchisor, to franchise the rights to certain valuable trade practices and all of the designs, phrases, logos, signs, formulas, operating procedures, electronic communications systems, merchandising methods, cost control, accounting and general business techniques, strategies, routines, copyrights, manuals, training materials, bulletins and all other items now or hereafter owned, used, developed or provided by Franchisor, as franchisor, in connection with the retail flower business, all of which may be improved, further developed or otherwise modified from time to time.

B. Franchisor and its affiliates have developed a chain of retail sales outlets for the sale of flowers, plants, related products and services and gift and sentiment items under the trade name and/or the Marks "1-800-FLOWERS", which are or will be operated in accordance with uniform standards of operation, including, without limitation, design of building, layout of equipment, interior and exterior decoration, signs, operating methods, purchasing programs, items of standard appearance and design, advertising, sales and general business techniques, personnel management and control systems and bookkeeping and accounting systems in order to create and maintain a unique appeal to the public.

C. Sublessor has entered into a Lease dated \_\_\_\_\_ (the "**Master Lease**"), as tenant, with \_\_\_\_\_ (the "**Master Landlord**"), for the premises located at \_\_\_\_\_ (the "**Franchised Location**") for the purpose of owning and operating or granting a franchise to a franchisee to own and operate a 1-800-Flowers franchised unit (the "**Franchised Unit**") at the Franchised Location. A copy of the Master Lease is attached to this Sublease as **Exhibit A** and incorporated herein by reference.

D. The following basic terms shall apply to this Sublease unless they are expressly contradicted, limited, or modified elsewhere in this Sublease:

1. **Term:** The initial term of this Sublease shall be \_\_\_\_\_.
2. **Number of Options To Extend:** \_\_\_\_\_.
3. **Length of Option Period(s):** \_\_\_\_\_.
4. **Rent:** \_\_\_\_\_ and /100 (\$ \_\_\_\_\_) per annum payable in equal consecutive monthly installments of \_\_\_\_\_ and /100 (\$ \_\_\_\_\_) per calendar month, in advance, without demand, on the first day of each month, commencing \_\_\_\_\_, and as adjusted in accordance with the terms of this Sublease and the Master Lease.

5. **Security Deposit:** The greater of the amount required under the Master Lease or two (2) months' rent, common area maintenance expenses, taxes, insurance and other assessments made by the Master Landlord under the Master Lease.

E. Sublessee desires to sublease the Franchised Location from Sublessor for the purpose of owning and operating the Franchised Unit at the Franchised Location as a franchisee of Franchisor and Sublessor desires to sublease the Franchised Location to Sublessee on the terms and conditions set forth in this Sublease.

**NOW, THEREFORE, IT IS AGREED:**

1. **INCORPORATION OF RECITALS.**

The recitals set forth in Paragraphs A through E of this Sublease are true and correct and are hereby incorporated by reference into the body of this Sublease.

2. **SUBLEASE OF PREMISES.**

a. **Franchised Location.** Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor for the term, at the rent, and upon all of the terms and conditions set forth in this Sublease, that certain real property, together with any improvements situated thereon, in the County of \_\_\_\_\_, State of \_\_\_\_\_, commonly known as \_\_\_\_\_.

b. **Franchise Agreement.** Concurrently with the parties' execution of this Sublease, Franchisor, as franchisor, and Sublessee, as franchisee, will enter into a Franchise Agreement (the "**Franchise Agreement**") pursuant to which Franchisor will grant Sublessee the right to own and operate the Franchised Unit at the Franchised Location. Sublessee will comply with and perform all covenants contained in the Franchise Agreement. Sublessee's breach of any of the terms and covenants of the Franchise Agreement will also constitute a breach of this Sublease. Termination, default or revocation of the Franchise Agreement for any reason, either in whole or in part, will also terminate this Sublease without further notice being required.

c. **Master Lease.** Sublessor is the tenant of the Franchised Location under the Master Lease. Sublessee shall comply with each and all of the terms and conditions of the Master Lease and shall perform each and all of the acts required to be performed by Sublessor, as tenant under the Master Lease, as if Sublessee was the tenant under the Master Lease. Sublessee shall not be obligated under this Sublease or the Master Lease to a greater extent than Sublessor, as tenant, is obligated to the Master Landlord under the Master Lease, except as otherwise set forth in this Sublease, nor shall Sublessee obtain any greater rights as against Sublessor than those held by Sublessor, as tenant, under the Master Lease. If the Master Lease provides for additional or more onerous terms with Sublessor, as tenant under the Master Lease, than this Sublease places on Sublessee, those additional or more onerous terms of the Master Lease shall apply and be binding upon Sublessee as if each and all of such terms were contained in this Sublease.

d. **Liability of Sublessor.** Sublessor shall not be liable for any default by the Master Landlord under the Master Lease and Sublessee assumes all such risks. Any obligation of Sublessor that is contained in this Sublease by the incorporation by reference of the provisions of the Master Lease may be observed or performed by Sublessor using reasonable efforts to cause the Master Landlord to observe and/or perform the same; provided, however, that Sublessee shall pay any cost or expense (including, without limitation, attorneys' fees) incurred by Sublessor in causing the Master Landlord to observe and/or perform the same. Sublessor shall have a reasonable time to enforce its rights to cause such observance or performance by the

Master Landlord. Sublessor shall not be required to furnish, supply or install anything required under any article of the Master Lease. If the Master Lease should terminate for any cause whatsoever during the term of this Sublease, this Sublease shall automatically terminate on the same date and with the same force and effect as if the termination date was set forth in this Sublease as the date of the expiration of the term. In such event, Sublessee shall have no claim against Sublessor for the termination of this Sublease, except for apportionment of rent paid in advance to the date of termination, unless the termination is caused by a failure of Sublessor to carry out Sublessor's obligations as the tenant under the Master Lease, which failure was not caused by any action or inaction of Sublessee.

e. **Termination of Master Lease.** If termination of the Master Lease is threatened because of the failure of Sublessor to pay the "**Master Lease Rent**", as defined in Section 5 of this Sublease, Sublessee may prevent a termination of the Master Lease by his direct payment to the Master Landlord of the Master Lease Rent, to the extent the terms of the Master Lease grant Sublessee such right or to the extent that the Master Landlord allows Sublessee to do so. Sublessor shall notify Sublessee of any threatened termination of the Master Lease for Sublessor's failure to pay Master Lease Rent within five (5) days after Sublessor is notified in writing of such action by the Master Landlord.

### 3. **CONSTRUCTION OR REMODELING OF PREMISES.**

If applicable, Sublessee shall construct a building suitable for use as the Franchised Unit on the Franchised Location or the existing building shall be remodeled by or on behalf of Sublessee, at Sublessee's sole cost and expense. The Franchised Unit must conform to the general plan and decor of 1-800 Flowers units operated by Sublessor, or its "**affiliates**" (a person, other than a natural person, controlled by, controlling, or under common control with Sublessor, which is providing products or services to Sublessor's franchisees), or by franchisees of Sublessor, modified to conform to space and other limitations of the Franchised Location and the Master Lease. The Franchised Unit shall be fixturized, equipped and operated at Sublessee's expense in accordance with the terms of the Franchise Agreement and this Sublease. Sublessor reserves the right to require Sublessee, at Sublessee's expense, to make additional improvements to the Franchised Unit, if reasonably necessary, after the completion of the original improvements and during the term or any extended term of this Sublease.

### 4. **TERM.**

a. **Term.** The term of this Sublease shall be for ten (10) years or the term of the Master Lease, less one (1) day, whichever is less, commencing on the day and year of the parties' execution of this Sublease. As used in this Sublease, the word "**term**" shall include the initial term and all renewals and extensions of this Sublease. The term is subject to earlier termination in accordance with the terms and conditions of this Sublease or by operation of law. Upon the termination of this Lease for any reason, Sublessee shall deliver to Sublessor a release and cancellation of this Sublease.

b. **Successor Franchise.** If Franchisor grants Sublessee a "**Successor Franchise**" upon the expiration of the term of the Franchise Agreement as described in Section 4 of the Franchise Agreement and if the Master Lease provides for a right to renew or extend the term of the Master Lease, providing Sublessee is not in default of the Sublease or the Franchise Agreement, Sublessee shall have the right and option to renew or extend the term of this Sublease for an additional period of time equal to the time permitted under the Master Lease, less one (1) day. If Sublessee is not in default of the Sublease or the Franchise Agreement and wishes to exercise such option, it shall give written notice to Sublessor of such election not later than thirty (30) days prior to the date Sublessor is required to give the Master Landlord notice of Sublessor's exercise of the renewal option pursuant to the terms of the Master Lease. Sublessee understands and acknowledges that

its obligation to provide such notice to Sublessor is completely dependent on the option and notice provisions in the Master Lease and that such 30-day notice is required to be provided to Sublessor in advance of Franchisor's notice to Sublessee of any Successor Franchise. In the event that Franchisor does not grant Sublessee a Successor Franchise upon the expiration of the term of the Franchise Agreement and/or Sublessee fails to give Sublessor the notice required hereunder in a timely manner, then the Sublease shall terminate on the scheduled termination date and Sublessor shall be free to (i) exercise the renewal or extension rights itself and sublease the Franchised Location to a third party on such terms and conditions as Sublessor shall, in Sublessor's sole discretion, elect, (ii) occupy the Franchised Location itself, or (iii) terminate the Master Lease or permit it to lapse. If Sublessor elects to terminate the Master Lease or let it lapse, providing Sublessee is not in default and has been granted an extension, if applicable, on their Franchise Agreement, Sublessee may negotiate a direct lease with the Master Landlord. Sublessee understands and acknowledges that nothing in this Section 4(b) places an obligation upon Franchisor to grant Sublessee a Successor Franchise, which shall be governed by the terms and provisions of the Franchise Agreement, regardless of whether proper notice to renew this Sublease was provided to Sublessor by Sublessee.

c. **No Direct Negotiations.** Except as provided in Section 4(b) above, in no event shall Sublessee negotiate for or otherwise attempt to obtain an extension or renewal of the Master Lease, directly or indirectly. Nothing contained in this Sublease shall require Sublessor to negotiate for or secure any extension or renewal of the term of the Master Lease not originally provided for in the Master Lease.

d. **Relocation.** If Sublessee is granted a successor franchise as described in Paragraph 4(b), Sublessor and Franchisor shall have the option to require Sublessee to relocate the Franchised Unit at the expiration of the initial term of the Franchise Agreement, based upon their analysis of market changes in the trade area of the Franchised Location during the prior ten (10) year period. If Sublessor and Franchisor elect to require Sublessee to re-locate the Franchised Unit, Sublessor and Franchisor shall give Sublessee six (6) months' written notice of their intention to require Sublessee to re-locate the Franchised Unit and Sublessee shall do so at its sole expense within six (6) months after the expiration of such ten (10) year period.

5. **RENT.**

a. **Monthly Rent.** Sublessee shall pay to Sublessor as monthly rent for the Franchised Location, without deduction or offset, in advance, without demand or notice, the sum set forth in Recital Paragraph D(4) above for each month of the term commencing upon the parties' execution of this Sublease. The rent due under this Sublease shall include the "**Master Lease Rent**" payable by Sublessor to the Master Landlord under the Master Lease and shall be due and payable by Sublessee on the first day of each month during the term. "**Master Lease Rent**" shall mean the monthly rent and any adjustments to the Master Lease Rent required to be paid by Sublessor to the Master Landlord pursuant to the Master Lease and any extension or renewal of the term of the Master Lease.

b. **Rent Prior to Opening for Business.** In the event that the Master Lease provides for monthly rent or other payments prior to the completion of the construction of the Franchised Unit and/or the obtaining of all certificates of occupancy for the Franchised Unit, Sublessee shall pay the monthly rent or other payments to Sublessor as and when these sums are due and payable by Sublessor to the Master Landlord under the terms of the Master Lease.

c. **Security Deposit.** Sublessee shall, upon execution of this Sublease, deposit with Sublessor, in cash, an amount equal to the greater of the amount required under the Master Lease or two (2) months' rent, common area maintenance expenses, taxes, insurance and other assessments made by the Master Landlord under the Master Lease, as a "**Security Deposit**". If Sublessee fails to pay rent or other charges due under this

Sublease, or is otherwise in default under this Sublease, Sublessor may use, apply and retain all or any portion of the Security Deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Sublessor may become obligated by reason of Sublessee's default, or to compensate Sublessor for any loss or damage that Sublessor may suffer thereby. If Sublessor uses, applies or retains all or any portion of the Security Deposit, Sublessee shall, within ten (10) days after written demand therefor, deposit cash with Sublessor in an amount sufficient to restore the Security Deposit to the full amount required. Sublessee's failure to do so shall be a material breach of this Sublease. If Sublessee performs all of Sublessee's obligations under this Sublease, the Security Deposit, or so much of the Security Deposit that has not been used, applied or retained by Sublessor, shall be returned to Sublessee without payment of any interest, after Sublessee has vacated the Franchised Location.

d. **Other Rental Fees and Rental Payments.** If Master Lease Rent or other payments (including, without limitation, attorneys' fees, title insurance premiums and/or expenses, costs of subdividing, parcel mapping, zoning changes and variances, and/or closing costs) have accrued or have been paid by Sublessor in the acquisition of the Franchised Location or in securing the Master Lease, Sublessee shall pay Sublessor, as additional rent, the amount of the Master Lease Rent or other payments, whether accrued or paid prior to the execution of this Sublease, upon execution of this Sublease, or after the execution of this Sublease, within ten (10) days following demand for such payment by Sublessor.

e. **Additional Rent.** This Sublease is a "net-net-net" Sublease. Sublessor shall receive the rent set forth in this Section 5 free and clear of any and all taxes, liens, insurance premiums, operating charges, maintenance charges, utilities and any other charges, costs and expenses of any nature whatsoever in connection with the occupation and operation of the Franchised Location, or which arise or may be contemplated under any provision of this Sublease during the term of this Sublease, as additional rent. All of such costs and expenses shall be the responsibility of Sublessee and shall be paid by Sublessee on or before the due date thereof.

## 6. **PAYMENT FOR IMPROVEMENTS TO THE FRANCHISED LOCATION.**

Except where the Master Landlord builds to suit for Sublessee or where no remodeling of the existing improvements on the Franchised Location is required by Sublessor, Sublessee shall pay all costs and expenses to construct or remodel the Franchised Location, directly to the persons constructing, remodeling or providing the improvements to the Franchised Unit.

## 7. **USE AND CONDITION OF PREMISES.**

a. **Use of Franchised Location.** The Franchised Location shall be used and occupied only for the operation of the Franchised Unit in accordance with the 1-800-Flowers System as described in the Franchise Agreement. Any unauthorized use shall constitute a material breach of this Sublease and the Franchise Agreement.

b. **Condition of Franchised Location.** Sublessee acknowledges and agrees that he has inspected the Franchised Location and accepts the Franchised Location in the condition existing as of the date of his execution of this Sublease, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the Franchised Location and the use thereof. Sublessee hereby waives any right to terminate this Sublease under California Civil Code Section 1932 or any similar statute or law.



c. **Compliance with Law.** Sublessee shall, at Sublessee's expense, promptly comply with all applicable statutes, ordinances, rules, regulations, orders and requirements in effect during the term or any part of the term of this Sublease that affect the Franchised Location. Sublessee shall not use or permit the use of the Franchised Location in any manner that will tend to create waste or a nuisance.

8. **MAINTENANCE, REPAIRS AND ALTERATIONS.**

a. **Sublessee's Obligations.**

(i) Sublessee shall, during the term of this Sublease, keep in good order, condition and repair, the Franchised Location and every part thereof, structural or non-structural and all adjacent sidewalks, landscaping, driveways, parking lots, fences and signs located in the areas that are adjacent to and included with the Franchised Location and all fixtures, furnishings, equipment and other items included in the Franchised Location.

(ii) Sublessee shall repaint the Franchised Location as necessary, but at least once every three (3) years. Notwithstanding the preceding provision, Sublessor will consider a waiver of Sublessee's obligation for repainting, upon an appropriate request, if Sublessor shall determine that such repainting is not then required for the maintenance of the Franchised Location in good sanitary order, condition and repair.

(iii) Sublessor shall incur no expense, nor have any obligation of any kind whatsoever, in connection with the maintenance, repair or replacements of the Franchised Location, and Sublessee expressly waives the benefits of any statute now or hereafter in effect that would otherwise afford Sublessee the right to make repairs or replacements at Sublessor's expense or to terminate this Sublease because of Sublessor's failure to keep the Franchised Location in good order, condition and repair.

(iv) Sublessee shall repair or replace at his own expense any furnishings, fixtures, and equipment that become unusable or defective, including without limitation, the refrigeration unit, doors, compressors, heaters, air conditioning, if any, and/or water cooling system, if any, ventilating systems, plumbing fixtures, lighting fixtures or other electrical services, glass and display cases, and any and all utilities and waste systems, parking lot and roof replacement if required under the Master Lease with such replacements to be subject to Sublessor's approval.

b. **Sublessor's Rights.** If Sublessee fails to perform Sublessee's obligations under this Section 8, Sublessor may, at Sublessor's option, (but shall not be required to) enter upon the Franchised Location, and put the same in good order, condition and repair, and the cost thereof plus ten percent (10%) of the cost (which is the fair and reasonable estimate of the cost Sublessor will incur by reason of Sublessee's non-performance) shall become due and payable by Sublessee as additional rent to Sublessor together with Sublessee's next rental installment.

c. **Alterations and Additions.**

(i) Sublessee shall not, without Sublessor's prior written consent, make any sub-leasehold improvements, building improvements, alterations, additions or utility installations in, on or about the Franchised Location. As used in this Paragraph 8(c), the term "**utility installations**" shall include ducting, power panels, fluorescent fixtures, space heaters, conduits and wiring. As a condition to giving such consent, Sublessor, at its sole option, may require that Sublessee remove any such alterations, improvements, additions or utility installations at the expiration of the term, or any sooner termination, and to restore the Franchised Location to their prior condition. Sublessor shall also require Sublessee to submit plans and specifications with

respect to such alterations, improvements, additions or utility installations to Sublessor for approval. As a further condition to giving such consent, Sublessor may require Sublessee to provide Sublessor, at Sublessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1 1/2) times the estimated cost of such improvements, to insure Sublessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. As permitted under the Master Lease, Sublessee shall be the owner of all the sub-leasehold improvements, alterations, additions, furniture and fixtures that Sublessee has purchased.

(ii) Sublessee shall pay, when due, all claims for labor or materials furnished to or for Sublessee at or for use in the Franchised Location, which claims are or may be secured by any mechanics' or materialmen's lien against the Franchised Location or any interest therein. Sublessee shall give Sublessor not less than ten (10) days written notice prior to the commencement of any work in the Franchised Location, and Sublessor shall have the right to post notices of non-responsibility in, or on, the Franchised Location as provided by law.

## 9. INSURANCE.

a. Insurance Coverage. Sublessee shall obtain and shall maintain in full force and effect during the term of this Sublease, at Sublessee's expense, insurance coverage in accordance with Sublessor's current insurance requirements with insurance carriers acceptable to Sublessor. The coverage shall commence when possession of the Franchised Location is delivered to Sublessee for construction or otherwise. The policy or policies shall comply with the requirements of the Master Lease and this Sublease; however, Sublessor may require Sublessee to maintain insurance coverage in amounts that exceed the coverage required by the Master Lease or this Sublease and/or the Master Lease may require Sublessee to maintain insurance coverage in amounts that exceed the coverage required by Sublessor. Sublessee shall obtain and maintain coverage for:

(i) Auto liability for any vehicle for a combined single limit of \$1,000,000.

(ii) Public liability including products liability, covering bodily injury, property damage, and advertising, sidewalks and parking areas and personal injury in the amount of at least \$1,000,000 combined single limit and an aggregate of \$2,000,000 and a \$2,000,000 umbrella coverage against claims for personal injury, death or property damage occurring in, on, or about the Franchised Unit.

(iii) Workers compensation as may be required by law.

(iv) Employer's liability for a limit of \$1,000,000 for each accident or disease.

(v) Employment Practices Liability Insurance.

Sublessee shall also carry fire and extended coverage insurance on the Franchised Unit and its property in an amount adequate to replace it in the event of an insured loss, fire-legal liability insurance in an amount of the value of the Franchised Location and business interruption insurance in sufficient amounts to cover twelve (12) months of continuing franchise fee and marketing fee payments to Sublessor, based upon the average fees paid by Sublessee to Sublessor during the twelve (12) months preceding the event of business interruption, twelve (12) months of rent and other direct site costs for the Franchised Location, twelve (12) months of insurance premiums and other fixed expenses.

Sublessee shall also carry coverage against all forms of liability for death or injury to any individual, and for loss or damage to property. Sublessee's insurance shall provide for primary coverage and not contributory coverage, notwithstanding any other insurance which Sublessor may obtain or maintain.

b. **Conditions of Coverage.** Sublessor shall be named as an additional named insured on all of such policies to the extent of its interests and shall be provided with certificates of insurance evidencing such coverage upon the issuance and each renewal of such policies. All policies shall provide Sublessor with at least thirty (30) days prior written notice to Sublessor of cancellation, lapse, material changes in or notice of cancellation or termination of coverage. Sublessor reserves the right to specify reasonable changes in the types and amounts of insurance coverage required by this Section 9. Sublessee's policies shall provide a waiver of subrogation to the Sublessor and all additional insureds. Sublessee's insurance shall be primary and non-contributory with respect to all additional insureds. Any insurance or self-insurance maintained by Sublessor shall be in excess of the Sublessee's insurance and shall not contribute with it. Sublessee's policies shall not contain any provision, definition or endorsement that would serve to eliminate coverage for third party action over claims. Sublessee's policies shall not contain any provision, definition or endorsement (including, but not limited to, ISO endorsement Form CG 24 26) that would serve to revise the definition of insured contract to remove coverage for an indemnitee's or additional insured's sole negligence. Sublessee shall provide Sublessor with a certificate of insurance as evidence of the Sublessee's insurance prior to, or as soon as practicable after, the execution hereof. The insurance however, shall be effective as of the Effective Date of this Sublease.

c. **No Limit of Liability.** The insurance requirements hereunder shall not limit the liability of Sublessee hereunder. Sublessee shall remain responsible for the payment of all amounts due to Sublessor or its affiliates, notwithstanding the limits of insurance required herein.

d. **Annual Review.** The limits of all insurance policies shall be reviewed annually and may be increased by an amount that Sublessor, in its sole and absolute discretion, deems necessary to protect it and its interests in the Franchised Unit. In no event, however, shall Sublessee be obligated to obtain and keep in force a policy or policies of insurance covering loss or damage to the Franchised Unit in excess of the full replacement value thereof.

e. **Right to Obtain Coverage.** Should Sublessee fail or refuse to procure the required insurance coverage from an insurance carrier acceptable to Sublessor or to maintain it throughout the term of this Sublease, Sublessor may procure such coverage for Sublessee, in which event Sublessee agrees to pay the required premiums or to reimburse Sublessor therefor in the manner provided by Paragraph 13(k) herein. Failure to maintain the required insurance or to promptly reimburse Sublessor for any premiums paid on behalf of Sublessee by Sublessor shall constitute a default under this Sublease.

f. **Destruction.** If the Franchised Unit is damaged or destroyed by an insured or uninsured cause, Sublessee shall repair, restore or rebuild the Franchised Location, provided that, if the cost to do so exceeds the insurance proceeds, Sublessee will be liable for the difference. There shall be no abatement of the obligations of Sublessee by reason of damage or destruction to the Franchised Unit.

g. **Sublessor's Insurance.** Sublessee's obligation to maintain insurance as set forth herein shall not be in any way diminished or limited by reason of any insurance maintained by Sublessor or its affiliates, on or in connection with this Sublease, the Franchised Unit or the Franchised Location.

10. **INDEMNITY.**

a. **Indemnification of Sublessor.** Sublessee shall indemnify and hold Sublessor and its affiliates, and their respective shareholders, directors, officers, employees and agents, and each of them, harmless from and against any and all liability, claims, losses and damages arising from Sublessee's use of the Franchised Location, or from the conduct of Sublessee's business or from any activity, work or thing done, permitted or suffered by Sublessee in or about the Franchised Location or elsewhere and shall further indemnify and hold Sublessor and its affiliates harmless from and against any and all liability, claims, losses or damages arising from any breach or default in the performance of any obligation on Sublessee's part to be performed under the terms of this Sublease, or arising from any negligence, active or passive, of Sublessee, or any of Sublessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

b. **Actions and Proceedings.** In any action or proceeding brought against Sublessor or its subsidiaries or affiliates by reason of any liability, claim, loss or damage described in Paragraph 10(a) above of this Sublease, Sublessee, upon written notice from Sublessor, shall defend the same at Sublessee's expense with legal counsel satisfactory to Sublessor. Sublessee, as material consideration to Sublessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Franchised Location arising from any cause and Sublessee hereby waives any and all claims, losses or damages in respect thereof against Sublessor or its subsidiaries or affiliates.

11. **ASSIGNMENT AND SUBLETTING.**

a. **Restrictions.** Except as set forth in this Section 11, Sublessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Sublessee's interest in this Sublease or in the Franchised Location, without Sublessor's prior written consent. This Sublease shall be assigned by Sublessee to any party to whom the Franchise Agreement is assigned by Sublessee in accordance with the applicable terms and conditions of the Franchise Agreement. The events that constitute a transfer of the Franchise Agreement shall also constitute a transfer of this Sublease. Any attempted assignment, transfer, mortgage, encumbrance or subletting without Sublessor's prior written consent shall be void, shall give no rights to the purported assignee, transferee, mortgagee, lienholder or sub-sublessee and shall constitute a breach of this Sublease or the Franchise Agreement.

b. **Consent.** The consent or failure of Sublessor to object to one assignment or subletting shall not be deemed a consent to or approval of any subsequent assignment or subletting. Sublessor may assign or encumber this Sublease at any time to any person or entity without the consent of Sublessee.

12. **EVENTS OF DEFAULT.**

a. **Defaults.** The occurrence of any one or more of the following events shall constitute a default and breach of this Sublease by Sublessee:

(i) The vacating or abandonment of the Franchised Location by Sublessee. Sublessee shall be deemed to have vacated or abandoned the Franchised Location if Sublessee shall have ceased the continuous and uninterrupted occupancy and use of the Franchised Location, ceased operating or conducting its business therein, or failed to remain open as a "1-800-FLOWERS" franchised unit in accordance with the terms and conditions of the Franchise Agreement. The failure by Sublessee to operate or conduct its business from the Franchised Location for five (5) consecutive days shall be conclusively presumed a vacation and

abandonment of the Franchised Location. The foregoing shall not limit the events that may constitute vacation or abandonment of the Franchised Location by Sublessee.

(ii) The failure of Sublessee to make any payment of rent or any other payment required to be made by Sublessee hereunder as additional rent, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Sublessor to Sublessee.

(iii) The failure of Sublessee to observe or perform any of the covenants, conditions and provisions of this Sublease to be observed or performed by Sublessee, where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublessor to Sublessee.

(iv) The failure of Sublessee to observe or perform any of the covenants, conditions and provisions of the Franchise Agreement to be observed or performed by Sublessee where such failure shall continue for a period beyond the applicable cure period provided for in the Franchise Agreement and the termination of the Franchise Agreement.

(v) The failure of Sublessee to comply with any federal, state or local law or regulation applicable to the operation of the franchise, where such failure shall continue for a period of ten (10) days after written notification of noncompliance.

(vi) The failure of Sublessee to observe or perform any of the covenants, conditions and provisions of any other agreement between Sublessor, its affiliates, and Sublessee to be observed or performed by Sublessee, where such failure shall continue for a period beyond the applicable cure period provided for in the agreement.

(vii) Any affirmative act of bankruptcy or insolvency by Sublessee, or any of its owners if it is an entity, or the filing by Sublessee, or any of its owners if it is an entity, of any petition or action in bankruptcy or insolvency, or for appointment of a receiver or trustee, or an assignment by Sublessee, or any of its owners if it is an entity, for the benefit of creditors, or the failure to vacate or dismiss within sixty (60) days after filing any such proceedings commenced against Sublessee, or any of its owners, by a third party.

(viii) The termination of the Franchise Agreement.

b. **Remedies.** In the event of any default or breach by Sublessee, Sublessor may at any time thereafter, with or without further notice or demand, and without limiting Sublessor in the exercise of any right or remedy that Sublessor may have by reason of such default or breach:

(i) Terminate Sublessee's right to possession of the Franchised Location by any lawful means, in which case this Sublease shall terminate and Sublessee shall immediately surrender possession of the Franchised Location to Sublessor. In such event Sublessor shall be entitled to recover from Sublessee all damages incurred by Sublessor by reason of Sublessee's default, including, but not limited to, the cost of recovering possession of the Franchised Location, cost of storage, expenses of reletting, including necessary renovation and alteration of the Franchised Location, reasonable attorney's fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of (a) any unpaid rent which had been earned by the time of such termination, plus (b) the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of such rental loss Sublessee proves could have been reasonably avoided, plus (c) the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Sublessee proves could be reasonably avoided. As used in (a) and (b) directly above, the "**worth at the**

**time of award**" is computed by allowing interest at the maximum legally allowed rate of interest on transactions of this nature. In the event Sublessee shall have abandoned the Franchised Location, Sublessor shall have the option of (x) retaking possession of the Franchised Location and recovering from Sublessee the amount specified in this Paragraph 12(b) (i) or (y) proceeding under Paragraph 12(b)(ii).

(ii) Maintain Sublessee's right to possession, in which case, this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Franchised Location. In such event, Sublessor shall be entitled to enforce all of Sublessor's rights and remedies under this Sublease, including the right to recover the rent as it becomes due hereunder. Should Sublessor proceed under this Paragraph 12(b)(ii) Sublessor's consent to assignment or subletting by Sublessee shall not have been unreasonably withheld.

(iii) Pursue any and all remedies afforded landlords of shopping centers under the Bankruptcy Reform Act of 1978 or any successor or similar statute or law.

(iv) Pursue any other remedy now or hereafter available to Sublessor under the laws or judicial decisions of the State where the Franchised Location is located.

(v) In no event shall Sublessee be entitled to the return of all or any portion of any sum paid to Sublessor under this Sublease or the Franchise Agreement or to any credit for or offset by reason of any such payment.

c. **Conflict with Master Lease.** If the terms of this Sublease and the terms of the Master Lease differ as to the time allowed for the cure of any default hereunder and under the Master Lease, the shorter period of time, whether stated in this Sublease or in the Master Lease, shall control.

### 13. **GENERAL PROVISIONS**

a. **Estoppel Certificate.**

(i) Sublessee shall within ten (10) days of written notice from Sublessor execute, acknowledge and deliver to Sublessor a statement in writing certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and acknowledging that there are not, to Sublessee's knowledge, any uncured defaults on the part of Sublessor hereunder, or specifying such defaults if any are claimed.

(ii) Any such statement may be conclusively relied upon by any prospective purchaser of or lender for the Franchised Location, or any part thereof. Sublessee's failure to deliver this statement within such time means that this Sublease is in full force and effect, without modification, except as may be represented by Sublessor; that there are no uncured defaults in Sublessor's performance; and that not more than one month's rent has been paid in advance by Sublessee. If Sublessor desires to finance or refinance or assign the Franchised Location, or any part thereof, Sublessee shall deliver to any lender or proposed assignee designated by Sublessor current and the past three (3) years financial statements of Sublessee as may be reasonably required by such lender or proposed assignee to enable Sublessor to obtain the financing.

b. **Recording.** Sublessee shall not record this Sublease without Sublessor's prior written consent. Sublessee shall, upon request of Sublessor, execute, acknowledge and deliver to Sublessor a "**Short Form**" Memorandum of this Sublease for recording purposes.

c. **Holding Over.** If Sublessee remains in possession of the Franchised Location or any part thereof after the expiration of the term of this Sublease without the express written consent of Sublessor, such occupancy shall be a tenancy from month-to-month as a rental, plus all other charges payable hereunder and upon all the terms hereof applicable to a month-to-month tenancy and shall indemnify the Sublessor from any claims under the Master Lease, including without limitation, payment of Sublessor's legal fees and expenses.

d. **Subordination.** This Sublease, at Sublessor's option, shall be subordinate to any ground lease, mortgage, deed of trust, construction, equipment or personal property agreement or any other hypothecation for security now or hereafter placed upon the real property of which the Franchised Location is a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Sublessee's right to quiet possession of the Franchised Location shall not be disturbed if Sublessee is not in default and so long as Sublessee pays the rent and observes and performs all of the provisions of this Sublease, unless this Sublease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor shall elect to have this Sublease subordinate to the lien of its mortgage, deed of trust or ground lease and shall give written notice thereof to Sublessee, this Sublease shall be deemed subordinate to such mortgage, deed of trust, or ground lease, whether this Sublease is dated prior or subsequent to the date of such mortgage, deed of trust or ground lease or the date of the recording of same. Sublessee shall execute any documents required to effectuate such subordination or to make this Sublease subordinate to the lien of any mortgage, deed of trust or ground lease, as the case may be. If Sublessee fails to do so within ten (10) days after written demand, Sublessee hereby make, constitutes and irrevocably appoints Sublessor, as Sublessee's attorney-in-fact and in Sublessee's name, place and stead, to do so.

e. **Access by Sublessor.** Sublessor and Sublessor's agents shall have the right to enter the Franchised Location at reasonable times in accordance with those provisions of this Sublease and the Franchise Agreement for the purpose of inspecting the same, showing the same to prospective purchasers or lenders and making such alterations, repairs, improvements or additions to the Franchised Location or any part thereof or to the building of which they are a part as Sublessor may deem necessary or desirable. Sublessor may at any time place on or about the Franchised Location any ordinary "For Lease" signs and signs regarding the availability of franchises offered by Sublessor, all without rebate of rent or liability to Sublessee.

f. **Further Acts.** The parties agree to execute such other documents and perform such further acts as may be necessary or desirable to carry out the purposes of this Sublease.

g. **Heirs and Successors.** This Sublease shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

h. **Entire Agreement.** This Sublease, the Exhibits to this Sublease and any documents incorporated herein by reference represent the entire understanding between the parties regarding the subject matter of this Sublease and supersede all other negotiations, agreements, representations and covenants, oral or written, except any other agreement executed by Sublessor or its subsidiaries or affiliates, and Sublessee in connection herewith. This Sublease may not be modified except by a written instrument signed by the party to be charged. The parties intend this Sublease to be the entire integration of all of their agreements of any nature that are the subject matter of this Sublease. No other agreements, representations, promises, commitments or the like, of any nature, exist between the parties. By placing his initials at the end of this Paragraph 13(h), Sublessee acknowledges the accuracy of the provisions of this Paragraph 13(h).

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Initials

i. **No Warranties.** Sublessee acknowledges and agrees that Sublessor has made no promises, representations or warranties to Sublessee that are inconsistent with the terms of this Sublease or Sublessor's Franchise Disclosure Document concerning the profitability or likelihood of success of the franchised unit at the Franchised Location, that he has been informed by Sublessor that there can be no guaranty of success in the franchised business and that Sublessee's business ability and aptitude is primary in determining his success. By placing his initials at the end of this Paragraph 13(i), Sublessee acknowledges the accuracy of the provisions of this Paragraph 13(i).

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**Initials**

j. **Waiver.** Failure by Sublessor to enforce any rights under this Sublease shall not be construed as a waiver of such rights. Any waiver, including a waiver of default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance. Any acceptance of money or other performance by Sublessor from Sublessee shall not constitute a waiver of any default except as to the particular payment or performance so received.

k. **Interest and Late Charges.**

(i) Any monies past due to Sublessor from Sublessee shall bear interest at the maximum rate permitted by the state whose law governs this Sublease, or in the absence of a maximum rate specified by state law, ten percent (10%). The foregoing shall not affect any other right or remedy of Sublessor arising from any delinquency.

(ii) Sublessee hereby acknowledges that late payment by Sublessee to Sublessor of rent, taxes and other sums due under this Sublease will cause Sublessor to incur costs not contemplated by this Sublease, the exact amount of which will be extremely difficult to ascertain. Such costs include, without limitation, processing and accounting charges, costs of borrowing, unavailability of funds, and late charges that may be imposed on Sublessor by the terms of the Master Lease and/or any mortgage or trust deed covering the Franchised Location. Accordingly, if any installment of rent, taxes, or any other sum due from Sublessee is not received by Sublessor on the first day of the month for which it is due, Sublessee shall pay to Sublessor a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs Sublessor will incur by reason of late payment by Sublessee. Acceptance of the late charge by Sublessor shall in no event constitute a waiver of Sublessee's default with respect to such overdue amount nor prevent Sublessor from exercising any of the other rights and remedies granted in this Sublease or by law.

l. **Validity.** Any invalidity of any portion of this Sublease shall not affect the validity of the remaining portions and unless substantial performance of this Sublease is frustrated by any such invalidity, this Sublease shall continue in full force and effect.

m. **Headings, Table of Contents and Gender.** The headings and Table of Contents used herein are for purposes of convenience only and shall not be used in construing the provisions hereof. As used herein, the male gender shall include the female and neuter genders, the singular shall include the plural and the plural, the singular.

n. **Effectiveness.** This Sublease shall become effective only upon execution thereof by Sublessor and Sublessee.



o. **Execution by Sublessor.** This Sublease shall not be binding on Sublessor unless, and until, it has been accepted and signed by authorized officers of Sublessor.

p. **Attorneys' Fees.** If Sublessor becomes a party to any legal proceedings concerning this Sublease, the Master Lease or the Franchised Location by reason of any act or omission of Sublessee or its authorized representatives, Sublessee shall be liable to Sublessor for the reasonable attorneys' fees and court costs incurred by Sublessor in the legal proceedings. If either party commences a legal action against the other party arising out of or in connection with this Sublease, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

q. **Uniformity.** Sublessor has made no warranties or representations to Sublessee that all Subleases previously issued or issued after this Sublease by Franchisor do or will contain terms substantially similar to the terms contained in this Sublease. Sublessor may, in its reasonable business judgment and in its sole and absolute discretion, due to business conditions or other factors unique to previous or future transactions or otherwise, waive or modify comparable provisions of other Subleases previously executed or executed after the date of this Sublease with other 1-800-FLOWERS franchisees in a non-uniform manner.

r. **Responsibility.** The term "**Sublessee**" as used in this Sublease shall refer to each person executing this Sublease as Sublessee, whether such person is one of the spouses, partners, shareholders, trustees, trustors or beneficiaries or persons named as included in Sublessee, and shall apply to each such person as if he were the only named Sublessee in this Sublease.

(i) If Sublessee is a married couple, both husband and wife executing this Sublease shall be liable for all obligations and duties of Sublessee hereunder as if such spouse were the sole Sublessee hereunder.

(ii) If Sublessee is a partnership or if more than one person executes this Sublease as Sublessee, each partner or person executing this Sublease shall be liable for all the obligations and duties of Sublessee hereunder.

(iii) If Sublessee is a trust, each trustee, trustor and beneficiary signing this Sublease shall be liable for all of the obligations and duties of Sublessee hereunder.

(iv) If Sublessee is a limited liability company, all members executing this Sublease shall be liable for all obligations and duties of Sublessee hereunder as if each such member were the sole Sublessee hereunder.

(v) If Sublessee is a corporation, all shareholders executing this Sublease shall be liable for all obligations and duties of Sublessee hereunder as if each such shareholder were the sole Sublessee hereunder.

(vi) If Sublessee is in breach or default under this Sublease, Sublessor may proceed directly against each such spouse, partner, signatory to this Sublease, shareholder, trustee, trustor or beneficiary without first proceeding against Sublessee and without proceeding against or naming in such suit any other Sublessee, partner, signatory to this Sublease, shareholder, trustee, trustor or beneficiary. The obligations of Sublessee and each such spouse, partner, person executing this Sublease, shareholder, trustee, trustor and beneficiary shall be joint and several.

(vii) Notice to or demand upon one spouse, partner, person signing this Sublease, shareholder, trustee, trustor or beneficiary shall be deemed notice to or demand upon Sublessee and all such spouses, partners, persons signing this Sublease, shareholders, trustees, trustors and beneficiaries, and no notice or demand need be made to or upon all such Sublessee's, spouses, partners, persons executing this Sublease, shareholders, trustees, trustors or beneficiaries.

(viii) The cessation of, or release from, liability of Sublessee, or any such spouse, partner, person executing this Sublease, shareholder, trustee, trustor or beneficiary shall not relieve any other Sublessee, spouse, partner, person executing this Sublease, shareholder, trustee, trustor or beneficiary from liability hereunder, except to the extent that the breach or default has been remedied or monies owed have been paid.

s. **Cumulative Remedies.** Any specific right or remedy set forth in this Sublease, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth herein or allowed or allowable by law.

t. **Notices.** All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery or by electronic transmission (fax). Service shall be deemed conclusively made: (i) at the time of service, if personally served; (ii) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (iii) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail; (iv) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery; and (v) at the time of electronic transmission, if such transmission occurs prior to 5:00 P.M. on a business day and a copy of such notice is mailed within twenty-four (24) hours after the transmission.

Any notice or demand to Sublessor shall be given to:

1-800-Flowers Retail, Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-7797  
Attention: Senior Vice President, Retail Operations

With a copy to:

1-800-Flowers Retail, Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-6101  
Attention: General Counsel/Corporate Secretary

With a copy to:

1-800-Flowers Retail, Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-4942  
Attention: Real Estate Department

Any notice or demand to Sublessee shall be given to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Either party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner set forth above to the other party.

u. **Additional Provisions.** Additional provisions of this Sublease that are necessary or required in order to conform this Sublease with the Master Lease or for any other purpose shall be included in an Addendum to Sublease to be attached to this Sublease.

v. **Counterparts and Electronic Transmission; Electronic Signatures.** This Sublease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this Sublease with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this Sublease for all purposes, provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this Sublease. In addition, this Sublease may be signed electronically by the Parties and electronic signatures appearing on this Sublease shall be deemed to be the same as handwritten signatures for the purposes of the validity, enforceability and admissibility of this Sublease.

w. **Governing Law/Venue/Jurisdiction.** This Sublease shall be governed by and construed in accordance with the laws of the State of New York. Venue for purposes of any legal proceedings brought in connection with or arising out of this Sublease shall be conclusively presumed to be in the State of New York, County of Nassau or County of Suffolk. Sublessee hereby submits to the exclusive jurisdiction of the Supreme Court of the State of New York and of the United States District Court in and for the Eastern District of New York.

**IN WITNESS WHEREOF**, the parties have executed this Sublease at Jericho, New York, on the date first shown above.

**SUBLESSOR:**

**SUBLESSEE:**

**1-800-FLOWERS RETAIL, INC.,**  
A Delaware corporation

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

\_\_\_\_\_

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

\_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT E  
OPTION TO OBTAIN LEASE ASSIGNMENT**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**OPTION TO OBTAIN LEASE ASSIGNMENT AGREEMENT**

1-800-FLOWERS.COM FRANCHISE CO., INC.

OPTION TO OBTAIN LEASE ASSIGNMENT AGREEMENT  
TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
1. INCORPORATION OF RECITALS. ....	1
2. OPTION. ....	1
3. ONLY EFFECTIVE UPON EXERCISE OF OPTION. ....	1
4. CONSENT TO ASSIGNMENT. ....	2
5. EXERCISE OF OPTION BY RETAIL. ....	2
6. TERM OF AGREEMENT. ....	3
7. TERMINATION OF LEASE AND FRANCHISE AGREEMENT. ....	3
8. RESTRICTIONS ON TRANSFER. ....	4
9. POWER OF ATTORNEY. ....	4
10. GENERAL PROVISIONS. ....	4
SIGNATURES. ....	7

**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
**OPTION TO OBTAIN LEASE ASSIGNMENT AGREEMENT**

AGREEMENT made \_\_\_\_\_ by \_\_\_\_\_ and between \_\_\_\_\_ (“**Franchisee**”) \_\_\_\_\_ (“**Landlord**”) and **1-800-FLOWERS RETAIL, INC.**, a Delaware corporation (“**Retail**”), with reference to the following facts:

A. On \_\_\_\_\_, \_\_\_\_\_, Landlord, as landlord, and Franchisee, as tenant, entered into a Lease (the “**Lease**”) for the premises located at \_\_\_\_\_ (the “**Franchised Location**”) pursuant to which Franchisee leased the Franchised Location from Landlord for the purpose of operating a franchised 1-800-Flowers shop (the “**Franchised Unit**”) at the Franchised Location.

B. 1-800-FLOWERS.COM FRANCHISE CO., INC., a Delaware corporation, as franchisor (“**Franchisor**”), and Franchisee, as franchisee, have entered into a Franchise Agreement (the “**Franchise Agreement**”) pursuant to which Franchisee has agreed to operate the Franchised Unit at the Franchised Location as a franchisee of Franchisor in accordance with the terms and conditions of the Franchise Agreement.

C. Franchisee, Retail and Landlord desire to enter into this Agreement to define the rights of Retail in and to the Franchised Location and to protect the interests of Retail with respect to the continued operation of a 1-800-Flowers shop at the Franchised Location during the entire term of the Lease and any renewals and extensions of the Lease on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE, IT IS AGREED:**

1. **INCORPORATION OF RECITALS.**

The Recitals set forth in Paragraph A through C of this Agreement are true and correct and are incorporated into this Agreement as part of this Agreement.

2. **OPTION.**

Franchisee does hereby grant to Retail an option, exercisable at any time within thirty (30) days after Retail’s receipt of actual notice of the occurrence of any of the events described in Paragraphs 3(a)-3(g) below of this Agreement (the “**Option**”), to obtain an assignment of the rights and obligations of Franchisee under the Lease to Retail (the “**Assignment**”).

3. **ONLY EFFECTIVE UPON EXERCISE OF OPTION.**

This Agreement shall be effective upon the date hereof; however, the Assignment shall only become effective if, and when, Retail expressly exercises the Option in writing after the occurrence of one or more of the following events:

a. **Franchise Agreement.** The occurrence of (i) any acts that would result in the immediate termination of the Franchise Agreement; or (ii) the default by Franchisee in the performance of any of the terms or obligations of the Franchise Agreement, which default is not cured within the applicable cure period set forth in the Franchise Agreement.

b. **Lease.** The occurrence of (i) any acts that would result in the termination or merger of the Lease; or (ii) the default by Franchisee in the performance of any of the terms or obligations of the Lease which default is not cured within the applicable cure period set forth in the Lease.

c. **Sale of Franchised Unit.** If Franchisee, without the prior written consent of Franchisor, either (i) sells, transfers, assigns, sublets or enters into any agreement to sell, transfer, assign or sublet any of its right, title or interest in and to the Franchised Unit, including any transfer, assignment or sublet of the Franchise Agreement, the Lease or any of the operating assets of the Franchised Unit; or (ii) amends the Lease in any manner that would impair the value of the security granted by this Agreement or that would materially affect the rights of Retail under this Agreement.

d. **Failure to Exercise Option to Renew or Extend.** If Franchisee shall fail to exercise any option to renew or extend the term of the Lease.

e. **Insolvency.** If Franchisee, or any of its owners if it is an entity, (i) is adjudicated insolvent, or makes an assignment for the benefit of creditors; or (ii) applies for or consents to the appointment of a custodian, receiver, trustee, or similar officer for it or for all or any substantial part of its property; or (iii) if such a custodian, receiver, trustee or similar officer is appointed without the application or consent of Franchisee, and such appointment continues undischarged for a period of sixty (60) days.

f. **Bankruptcy.** If Franchisee or any of its owners if it is an entity (i) is adjudicated bankrupt or institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or (ii) any such proceeding is instituted (by petition, application or otherwise) against Franchisee, or any of its owners, and remains undismissed for a period of sixty (60) days.

g. **Sale of Franchised Location.** If Franchisee or any entity with which Franchisee has any financial interest enters into any agreement to purchase the Franchised Location from Landlord. Franchisee and Landlord shall each provide Retail and Franchisor with independent and separate written notice of the occurrence of any of the events described in Paragraphs 3(a)-3(g) of this Agreement.

#### 4. **CONSENT TO ASSIGNMENT.**

Landlord hereby consents to the Assignment and agrees that its consent to the Assignment shall remain in effect during the entire term of the Lease and any and all renewals and extensions of the Lease. The Lease shall not be amended, modified, altered, assigned, extended, renewed or terminated by Landlord, nor shall the Franchised Location be sublet by Franchisee with the consent of Landlord, without the prior written consent of Retail.

#### 5. **EXERCISE OF OPTION BY RETAIL.**

Retail shall exercise the Option by giving written notice to Franchisee and Landlord of its affirmative election to do so within thirty (30) days after Retail's receipt of actual notice of the occurrence of any of the events described in Paragraphs 3(a)-3(g) above of this Agreement.

a. **Cure Defaults.** If Retail exercises the Option, Franchisee, Retail, or its franchisee-assignee, shall have the right to cure all uncured defaults of Franchisee under the Lease that exist as of the date of the



exercise of the Option when Retail or its franchisee-assignee is put into actual possession of the Franchised Unit. The period of time to cure all defaults of Franchisee under the Lease shall be reasonably and appropriately extended by Landlord beyond the cure period provided to Franchisee under the Lease.

b. **Assignment of Rights.** Retail shall have the right, concurrently with or subsequent to Retail's exercise of the Option, to assign and transfer its rights under this Agreement to an affiliate or a franchisee of Retail without the prior consent of Landlord. In the event of such an assignment or transfer, the Retail's affiliate-assignee or franchisee-assignee shall obtain the Assignment in place and instead of Retail.

c. **Indemnification by Assignor.** Franchisee agrees to pay and reimburse Retail and to hold Retail harmless from and against any and all costs, damages, attorneys' fees, liabilities or other expenses of any nature whatsoever incurred by Retail in connection with the enforcement of Retail's rights and/or the performance of Retail's rights or obligations under this Agreement. Retail's exercise of the Option shall not release Franchisee from any liability to Landlord or Retail for any rents, costs, damages, attorneys' fees, liabilities or other expenses incurred by Retail or Landlord as a result of Franchisee's defaults or actions under Paragraphs 3(a)-3(g) above of this Agreement.

d. **No Approval of Lease.** Franchisor is only a party to this Agreement, has not read nor approved the Lease, and does not and will not guarantee or approve any of the language contained in the Lease.

## 6. **TERM OF AGREEMENT.**

This Agreement shall terminate upon the termination of the Lease with the written consent of Retail.

## 7. **TERMINATION OF LEASE AND FRANCHISE AGREEMENT.**

a. **Termination of Lease.** If, and only if, Retail exercises the Option, upon any termination of the Lease prior to the expiration date of the Lease or upon expiration of the term of the Lease in violation of Paragraph 3(d) above of this Agreement, following Retail's exercise of the Option, Landlord shall enter into a new lease for the Franchised Location with Retail, or its assignee, on the identical terms and conditions as contained in the Lease, for the remaining term of the Lease, with identical extension or renewal options, within ten (10) business days of the termination or expiration of the Lease.

b. **Termination of Franchise Agreement.** Upon Retail's exercise of the Option, Franchisee shall surrender possession of the Franchised Location to Retail and Retail shall be entitled to, and Franchisee shall provide Retail with, immediate possession of the Franchised Location and Franchisee shall no longer be entitled to the use or occupancy of the Franchised Unit or the Franchised Location, all of Franchisee's rights in and to the same, including all improvements, buildings and fixtures that are a part of the same will, in all respects, be deemed to have been terminated and, under the terms of this Agreement and the applicable provisions of the Franchise Agreement, assigned to Retail. Retail shall have the right to manage and operate the Franchised Unit at the Franchised Location immediately upon its exercise of the Option.

c. **De-Identification of Franchised Unit.** If Retail does not exercise the Option upon a termination of the Franchise Agreement and/or Lease, Retail shall have the right to enter the Franchised Unit and the Franchised Location to remove and modify to Retail's satisfaction, all distinctive design features and characteristics of the Franchised Unit and the Franchised Location, including distinctive interior designs and surface materials and refrigeration equipment, display fixtures, color décor and interior and exterior signs and all other items identifying the Franchised Unit and the Franchised Location as a 1-800-Flowers shop.

8. **RESTRICTIONS ON TRANSFER.**

This Agreement may not be assigned by Franchisee without the prior written consent of Retail. Franchisee shall not sell, transfer, assign, sublet or otherwise encumber any or all of its right, title or interest in and to the Franchised Unit, the Franchise Agreement or the Lease, except in accordance with the applicable terms and conditions of the Franchise Agreement. Franchisee shall not amend, modify or alter the Lease during the term of this Agreement without the prior written consent of Retail and shall provide Retail with at least thirty (30) days prior written notice of any proposed amendment, modification, alteration, extension or renewal of the Lease.

9. **POWER OF ATTORNEY.**

Franchisee hereby irrevocably appoints Retail as its attorney-in-fact to exercise any and all of Franchisee's rights in, to and under the Lease and in and to the Franchised Location upon the occurrence of a default or an event of default under the Lease or Franchise Agreement. Landlord acknowledges this appointment and agrees to recognize and accept the rights and actions of Retail under this appointment.

10. **GENERAL PROVISIONS.**

a. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State in which the Franchised Location is located.

b. **Notices.** All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery or by electronic transmission (FAX). Service shall be deemed conclusively made (i) at the time of service, if personally served; (ii) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (iii) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail; (iv) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery; and (v) at the time of electronic transmission, if such transmission occurs prior to 5:00 p.m. on a business day and a copy of such notice is mailed within twenty-four (24) hours after the transmission.

Any notice or demand to Franchisee shall be given to:

\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Any notice or demand to Retail or Franchisor shall be given to:

1-800-Flowers.Com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-7797  
Attention: Senior Vice President, Retail Operations

With a copy to:

1-800-Flowers.Com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-6101  
Attention: General Counsel/Corporate Secretary

With a copy to:

1-800-Flowers.Com  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-4721  
Attention: Real Estate Department

Any notice or demand to Landlord shall be given to:

\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Any party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner set forth above to the other party.

c. **Waivers.** The delay, omission or forbearance by Retail to take action to remedy or seek damages for the breach or default of any term, covenant or condition of this Agreement or to exercise any right, power or duty arising from such breach or default shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach or default of the same or any other term, covenant or condition of this Agreement. The subsequent acceptance of performance by Retail shall not be deemed to be a waiver of any preceding breach or default by Franchisee other than its failure to pay the particular payment so accepted, regardless of Retail's knowledge of such preceding breach or default at the time of acceptance of such payment.

d. **Attorneys' Fees.** If any legal action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, and any and all costs of collection, in addition to any other relief to which that party may be entitled.

e. **Modification.** This Agreement may be modified only by a writing executed by the party sought to be bound.

f. **Entire Agreement.** This Agreement, and the other agreements referred to in this Agreement, and any other agreement that may be executed by the parties concurrently with the execution of this Agreement, set forth the entire agreement and understanding of the parties with regard to the subject matter of this Agreement and any agreement, representation or understanding, express or implied, heretofore made by either party or exchanged between the parties are hereby waived and canceled.

g. **Cumulative Remedies.** Any specific right or remedy set forth in this Agreement, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies

set forth in this Agreement or allowed or allowable by law.

h. **Captions.** The various titles of the Paragraphs in this Agreement are used solely for convenience and shall not be used in interpreting or construing any word, clause, paragraph, or subparagraph of this Agreement.

i. **Gender.** All words used in this Agreement in the singular shall include the plural and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

j. **Successors.** This Agreement shall be binding upon all of the parties to this Agreement, their respective heirs, executors, administrators, personal representatives, successors and assigns.

k. **Severability.** The invalidity of any one or more of the provisions contained in this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

l. **Additional Documents.** Each of the parties agrees to execute, acknowledge and deliver to the other party and to procure the execution, acknowledgment and delivery to the other party of any additional documents or instruments that either party may reasonably require to fully effectuate and carry out the provisions of this Agreement.

m. **Counterparts and Electronic Transmission; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this Agreement with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this Agreement for all purposes, provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this Agreement. In addition, this Agreement may be signed electronically by the Parties and electronic signatures appearing on this Agreement shall be deemed to be the same as handwritten signatures for the purposes of the validity, enforceability and admissibility of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**RETAIL:**

**FRANCHISEE:**

**1-800-FLOWERS RETAIL, INC.,**  
A Delaware corporation

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

\_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

**LANDLORD:**

\_\_\_\_\_

\_\_\_\_\_

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT F  
STATE SPECIFIC ADDENDA**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**STATE SPECIFIC ADDENDA**

Each provision of this Addenda shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of a state are met independently, without reference to this Addenda.

**ILLINOIS**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

In recognition of the requirements of the Illinois Franchise Disclosure Act of 1987, as amended (the “Act”), the Disclosure Document is amended as follows:

1. Illinois law governs the agreements between the parties to the Franchise Agreement.
2. Section 4 of the Act provides that any provision in the Franchise Agreement that designates jurisdiction or venue outside the State of Illinois is void. However, a Franchise Agreement may provide for arbitration outside of Illinois.
3. Section 41 of the Act provides that any condition, stipulation or provision that purports to bind a person acquiring any franchise to waive compliance with the Act or any other law of Illinois is void.
4. Your rights upon termination and non-renewal of the Franchise Agreement are set forth in Sections 19 and 20 of the Act.
5. Item 5 of the Franchise Disclosure Document is amended as follows:

“Despite the payment provisions in this Item 5, all initial fees and payments due to us will be deferred until the first business day following the date that we have completed all of our material initial obligations to you under the Franchise Agreement and you begin to conduct business at the Franchised Location, at which time all initial fees and payments will become immediately due and payable. This deferral has been imposed by the Illinois Attorney General’s Office based on our financial condition.”

**ILLINOIS**  
**ADDENDUM TO FRANCHISE AGREEMENT**

**THIS ADDENDUM TO FRANCHISE AGREEMENT** (this “**Addendum**”) dated \_\_\_\_\_, is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the “**Franchise Agreement**”) dated \_\_\_\_\_, by and between **1-800-FLOWERS.COM FRANCHISE CO., INC.**, a Delaware corporation, as franchisor (“**Franchisor**”), and \_\_\_\_\_, as franchisee (“**Franchisee**”). Where and to the extent that any of the provisions of this Addendum are contrary to, in conflict with or inconsistent with any provision contained in the Franchise Agreement, the provisions contained in this Addendum shall control. Defined terms contained in the Franchise Agreement shall have the identical meanings in this Addendum.

1. Illinois law governs the agreements between the parties to the Franchise Agreement.
2. Section 4 of the Illinois Franchise Disclosure Act provides that any provision in the Franchise Agreement that designates jurisdiction or venue outside the State of Illinois is void. However, a Franchise Agreement may provide for arbitration outside of Illinois.
3. Section 41 of the Illinois Franchise Disclosure Protection Act provides that any condition, stipulation or provision that purports to bind a person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.
4. Franchisee’s rights upon termination and non-renewal of the Franchise Agreement are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.
5. Article 5 of the Franchise Agreement is amended as follows:

“Despite the payment provisions in this Article 5, all initial fees and payments due to Franchisor will be deferred until the first business day following the date that Franchisor has completed all of Franchisor’s material initial obligations to Franchisee under the Franchise Agreement and Franchisee begins to conduct business at the Franchised Location, at which time all initial fees and payments will become immediately due and payable. This deferral has been imposed by the Illinois Attorney General’s Office based on the Franchisor’s financial condition.”

**IN WITNESS WHEREOF**, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.

**FRANCHISOR:**  
**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
A Delaware corporation

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

**FRANCHISEE:**  
\_\_\_\_\_  
A \_\_\_\_\_

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



**MICHIGAN**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

The following disclosures are required by the State of Michigan:

1. THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

Each of the following provisions is void and unenforceable if contained in any documents related to a franchise:

- A. A prohibition on the right of a franchisee to join an association of franchisees.
- B. A requirement that a franchisee assent to a release, assignment, novation, waiver or estoppel which deprives a franchisee of rights and protections provided in the Michigan Franchise Investment Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
- C. A provision that permits a franchisor to terminate a franchise prior to the expiration of this term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
- D. A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years, and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
- E. A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
- F. A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
- G. A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. The subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

- 1) The failure of the proposed transferee to meet the franchisor's then-current reasonable qualifications or standards.
- 2) The fact that the proposed transferee is a competitor of the franchisor or sub-franchisor.
- 3) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
- 4) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

H. A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (C).

I. A provision which permits the franchisor to directly or indirectly convey, assign or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless a provision has been made for providing the required contractual services.

2. If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000.00, the franchisor shall, at the request of a franchisee, arrange for the escrow of initial investment and other funds paid by the franchisee until the obligations to provide real estate, improvements, equipment, inventory, training or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

3. THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENFORCEMENT BY THE ATTORNEY GENERAL.

Any questions regarding this notice should be direct to:

Michigan Department of Attorney General  
Consumer Protection Division  
Attn: Franchise Section  
525 West Ottawa, G. Mennen Williams Building, 1<sup>st</sup> Floor  
Lansing, Michigan 48933  
(517) 335-7567

**MINNESOTA**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

In accordance with the requirements of the state of Minnesota, the following disclosure should be read in conjunction with the Disclosure Document. Any inconsistency with the information contained in the Disclosure Document will be resolved in favor of this Minnesota Addendum.

1. Item 5 of the Franchise Disclosure Document is amended as follows:

“Despite the payment provisions in this Item 5, all initial fees and payments due to us will be deferred until the first business day following the date that we have completed all of our material initial obligations to you under the Franchise Agreement and you begin to conduct business at the Franchised Location, at which time all initial fees and payments will become immediately due and payable.”

2. Item 13 **Trademarks** is amended by adding the following:

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Section 80C.12, Subd. 1(g) which requires us to protect your right to use the trademarks, service marks and tradenames and indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of same.

3. Item 17 **Renewal, Termination, Transfer and Dispute Resolution** is amended by adding the following:

A. **Renewal and Termination**

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the Agreement.

B. **Choice of Forum**

Minn. Stat. Section 80C.21 and Minn. Rule 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside of Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreement(s) can abrogate or reduce any of franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

C. **Releases**

A general release shall not relieve any person from liability imposed by the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.22.

D. **Injunctive Relief**

Minn. Rule 2860.4400J prohibits us from requiring a franchisee to consent to a franchisor obtaining injunctive relief. We may seek injunctive relief. In addition, a court will determine if a bond is required.

E. **Limitation of Claims**

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Section 80C.17, Subd. 5, which requires that no action may be commenced more than three years after the cause of action accrues.

**MINNESOTA**  
**ADDENDUM TO FRANCHISE AGREEMENT**

In recognition of the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.01 through 80C.22, and the Rules and Regulations promulgated pursuant thereto by the Minnesota Commission of Securities, Minnesota Rule 2860.4400, et seq., the parties to the attached Franchise Agreement agree as follows:

1. Article 5 of the Franchise Agreement is amended to include the following:

“Despite the payment provisions in this Article 5, all initial fees and payments due to us will be deferred until the first business day following the date that we have completed all of our material initial obligations to you under the Franchise Agreement and you begin to conduct business at the Franchised Location, at which time all initial fees and payments will become immediately due and payable.”

2. Section 15 of the Franchise Agreement shall be supplemented by the following new paragraph:

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Section 80C.12, Subd. 1(g) which requires us to protect your right to use the trademarks, service marks and tradenames and indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of same.

3. Section 21 of the Franchise Agreement shall be supplemented by the following new paragraph:

With respect to franchises governed by Minnesota law, Franchisor will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5 which require, except in certain specified cases, that Franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice of non-renewal of the Agreement.

4. Section 17 of the Franchise Agreement shall be supplemented by the following new sentence:

A general release shall not relieve any person from liability imposed by the Minnesota Franchise Law, Minn. Stat., Chapter 80C, Sections 80C.22.

5. Paragraph 23(s) of the Franchise Agreement shall be supplemented by the following:

Minn. Stat. Section 80C.21 and Minn. Rule 2860.4400J prohibit the franchisor from requiring litigation to be conducted outside of Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Agreement can abrogate or reduce any of franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C, or franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

A Delaware corporation

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

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

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

**FRANCHISEE:**

\_\_\_\_\_

A \_\_\_\_\_

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

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

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

**NEW YORK**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

The Disclosure Document is amended as follows:

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT R OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NYS DEPARTMENT OF LAW, INVESTOR PROTECTION BUREAU, FRANCHISE SECTION, 28 LIBERTY STREET, 21<sup>ST</sup> FLOOR, NEW YORK, NEW YORK, 10005-1495.**

**THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the Franchisor's principal trademark:

A. No such party has had an administrative, criminal or civil action pending against that person alleging a felony; a violation of franchise, antitrust or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property; unfair or deceptive practices or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchises and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud or securities law, fraud, embezzlement, fraudulent conversion or misappropriation of property, unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange

Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of Item 4:

Neither we nor any of our affiliates, predecessors, officers, or general partners have, during the 10-year period immediately before the date of the Disclosure Document: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the U.S. Bankruptcy Code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after the officer or general partner of ours held this position in such company or partnership.

4. The following is added at the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

5. The following is added to the end of the **“Summary” sections of Item 17(c), entitled “Requirements for Franchisee to Renew or Extend”** and Item 17(m), entitled **“Conditions for Franchisor Approval of Transfer”**:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York, and the regulations issued under the Law shall remain in force; it being the intent of this proviso that the non-waiver provision of General Business Law Sections 687.4 and 687.5 be satisfied.

6. The following language replaces the **“Summary”** section of Item 17(d), entitled **“Termination by Franchisee”**:

You may terminate the agreement on any grounds available by law.

7. The following is added to the end of the **“Summary”** section of Item 17(j), entitled **“Assignment of Contract by Franchisor”**:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor’s obligations under the Franchise Agreement.



8. The following is added to the end of the "Summary" sections of Item 17(v), entitled "**Choice of Forum**", and Item 17(w), "**Choice of Law**":

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

**Franchisor's registered agent in this state authorized to receive service of process:**

New York Department of State  
One Commerce Plaza  
99 Washington Avenue, 6<sup>th</sup> Floor  
Albany, New York 12231-001

**NEW YORK**  
**ADDENDUM TO FRANCHISE AGREEMENT**

THIS ADDENDUM TO FRANCHISE AGREEMENT (this "Addendum") dated \_\_\_\_\_, is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, by and between **1-800-FLOWERS.COM FRANCHISE CO., INC.**, as franchisor ("Franchisor") and \_\_\_\_\_, as franchisee ("Franchisee"). Defined terms contained in the Franchise Agreement shall have the identical meanings in this Addendum.

The parties to the Franchise Agreement hereby acknowledge and agree that:

1. All rights Franchisee enjoys and any causes of action arising in Franchisee's favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this provision that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.
2. Franchisee may terminate the Franchise Agreement on any grounds available by law.
3. Irrespective of any rights granted to Franchisor to assign the Franchise Agreement, no assignment will be made except to an assignee who in good faith and judgment of Franchisor, is willing and financially able to assume Franchisor's obligations under the Franchise Agreement.
4. No choice of law or choice of forum provision in the Franchise Agreement should be considered a waiver of any right conferred upon Franchisor or upon Franchisee by Article 33 of the General Business Law of the State of New York.
5. In the event of any conflict between the terms of this Addendum and the terms of the Franchise Agreement, the terms of this Addendum shall prevail.
6. Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the General Business Law of the State of New York are met independently without reference to this Addendum.

**IN WITNESS WHEREOF**, each of the undersigned hereby acknowledges having read this Addendum and understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**,  
A Delaware corporation

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_

A \_\_\_\_\_

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

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

Its: \_\_\_\_\_

## NORTH DAKOTA

### ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT AND FRANCHISE AGREEMENT

This addendum to the Disclosure Document and Franchise Agreement effectively amends and revises said documents as follows:

1. Item 17(c) of the Disclosure Document and Sections 4 and 17 of the Franchise Agreement are hereby amended to indicate that a franchisee shall not be required to sign a general release.

2. Item 17(i) of the Disclosure Document and Section 22 of the Franchise Agreement require the franchisee to consent to termination or liquidated damages. Since the Commissioner has determined this to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law, these provisions are hereby deleted in each place they appear in the Disclosure Document and Franchise Agreement used in North Dakota.

3. Covenants not to compete are generally considered unenforceable in the State of North Dakota, in accordance with Section 51-19-09 of the North Dakota Franchise Investment Law. Item 17(r) of the Disclosure Document and Section 16 of the Franchise Agreement are amended accordingly.

4. Item 17(v) of the Disclosure Document and the provisions of Section 23 of the Franchise Agreement, which require jurisdiction of courts in the State of New York, are deleted.

5. Item 17(w) of the Disclosure Document and Section 23 of the Franchise Agreement are amended to indicate that the agreements are to be construed according to the laws of the State of North Dakota.

6. Apart from civil liability as set forth in Section 51-19-12 N.D.C.C., which is limited to violations of the North Dakota Franchise Investment Law (registration and fraud), the liability of the franchisor to a franchisee is based largely on contract law. Despite the fact that those provisions are not contained in the franchise investment law, those provisions contain substantive rights intended to be afforded to North Dakota residents. Therefore, North Dakota franchisees will not be required to waive their rights under North Dakota law. Item 17(w) and Section 23 of the Franchise Agreement are amended accordingly.

7. The provisions of Section 23 of the Franchise Agreement, which require a franchisee to consent to (1) a waiver of trial by jury and (2) a waiver of exemplary and punitive damages, are contrary to Section 51-19-09 of the North Dakota Franchise Investment Law and are hereby deleted.

8. The provisions of Section 23 of the Franchise Agreement, which require a franchisee to consent to a limitation of claims, are hereby amended to state that the statute of limitations under North Dakota law applies.

9. In the State of North Dakota, we will defer the payment of the initial franchise fee and any other initial payment until you open your business and it is operating. However, you must execute the Franchise Agreement prior to looking for a site or beginning training.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Addendum dated \_\_\_\_\_.

ATTEST

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

FRANCHISEE:  
\_\_\_\_\_

**RHODE ISLAND**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

The Disclosure Document is amended as follows:

1. The following language is added to Item 17(v) of the Disclosure Document, titled "**Choice of Forum**":

“A provision of a franchise agreement restricting jurisdiction or venue to a forum outside Rhode Island or requiring the application of the laws of any state other than Rhode Island is void with respect to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.”

2. The following language is added to Item 17(w) of the Disclosure Document, titled "**Choice of Law**”:

“A provision of a franchise agreement restricting jurisdiction or venue to a forum outside Rhode Island or requiring the application of the laws of any state other than Rhode Island is void with respect to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.”

**RHODE ISLAND**  
**ADDENDUM TO FRANCHISE AGREEMENT**

THIS ADDENDUM TO FRANCHISE AGREEMENT (this "Addendum") dated \_\_\_\_\_, is intended to be a part of, and by this reference is incorporated into that certain Franchise Agreement (the "Franchise Agreement") dated \_\_\_\_\_, by and between **1-800-FLOWERS.COM FRANCHISE CO., INC.**, as franchisor ("Franchisor") and \_\_\_\_\_, as franchisee ("Franchisee"). Defined terms contained in the Franchise Agreement shall have the identical meanings in this Addendum.

In recognition of the requirements of the Rhode Island Franchise Investment Act (Section 19-28.1-14), the parties to the Franchise Agreement agree as follows:

1. Any provision of the Franchise Agreement restricting jurisdiction or venue to a forum outside Rhode Island or requiring the application of the laws of any state other than Rhode Island is void with respect to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.
2. In the event of any conflict between the terms of this Addendum and the terms of the Franchise Agreement, the terms of this Addendum shall prevail.
3. Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act are met independently without reference to this Addendum.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, and understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**FRANCHISEE:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**,  
A Delaware corporation

\_\_\_\_\_  
A \_\_\_\_\_

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**SOUTH DAKOTA**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

The Disclosure Document is amended as follows:

Notwithstanding any provision in the Franchise Agreement that provides for a covenant not to compete upon termination or expiration of the Franchise Agreement, such covenants are generally unenforceable in the State of South Dakota, except in certain instances provided by law. Notwithstanding any provision in the Franchise Agreement that provides for arbitration in a state other than South Dakota, under South Dakota law, arbitration must be conducted at a mutually agreed upon site in accordance with § 11 of the Commercial Arbitration Rules of the American Arbitration Association.

Notwithstanding any provision in the Franchise Agreement that designates any law other than the laws of the State of South Dakota as the governing law, or that specifies that any provision in the Franchise Agreement is to be construed under any law other than the laws of the State of South Dakota, Franchise registration, employment, covenants not to compete, and other matters of local concern will be governed by the laws of the State of South Dakota. Contractual and all other matters will be subject to application, construction, enforcement, and interpretation under the governing law specified by the Franchise Agreement.

Under South Dakota law, any provision in a Franchise Agreement which designates jurisdiction or venue or requires the franchisee to agree to jurisdiction or venue outside South Dakota is void with respect to any cause of action which is governed by the law of South Dakota.

Under South Dakota law, termination provisions covering breach of the Franchise Agreement, failure to meet performance and quality standards, and failure to make fee payments contained in the Disclosure Document and Franchise Agreement must afford a franchisee thirty (30) days written notice with an opportunity to cure the default prior to termination. Under SDL 37-5B-21, any condition, stipulation or provision purporting to waive compliance with any provision of this chapter or any rule or order under it is void.

Any acknowledgment, provision, disclaimer or integration clause or a provision having a similar effect in a Franchise Agreement does not negate or act to remove from judicial review any statement, misrepresentation or action that would violate the South Dakota franchise law or a rule or order under the South Dakota franchise law.

Item 5 of the Franchise Disclosure Document is amended as follows:

“Despite the payment provisions in this Item 5, all initial fees and payments due to us will be deferred until the first business day following the date that we have completed all of our material initial obligations to you under the Franchise Agreement and you begin to conduct business at the Franchised Location, at which time all initial fees and payments will become immediately due and payable.”

**(Signature Page Follows)**

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.,**  
A Delaware corporation

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

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

Its: \_\_\_\_\_

**FRANCHISEE:**

\_\_\_\_\_  
A \_\_\_\_\_

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

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

Its: \_\_\_\_\_



**VIRGINIA**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

The Disclosure Document is amended as follows:

1. All references in Items 5 and 17 of the Disclosure Document which provide that the Franchise Agreement may be terminated for any reason are in violation of Section 13.1-564 of the Virginia Retail Franchising Act and are unenforceable.

The following statements are added to Item 17.h:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the franchise agreement does not constitute "reasonable cause," as that the term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, the provision may not be enforceable.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

Item 5 of the Franchise Disclosure Document is amended to include the following:

"The Virginia State Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by you to us until we have completed our pre-opening obligations under the Franchise Agreement."

**VIRGINIA**  
**ADDENDUM TO FRANCHISE AGREEMENT**

The undersigned hereby acknowledge and agree that:

1. All references in the Franchise Agreement which provide that the Franchise Agreement may be terminated for any reason are in violation of Section 13.1-564 of the Virginia Retail Franchising Act and are unenforceable.

2. In the event of any conflict between the terms of this Addendum and the terms of the Franchise Agreement, the terms of this Addendum shall prevail.

3. Each provision of this Addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Addendum.

4. Section 5.a of the Franchise Agreement is amended to include the following:

“The Virginia State Corporation Commission’s Division of Securities and Retail Franchising requires the Franchisor to defer payment of the initial franchise fee and other initial payments owed by Franchisee to Franchisor until Franchisor has completed its pre-opening obligations under the Franchise Agreement.”

**IN WITNESS WHEREOF**, each of the undersigned hereby acknowledges having read this Addendum, understands and consents to be bound by all of its terms.

**FRANCHISOR:**

**FRANCHISEE:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**,  
A Delaware corporation

\_\_\_\_\_  
A \_\_\_\_\_

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**WASHINGTON**  
**ADDENDUM TO FRANCHISE DISCLOSURE DOCUMENT**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

Item 5 of the Franchise Disclosure Document is amended as follows:

"In lieu of an impound of franchise fees, we will not require or accept the payment of any initial franchise fees until you have (a) received all initial training that you are entitled to under the Franchise Agreement or Offering Disclosure Document, and (b) you open for business".

The undersigned does hereby acknowledge receipt of this addendum.

Dated \_\_\_\_\_.

\_\_\_\_\_  
FRANCHISOR

\_\_\_\_\_  
FRANCHISEE

**WASHINGTON**  
**ADDENDUM TO FRANCHISE AGREEMENT**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.

Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

Article 5 of the Franchise Agreement is amended as follows:

"In lieu of an impound of franchise fees, the Franchisor will not require or accept the payment of any initial franchise fees until the Franchisee has (a) received all initial training that it is entitled to under the Franchise Agreement or Disclosure Document, and (b) is open for business".

The undersigned does hereby acknowledge receipt of this addendum.

Dated \_\_\_\_\_.

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FRANCHISOR

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FRANCHISEE

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT G  
CONFIDENTIALITY AGREEMENT**

1-800-FLOWERS.COM FRANCHISE CO., INC.

CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT made \_\_\_\_\_, by and between **1-800-FLOWERS.COM FRANCHISE CO., INC.**, a Delaware corporation ("**Franchisor**") and \_\_\_\_\_ ("**Candidate**"), with reference to the following facts:

A. 1-800-FLOWERS.COM, INC., a Delaware corporation, an affiliate of Franchisor, is the owner of all right, title and interest in and to the trade name, trademark and service marks "**1-800-FLOWERS**", "**FRUIT BOUQUETS BY 1-800-FLOWERS.COM**" and other marks (hereinafter the "**Marks**") and has authorized Franchisor to franchise the rights to certain valuable trade practices and all of the designs, phrases, logos, signs, formulas, operating procedures, merchandising methods, cost control, accounting and general business techniques, strategies, routines, copyrights, manuals, training materials, bulletins and all other items now or hereafter owned, used, developed or provided by Franchisor (hereinafter collectively the "**Trade Practices**") in connection with the retail flower business, all of which may be improved, further developed or otherwise modified from time to time.

B. Franchisor and its affiliates have developed a chain of retail sales outlets for the sale of flowers, plants, fresh fruit products, including fresh cut fruit arrangements, related products and services and gift and sentiment items under the trade name and/or the Marks "**1-800-FLOWERS**" and/or "**FRUIT BOUQUETS BY 1-800-FLOWERS.COM**", which are or will be operated in accordance with uniform standards of operation, including, without limitation, design of building, layout of equipment, interior and exterior decoration, signs, operating methods, purchasing programs, items of standard appearance and design, advertising, sales and general business techniques, personnel management and control systems and bookkeeping and accounting systems (hereinafter collectively the "**1-800-Flowers System**") in order to create and maintain a unique appeal to the public. Candidate acknowledges that the Trade Practices, the Marks and the 1-800-Flowers System have been developed by Franchisor by the investment of time, skill, effort and money and are widely recognized by the public and are of substantial value.

C. Franchisor may provide Candidate with confidential and proprietary information comprising the Trade Practices and the 1-800-Flowers System prior to granting Candidate a franchise or entering into a franchise agreement with Candidate. Franchisor desires that Candidate maintain the confidentiality of all such confidential and proprietary information, the Trade Practices and the elements of the 1-800-Flowers System on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE, IT IS AGREED:**

1. **INCORPORATION OF RECITALS.**

The recitals set forth in Paragraphs A, B and C above are true and correct and are hereby incorporated by reference into the body of this Agreement.



## 2. CONFIDENTIALITY.

Candidate acknowledges and agrees:

a. **Confidential Information.** That Candidate's knowledge of the elements of the 1-800-Flowers System and any other proprietary data that may be disclosed to Candidate by Franchisor, or any affiliate of Franchisor, including, without limitation, any and all confidential and/or proprietary knowledge, data or information of a party and any and all confidential and/or proprietary knowledge, data or information that a party has obtained or obtains from another person or entity and which a party treats as proprietary or designates (whether or not in writing or electronic form) as "**Confidential Information**". By way of illustration, but not limitation, "**Confidential Information**" includes tangible and intangible information (whether or not in electronic form) relating to the 1-800-Flowers System, the Trade Practices, the Marks and Franchisor's business operations (all as they may be defined herein or in any Franchise Agreement between Franchisor and Candidate), products and services, equipment, sources of materials and equipment, information management, computer hardware and software, data, other content, formulations, patterns, compilations, programs, devices and processes, know-how, business relationships, contact information for industry professionals, designs, developmental or experimental work and services, improvements, discoveries, plans for research, potential new or supplemental products and services, web sites, advertisements or ancillary products and services, marketing and selling methods and/or plans, business plans, budgets and unpublished financial statements, licenses, prices and costs, vendors, collaborators and customers, information regarding the skills and compensation of employees and contractors of Franchisor, designs, drawings, specifications, source code, object code, documentation, diagrams, flowcharts, research, development, marketing techniques and materials, trademarks, trade secrets, sales/license techniques, inventions, copyrightable material, trademarkable material, databases, relationship between Franchisor and other companies, persons or entities, and any other information or material considered proprietary by Franchisor, whether or not designated as Confidential Information by Franchisor, but that is not generally known by the public, or which derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor and which is subject of efforts by Franchisor that are reasonable under the circumstances to maintain its secrecy or any other information in oral, written, graphic or electronic form, which, given the circumstances surrounding such disclosure, would be considered confidential. Confidential Information also includes the manner in which any of the above-described items may be combined with other information or products or synthesized or used by Candidate. Confidential Information does not include any information that: (i) was in the lawful and unrestricted possession of Candidate prior to its disclosure by Franchisor; (ii) is or becomes generally available to the public by acts other than those of Candidate after receiving it; (iii) has been received lawfully and in good faith by Candidate from a third party who did not derive it from Franchisor; or (iv) is shown by acceptable evidence to have been independently developed by Candidate.

b. **Value.** That the Confidential Information has been developed by Franchisor and its affiliates by the investment of time, skill, effort and money and is widely recognized by the public and are of substantial value. Candidate acknowledges and agrees the Confidential Information is not generally known by the public or parties other than Franchisor, its affiliates, its franchisees and Candidate; derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor, its franchisees or Candidate; and is the subject of efforts by Franchisor that are reasonable under the circumstances to maintain the secrecy of the Confidential Information, including, without limitation (i) not revealing the Confidential Information to unauthorized parties; (ii) requiring its franchisees to acknowledge and agree in writing that the Confidential Information is confidential; (iii) requiring its franchisees to agree in writing to maintain the confidentiality of the Confidential Information; (iv) monitoring electronic access to the Confidential Information by the use of passwords and other restrictions so that electronic access to the

Confidential Information is limited to authorized parties; and (v) requiring its franchisees to return all Confidential Information to Franchisor upon the expiration or termination of their Franchise Agreements.

c. **Proprietary.** That the Confidential Information is proprietary, confidential and constitutes a trade secret of Franchisor and its affiliates.

d. **Maintain Confidentiality.** That Candidate will fully and strictly maintain the confidentiality of the Confidential Information, will exercise the highest degree of diligence in safeguarding the Confidential Information and will not disclose or reveal the Confidential Information to any person other than another person who is actively and directly participating in the acquisition of the franchise with Candidate, but only after first disclosing the identity of such person to Franchisor in writing and obtaining such person's signature on a Non-Disclosure Agreement similar to this Agreement, unless covered by attorney-client privilege.

e. **Reproduction and Use.** That Candidate will not directly or indirectly reproduce or copy any Confidential Information or any part thereof and will make no use of any Confidential Information for any purpose whatsoever unless and until Candidate becomes a franchisee of Franchisor, and then only in accordance with the provisions of Candidate's Franchise Agreement.

### 3. **MISCELLANEOUS.**

a. **Injunction.** Candidate recognizes the unique value and secondary meaning attached to the 1-800-Flowers System, the Marks and the Trade Practices and agrees that any noncompliance with the terms of this Agreement or any unauthorized or improper use of the Confidential Information will cause irreparable damage to Franchisor and its franchisees. Candidate therefore agrees that if he or it should engage in any such unauthorized or improper use of the Confidential Information, Franchisor shall be entitled to both permanent and temporary injunctive relief from any court of competent jurisdiction in addition to any other remedies prescribed by law.

b. **Further Acts.** The parties agree to execute such other documents and perform such further acts as may be necessary or desirable to carry out the purposes of this Agreement.

c. **Heirs and Successors.** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and permitted assigns.

d. **Entire Agreement.** This Agreement, the Exhibits to this Agreement and any documents incorporated herein by reference, represent the entire understanding between the parties regarding the subject matter of this Agreement and supersedes all other negotiations, agreements, representations and covenants, oral or written, except any other agreement executed by Franchisor, or its affiliates, and Candidate in connection herewith. This Agreement may not be modified except by a written instrument signed by the party to be charged. The parties intend this Agreement to be the entire integration of all of their agreements on this subject of any nature regarding the subject matter of this Agreement. No other agreements, representations, promises, commitments or the like, of any nature, exist between the parties. By placing his initials at the end of this Paragraph 3(d), Candidate acknowledges the accuracy of the provisions of this Paragraph 3(d).

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**Initials**

e. **No Warranties.** Candidate acknowledges and agrees that Franchisor has made no promises, representations or warranties to Candidate that are inconsistent with the terms of this Agreement or

Franchisor's Franchise Disclosure Document concerning the profitability or likelihood of success of the Franchised Unit at the Franchised Location, that he has been informed by Franchisor that there can be no guaranty of success in the franchised business and that Candidate's business ability and aptitude is primary in determining his success. By placing his initials at the end of this Paragraph 3(e), Candidate acknowledges the accuracy of the provisions of this Paragraph 3(e).

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**Initials**

f. **Waiver.** Failure by Franchisor to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Any waiver, including a waiver of default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance.

g. **Validity.** Any invalidity of any portion of this Agreement shall not affect the validity of the remaining portions and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in full force and effect.

h. **No Uniformity.** Franchisor has made no warranty or representation that all Confidentiality Agreements previously issued or issued after this Confidentiality Agreement by Franchisor do or will contain terms substantially similar to those contained in this Confidentiality Agreement. Franchisor may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Confidentiality Agreements previously executed or executed after the date of this Confidentiality Agreement with other 1-800-Flowers franchisees in a non-uniform manner.

i. **Headings, Table of Contents and Gender.** The headings and table of contents used herein are for purposes of convenience only and shall not be used in construing the provisions hereof. As used herein, the male gender shall include the female and neuter genders, the singular shall include the plural and the plural, the singular.

j. **Execution by Franchisor.** This Agreement shall not be binding on Franchisor unless and until it shall have been accepted and signed by authorized officers of Franchisor.

k. **Assignment.** Except as otherwise restricted by applicable law, this Agreement may be assigned in whole or in part by Franchisor without prior approval of Candidate and such assignment shall not modify or diminish Candidate's obligations hereunder. Candidate shall have no right to assign its rights or obligations under this Agreement.

l. **Third Parties.** Except as otherwise restricted by applicable law, the parties intend to confer no benefit or right on any person or entity not a party to this Agreement and no third party shall have the right to claim the benefit of any provision hereof as a third party beneficiary.

m. **Attorneys' Fees.** If Franchisor becomes a party to any legal proceedings concerning this Agreement by reason of any act or omission of Candidate or its authorized representatives, Candidate shall be liable to Franchisor for the reasonable attorneys' fees and court costs incurred by Franchisor in the legal proceedings. If either party commences a legal proceeding against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

n. **Responsibility.** The term "**Candidate**" as used in this Agreement shall refer to each person executing this Agreement as Candidate, whether such person is one of the spouses, partners, shareholders, trustees, trustors or beneficiaries or persons named as included in Candidate, and shall apply to each such person as if he were the only named Candidate in this Agreement.

(i) If Candidate is a married couple, both husband and wife executing this Agreement shall be liable for all obligations and duties of Candidate hereunder as if such spouse were the sole Candidate hereunder.

(ii) If Candidate is a partnership or if more than one person executes this Agreement as Candidate, each partner or person executing this Agreement shall be liable for all the obligations and duties of Candidate hereunder.

(iii) If Candidate is a trust, each trustee, trustor and beneficiary signing this Agreement shall be liable for all of the obligations and duties of Candidate hereunder.

(iv) If Candidate is a limited liability company, all members executing this Agreement shall be liable for all obligations and duties of Candidate hereunder as if each member were the sole Candidate hereunder.

(v) If Candidate is a corporation, all shareholders executing this Agreement shall be liable for all obligations and duties of Candidate hereunder as if each such shareholder were the sole Candidate hereunder.

(vi) If Candidate is in breach or default under this Agreement, Franchisor may proceed directly against each such spouse, partner, signatory to this Agreement, shareholder, trustee, trustor or beneficiary without first proceeding against Candidate and without proceeding against or naming in such suit any other Candidate, partner, signatory to this Agreement, shareholder, trustee, trustor or beneficiary. The obligations of Candidate and each such spouse, partner, person executing this Agreement, shareholder, trustee, trustor and beneficiary shall be joint and several.

(vii) Notice to or demand upon one spouse, partner, person signing this Agreement, shareholder, trustee, trustor or beneficiary shall be deemed notice to or demand upon Candidate and all such spouses, partners, persons signing this Agreement, shareholders, trustees, trustors and beneficiaries, and no notice or demand need be made to or upon all such Candidate's, spouses, partners, persons executing this Agreement, shareholders, trustees, trustors or beneficiaries.

(viii) The cessation of or release from liability of Candidate, or any such spouse, partner, person executing this Agreement, shareholder, trustee, trustor or beneficiary shall not relieve any other Candidate, spouse, partner, person executing this Agreement, shareholder, trustee, trustor or beneficiary from liability hereunder, except to the extent that the breach or default has been remedied.

o. **Cumulative Remedies.** Any specific right or remedy set forth in this Agreement, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth herein or allowed or allowable by law.

p. **Notices.** All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery or by electronic transmission (fax). Service shall be deemed conclusively made: (i) at the time of service, if personally served; (ii) twenty-four (24) hours (exclusive

of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (iii) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail; (iv) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery; and (v) at the time of electronic transmission, if such transmission occurs prior to 5:00 P.M. on a business day and a copy of such notice is mailed within twenty-four (24) hours after the transmission.

Any notice or demand to Franchisor shall be given to:

1-800-Flowers.Com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-7797  
Attention: Senior Vice President, Retail Operations

With a copy to:

1-800-Flowers.Com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-6101  
Attention: General Counsel/Corporate Secretary

Any notice or demand to Candidate shall be given to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Either party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner set forth above to the other party.

q. **No Right to Use Marks or 1-800-Flowers System.** This Agreement is not a Franchise Agreement or a license of any sort, and does not grant Candidate any right to use or to franchise or license the use of, the Confidential Information, which right is expressly reserved by Franchisor. Franchisor and Candidate acknowledge and agree that the execution of this Agreement by Franchisor shall not obligate Franchisor in any way to grant Candidate a license to execute a Franchise Agreement. Franchisor may refuse to offer a Franchise Agreement to Candidate for any reason whatsoever, with or without cause.

r. **Counterparts and Electronic Transmission; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this Agreement with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this Agreement for all purposes, provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this Agreement. In addition, this Agreement may be signed electronically by the Parties and electronic signatures appearing on this Agreement shall be deemed to be the same as handwritten signatures for the purposes of the validity, enforceability and admissibility of this Agreement.

s. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. In the event of any conflict of law, the law of New York shall prevail, without regard to the application of New York conflict of laws rules. Venue for purposes of any legal proceedings brought in connection with or arising out of this Agreement shall be conclusively presumed to be in the State of New York, County of Nassau or County of Suffolk. Franchisee hereby submits to the exclusive jurisdiction of the Supreme Court of the State of New York, County of Nassau, and of the United States District Court in and for the Eastern District of New York. THE PARTIES SPECIFICALLY WAIVE TRIAL BY JURY.

**IN WITNESS WHEREOF**, the parties have executed this Agreement at Jericho, New York, on the date first shown above.

**FRANCHISOR:**

**CANDIDATE:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.,**  
A Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT H  
GENERAL RELEASE**

1-800-FLOWERS.COM FRANCHISE CO., INC.

GENERAL RELEASE

THIS GENERAL RELEASE (this "Release Agreement") is made on \_\_\_\_\_ (the "Effective Date"), by and between 1-800-FLOWERS.COM FRANCHISE CO., INC., a Delaware corporation ("Franchisor"), on the one hand, and \_\_\_\_\_, a \_\_\_\_\_ ("Franchisee"), and \_\_\_\_\_ ("Owner"), on the other hand, who are collectively referred to in this Release Agreement as the "Releasing Parties", with reference to the following facts:

A. Franchisor and Franchisee are parties to a Franchise Agreement and related ancillary agreements dated \_\_\_\_\_ (collectively, the "Franchise Agreement") pursuant to which Franchisor granted Franchisee a license (the "License") to use the service mark and trade name " \_\_\_\_\_ " (the "Marks") and the " \_\_\_\_\_ System" (the "System") in connection with the operation of a \_\_\_\_\_ franchised unit (the "Franchised Unit") located at \_\_\_\_\_ (the "Franchised Location").

B. Franchisee desires to enter into a \_\_\_\_\_.

C. This Release Agreement has been requested at a juncture in the relationship of the Parties where Franchisor is considering either a change or an expansion of the relationship between the Parties and/or their affiliates. Franchisor is unwilling to make the anticipated change or expansion in the relationship of the Parties unless it is certain that it is proceeding with a "clean slate" and that "Releasing Parties" (as defined below) possess no outstanding grievances or "Claims" (as defined below) against it as of the Effective Date. Releasing Parties, therefore, give this Release Agreement as consideration for receiving the agreement of Franchisor to the anticipated change or expansion of the relationship between the Parties, and acknowledge and agree that this Release Agreement is intended to wipe the slate clean as of the Effective Date.

**NOW, THEREFORE, IT IS AGREED:**

1. **Definitions.** As used in this Release Agreement, the following capitalized terms have the meanings ascribed to them. Other capitalized terms used but not defined in this Release Agreement shall have the meanings ascribed to such terms in the Franchise Agreement:

1.1 "**Claims**" means all actual and alleged or unalleged claims and/or any and all actions, suits, causes of action, rights of action, dues, sums of money, accounts, bonds, bills, charges, covenants, contracts, controversies, agreements (whether oral or written), promises, preferences, suits, demands, rights, damages, costs, Losses, fees, judgments, variances, executions, debts, obligations, attorneys' fees, responsibilities, warranties, violations, counterclaims, cross claims, third-party claims, rights to terminate and rescind and liabilities of any and every kind, character, nature and/or description whatsoever, whether matured or unmatured, accrued or unaccrued, known or unknown, suspected or unsuspected, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, whether or not asserted, threatened, alleged or litigated, at law, equity or otherwise.

1.2 "**Constituents**" means past, present and future affiliates, subsidiaries, divisions, partners, members, trustees, receivers, executors, representatives, administrators, owners, shareholders, distributors, parents, predecessors, officers, directors, agents, managers, principals, employees, insurers, successors, assigns, representatives and attorneys and the past, present and future officers, directors, agents,



managers, principals, members, employees, insurers, successors, assigns, representatives and attorneys of each of the foregoing, as applicable.

1.3 “**Excluded Matters**” means Franchisor’s continuing contractual obligations that arise or continue under and pursuant to the Franchise Agreement and this Release Agreement on and after the Effective Date. This Release Agreement is not intended to terminate or amend the Franchise Agreement.

1.4 “**Franchisor Released Parties**” means Franchisor, BloomNet, Inc., a Delaware corporation, 1-800-Flowers Retail, Inc., a Delaware corporation, 800-Flowers, Inc., a New York corporation, 1-800-Flowers.com, Inc., a Delaware corporation, Flowerama of America, Inc., an Iowa corporation, Conroy’s, Inc., a California corporation, and each of their Constituents.

1.5 “**Losses**” means all damages, debts, liabilities, accounts, suits, awards, judgments, payments, diminutions in value and other losses, costs and expenses, however suffered or characterized, all interest thereon, all costs and expenses of investigating any Claim, reference proceeding, lawsuit or arbitration and any appeal therefrom, all actual attorneys’ fees incurred in connection therewith, whether or not such Claim, reference proceeding, lawsuit or arbitration is ultimately defeated and, all amounts paid incident to any compromise or settlement of any such Claim, reference proceeding, lawsuit or arbitration.

1.6 “**Releasing Parties**” means Franchisee, Owner and any additional parties undersigned below. Releasing Parties make and undertake all representations, warranties, acknowledgments, agreements, commitments, and obligations in this Release Agreement on behalf of themselves and each of their Constituents.

2. **General Release Agreement.** Releasing Parties for themselves and their Constituents, hereby absolutely and irrevocably waive, release and forever discharge Franchisor Released Parties and their Constituents from any and all Claims, whether asserted or unasserted, known or unknown, suspected or unsuspected, based upon anything that has occurred or existed, or failed to occur or exist, or otherwise, from the beginning of time to the Effective Date, except for the Excluded Matters. This waiver, release and discharge is effective immediately in its fullest and most comprehensive sense. Releasing Parties acknowledge and agree that they have no Claims or grievances against Franchisor Released Parties as of the Effective Date.

3. **Waiver Of Known and Unknown Claims.** Releasing Parties for themselves and on behalf of their Constituents, acknowledge and agree that among the wide and comprehensive range of Claims being waived, released and discharged, they are waiving, releasing and discharging unknown and unsuspected Claims, which if known or suspected by them, may have materially affected their decision to enter into this Release Agreement. Releasing Parties understand that the facts upon which this Release Agreement is given may in the future turn out to be, or be discovered to be, other than or different from the facts known or believed to be true by Releasing Parties. Releasing Parties, therefore, expressly assume the risk of the facts turning out to be, or being discovered to be, different and agree that this Release Agreement shall be in all respects effective and not subject to termination or rescission because of any such difference in facts.

4. **Representations And Warranties.** Releasing Parties hereby represent and warrant to Franchisor that, in entering into this Release Agreement, they (i) are doing so freely and voluntarily upon the advice of counsel and business advisors of their own choosing (or declined to do so, free from coercion, duress or fraud); (ii) have read and fully understand the terms and scope of this Release Agreement; (iii) realize that it is final and conclusive, and intends to be final and conclusive, as to the matters set forth in this Release Agreement; and (iv) have not assigned, transferred, or conveyed to any third party all or any part of or partial or contingent interest in any of the Claims that are released by this Release Agreement now or in the future,

that they are aware of no third party who contends or claims otherwise, and that they shall not assign, transfer, or convey any such Claim in the future.

5. **Covenants Not To Sue.** Releasing Parties for themselves and their Constituents hereby irrevocably covenant that they will not directly or indirectly: (i) commence, initiate, or cause to be commenced or initiated any proceeding, claim, or demand of any kind against Franchisor Released Parties based upon any Claims released under this Release Agreement; or (ii) assist or encourage any person or entity to investigate, inquire into, commence, initiate, or cause to be commenced or initiated any proceeding, claim, or demand of any kind against Franchisor Released Parties based upon any Claims released under this Release Agreement.

6. **Indemnity.** Without in any way limiting any of the rights and remedies otherwise available to any Franchisor Released Party, Releasing Parties shall defend, indemnify and hold harmless each Franchisor Released Party from and against all Claims, whether or not involving third-party Claims, arising directly or indirectly from or in connection with (i) the assertion by or on behalf of Releasing Parties or their Constituents of any Claim or other matter waived or released or discharged pursuant to this Release Agreement; (ii) the assertion by any third party of any Claim against any Franchisor Released Party, which Claim arises directly or indirectly from, or in connection with, any Claims or other matters waived or released or discharged pursuant to this Release Agreement; and (iii) any breach of representations, warranties or covenants in this Release Agreement by Releasing Parties or their Constituents.

7. **General Provisions.**

7.1 **Amendment.** This Release Agreement cannot be modified, altered or otherwise amended, except by an agreement in writing signed by all of the parties hereto.

7.2 **Entire Agreement.** This Release Agreement, together with the agreements referenced in this Release Agreement, constitute the entire understanding between and among the Parties with respect to the subject matter of this Release Agreement and supersedes any prior negotiations and agreements, oral or written, with respect to the subject matter of this Release Agreement.

7.3 **Counterparts and Electronic Transmission; Electronic Signatures.** This Release Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Copies of this Release Agreement with signatures that have been transmitted by email or by facsimile shall constitute and be deemed original copies of this Release Agreement for all purposes, provided that the copies are fully executed, dated and identical in form to the original hard copy version of this Release Agreement. In addition, this Release Agreement may be signed electronically by the Parties and electronic signatures appearing on this Release Agreement shall be deemed to be the same as handwritten signatures for the purposes of the validity, enforceability and admissibility of this Release Agreement.

7.4 **Heirs, Successors and Assigns.** This Release Agreement shall be binding on and shall benefit the Parties and their respective heirs, successors and permitted assigns. The Releasing Parties may not assign this Agreement without the prior written approval of the Franchisor Released Parties. Each of the Franchisor Released Parties and each of the Constituents is intended to be a third party beneficiary of this Agreement, with the right to enforce this Agreement for his or her or its benefit, whether acting alone or in combination with any other Franchisor Released Party and/or Constituent, even though such Franchisor Released Party or Constituent is not a signatory to this Agreement.

7.5 **Interpretation.** The rule that an agreement is to be construed against the party drafting the agreement is hereby waived by the Parties, and shall have no applicability in construing this Release Agreement or any of its terms. The headings used in this Release Agreement are for purposes of convenience only and shall not be used in construing the provisions of this Release Agreement. As used in this Release Agreement, the male gender shall include the female and neuter genders, the singular shall include the plural and the plural, the singular.

7.6 **Severability/Validity.** Any provision of this Release Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions of this Release Agreement or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

7.7 **Governing Law and Venue.** This Release Agreement shall in all respects be interpreted, enforced and governed by the internal laws of the State of New York. Venue for purposes of any legal proceedings brought in connection with, or arising out of, this Release Agreement shall be conclusively presumed to be in the State of New York, County of Nassau or County of Suffolk. Releasing Parties hereby submit to the exclusive jurisdiction of the Supreme Court of the State of New York, County of Nassau, and of the United States District Court in and for the Eastern District of the State of New York. FRANCHISOR AND RELEASING PARTIES SPECIFICALLY WAIVE TRIAL BY JURY.

7.8 **Authority of Franchisor.** Franchisor represents and warrants that (i) Franchisor has the power and authority to enter into this Release Agreement and to perform its obligations under this Release Agreement without the approval or consent of any other person or entity; and (ii) the individual who executes this Release Agreement on Franchisor's behalf is duly authorized to do so without the approval or consent of any other person or entity.

7.9 **Authority of Releasing Parties.** Releasing Parties represent and warrant that (i) they have the power and authority to enter into this Release Agreement and to perform their obligations under this Release Agreement without the approval or consent of any other person or entity; and (ii) the individuals who execute this Release Agreement on behalf of the Releasing Parties are duly authorized to do so without the approval or consent of any other person or entity.

7.10 **No Waiver.** No delay, waiver, omission, or forbearance on the part of any Party to exercise any right, option, duty, or power arising out of any breach or default by any other Party of any of the terms, provisions, or covenants of this Release Agreement, and no custom or practice by the Parties at variance with the terms of this Release Agreement, shall constitute a waiver by any Party to enforce any such right, option, or power as against the other Parties, or as to a subsequent breach or default by the other Parties.

7.11 **Attorneys' Fees.** If any legal action is brought to enforce the terms of this Release Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs, and any and all costs of collection, in addition to any other relief to which that Party may be entitled.

7.12 **Further Acts.** The Parties agree to execute, acknowledge and deliver to any requesting Party, and to procure the execution, acknowledgment and delivery to any requesting Party, of any additional documents or instruments that the requesting Party may reasonably require to fully effectuate and carry out the provisions of this Release Agreement.

7.13 **Incorporation of Recitals**. The Recitals set forth in Paragraphs A through C of this Release Agreement are true and correct and are incorporated into this Release Agreement as part of this Release Agreement.

**IN WITNESS WHEREOF**, the undersigned have executed this Release Agreement as of the Effective Date.

**FRANCHISOR:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.,**  
A Delaware corporation

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

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

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

**RELEASING PARTIES:**

**FRANCHISEE:**

\_\_\_\_\_

A \_\_\_\_\_

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

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

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

**OWNER:**

\_\_\_\_\_

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT I  
PROMISSORY NOTE

1-800-FLOWERS.COM FRANCHISE CO., INC.

PROMISSORY NOTE  
NOTE FOR \_\_\_\_\_

\$ \_\_\_\_\_ Jericho, New York \_\_\_\_\_

1. Principal and Payment.

FOR VALUE RECEIVED, the undersigned, \_\_\_\_\_ ("Maker"), promises to pay 1-800-Flowers.com Franchise Co., Inc., a Delaware corporation, or order ("Payee"), without deduction or offset, at the address specified for notice to Payee in Paragraph 8 hereof (or at such other place as Payee shall specify in writing), in lawful money of the United States of America, the principal amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_), together with interest thereon at the rate of \_\_\_\_\_ percent (\_\_\_%) per annum, until the entire balance due under this Promissory Note (the "Note") shall be paid in full as follows: \_\_\_\_\_ (\_\_\_) equal installments of principal and interest of \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_), pursuant to Exhibit A (attached hereto), which amounts are to be deducted from BloomNet # \_\_\_\_\_ Direct Pay, commencing with \_\_\_\_\_, 20\_\_\_\_ BloomNet orders and continuing thereafter each of the following \_\_\_\_\_ (\_\_\_) months' BloomNet orders. In the event that for any month in which there are insufficient funds in the above-mentioned Direct Pay account to make the full required monthly payment, then, in that event, the Payee shall supply the Maker with a statement of any such deficiency, and the Maker shall make payment of said amount within seven (7) days of the date of the statement. The proceeds of the loan shall be used only for the purposes listed above.

2. Prepayment.

This Note may be prepaid at any time or from time to time, in whole or in part, without penalty.

3. Application of Payments.

Each payment on this Note (whether made when due or otherwise) shall first be credited against any interest then due, and the remainder of such payment shall be credited against the unpaid principal.

4. Default; Acceleration.

If one or more of the following events shall occur ("Events of Default" or an "Event of Default"):

a. Maker shall default in the due and punctual payment of any installment due hereunder, whether at maturity, upon acceleration or otherwise, and such default shall continue for a period of ten (10) days after written notice of such default is given by Payee to Maker; or

b. Maker shall default in the performance of Maker's obligations under the "Franchise Agreement" between Maker and Payee, as Franchisor, dated \_\_\_\_\_, and such default shall continue past the applicable cure period specified in the Franchise Agreement after written notice of such default is given by Payee to Maker; or

c. Maker shall sell, exchange, transfer or make any other disposition of all or substantially all of the assets (other than a transfer by Maker to an affiliated entity) of the Franchised Unit or the 1-800-Flowers business located at the Franchised Location; or

d. Maker, or any of its owners if it is an entity, shall be adjudicated bankrupt or insolvent, or make an assignment for the benefit of creditors; or Maker, or any of its owners if it is an entity, shall apply for or consent to the appointment of a custodian, receiver, trustee, or similar officer for it or for all or any substantial part of its property; or such custodian, receiver, trustee or similar officer shall be appointed without the application or consent of Maker, and such appointment shall continue undischarged for a period of sixty (60) days; or

e. Maker, or any of its owners if it is an entity, shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against Maker, or any of its owners if it is an entity, and shall remain undismissed for a period of sixty (60) days;

**THEN**

upon the occurrence of an Event of Default under Paragraphs 4(c), 4(d) or 4(e) above, automatically, and, upon the occurrence of an Event of Default under Paragraphs 4(a) or 4(b), upon the election of Payee following the expiration of the applicable cure period provided therein, the entire principal balance of this Note, and all accrued interest, without further demand, shall immediately become due and payable. Upon the occurrence of an Event of Default, any principal amount past due to Payee from Maker shall bear interest at the maximum rate permitted by the state whose law governs this Note, or in the absence of a maximum rate specified by state law, ten percent (10%). No delay or omission on the part of Payee in exercising any right under this Note shall operate as a waiver of such right.

5. **Waiver.**

Maker waives presentment, protest and demand, notice of protest, demand, dishonor and nonpayment of this Note, notice of acceleration, notice of intent to accelerate, and any and all other notices or matters of a like nature; provided that, such waiver shall not extend to any notice of default to be given by Payee under Paragraphs 4(a) or 4(b) hereof.

6. **Attorneys' Fees.**

Maker agrees that if any legal action is brought to enforce or collect this Note, Payee shall be entitled to reasonable attorney's fees and costs, and any and all costs of collection, in addition to any other relief to which Payee may be entitled. This provision shall be applicable to the entire Note.

7. **Severability.**

Every provision of this Note is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

8. **Notices.**

All notices, statements or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery or by electronic transmission (fax). Service shall be deemed conclusively made: (a) at the time of service, if personally served; (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail; (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery; and (e) at the time of electronic transmission, if such transmission occurs prior to 5:00 p.m. on a business day and a copy of such notice is mailed within twenty-four (24) hours after the transmission.

Any notice or demand to Payee shall be given to:

1-800-Flowers.com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-7797  
Attention: Senior Vice President, Retail Operations

With a copy to:

1-800-Flowers.com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-6101  
Attention: General Counsel/Corporate Secretary

Any notice or demand to Maker shall be given to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party.

9. **Binding Effect.**

All the terms and provisions of this Note shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.



10. **Headings.**

Headings at the beginning of each numbered Paragraph of this Note are intended solely for convenience and are not to be deemed or construed to be a part of this Note.

11. **Security for Payment of Note.**

Payment of this Note shall be secured by a security interest in the "Assets" located at the Franchised Unit and certain other assets of the Franchised Unit as evidenced by the "Security Agreement" executed by Maker in favor of Payee concurrently with the execution of this Note.

12. **Governing Law and Venue.**

This Note shall be governed by the laws of the State of New York. Any dispute arising out of this Agreement shall be resolved by the Courts of the State of New York, and the parties hereby consent that venue must be placed in the Supreme Court of the State of New York, Nassau County, or the United States District Court in and for the Eastern District of New York, and the parties submit to the exclusive jurisdiction of said Courts. THE PARTIES SPECIFICALLY WAIVE TRIAL BY JURY.

**IN WITNESS WHEREOF**, the undersigned have executed this Note as of the day and year first above written.

**MAKER:**

---

**EXHIBIT A**

**AMORTIZATION SCHEDULE**

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT J  
GUARANTEE OF PROMISSORY NOTE**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**GUARANTEE OF PROMISSORY NOTE**

**THIS GUARANTEE OF PROMISSORY NOTE** (this “**Guarantee**”) is executed by the undersigned (the “**Guarantors**”) in favor of Franchisor, in consideration of, and as an inducement to, the acceptance of that certain Promissory Note, and any revisions, modifications and amendments thereto (hereinafter collectively the “**Note**”) dated \_\_\_\_\_, in favor of **1-800-FLOWERS.COM FRANCHISE CO., INC.**, a Delaware corporation (hereinafter the “**Franchisor**”), from \_\_\_\_\_ (hereinafter the “**Franchisee**”), each of the Guarantors agree as follows:

1. The Guarantors do hereby jointly and severally unconditionally guarantee the full, prompt and complete performance of Franchisee under the terms, covenants and conditions of the Note, including, without limitation, the complete and prompt payment of all indebtedness to Franchisor under the Note. The word “indebtedness” is used herein in its most comprehensive sense and includes, without limitation, any and all advances, debts, obligations and liabilities of Franchisee, now or hereafter incurred, either voluntarily or involuntarily, and whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, or whether recovery thereof may be now or hereafter barred by any statute of limitation or is otherwise unenforceable.

2. The obligations of the Guarantors are independent of the obligations of Franchisee and a separate action or actions may be brought and prosecuted against any or all of the Guarantors, whether or not actions are brought against Franchisee or whether Franchisee is joined in any such action.

3. If Franchisee is a corporation, partnership or limited liability company, Franchisor shall not be obligated to inquire into the power or authority of Franchisee or its partners or the officers, directors, agents, members or managers acting or purporting to act on Franchisee’s behalf and any obligation or indebtedness made or created in reliance upon the exercise of such power and authority shall be guaranteed hereunder. Where the Guarantors are corporations or partnerships, it shall be conclusively presumed that the Guarantors and the partners, agents, officers and directors acting on their behalf have the express authority to bind such corporations or partnerships and that such corporations or partnerships have the express power to act as the Guarantors pursuant to this Guarantee and that such action directly promotes the business and is in the interest of such corporations or partnerships.

4. The Franchisor, its successors and assigns, may from time to time, without notice to the Guarantors: (a) resort to the Guarantors for payment of any of the indebtedness, whether or not it or its successors have resorted to any property securing any of the indebtedness or proceeded against any other of the Guarantors or any party primarily or secondarily liable on any of the indebtedness; (b) release or compromise any indebtedness of any of the Guarantors hereunder or any indebtedness of any party or parties primarily or secondarily liable on any of the indebtedness; (c) extend, renew or credit any of the indebtedness for any period (whether or not longer than the original period); (d) alter, amend or exchange any of the indebtedness; or (e) give any other form of indulgence, whether under the Note or otherwise.

5. The Guarantors further waive presentment, demand, notice of dishonor, protest, nonpayment and all other notices whatsoever, including without limitation: notice of acceptance hereof; notice of all contracts and commitments; notice of the existence or creation of any liabilities under the Note and of the amount and terms thereof; and notice of all defaults, disputes or controversies between Franchisee and Franchisor resulting from the Note or otherwise, and the settlement, compromise or adjustment thereof.

6. This Guarantee shall be enforceable by and against the respective administrators, executors, successors and assigns of the Guarantors and the death of any Guarantor shall not terminate the liability of Guarantor or limit the liability of the other Guarantors hereunder.

7. If more than one person has executed this Guarantee, the term the "Guarantors" as used herein shall refer to each such person, and the liability of each of the Guarantors hereunder shall be joint and several and primary as sureties.

8. In each case where a spouse of any Guarantor has executed any documents in connection with the Note, and Franchisee subsequently divorces from such spouse, then, in the event that Franchisee subsequently remarries, the new spouse of such Franchisee must execute, and agree to be bound by the provisions of, each of the documents previously executed by Franchisee's original spouse.

9. This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. In the event of any conflict of law, the law of New York shall prevail, without regard to the application of New York conflict of laws rules. Venue for purposes of any legal proceedings brought in connection with or arising out of this Guarantee shall be conclusively presumed to be in the State of New York, County of Nassau or County of Suffolk. Guarantors hereby submit to the exclusive jurisdiction of the Supreme Court of the State of New York, County of Nassau, and of the United States District Court in and for the Eastern District of the State of New York. GUARANTORS SPECIFICALLY WAIVE TRIAL BY JURY.

**IN WITNESS WHEREOF**, each of the Guarantors has executed this Guarantee under seal effective as of \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Spouse (if married)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Home Telephone

\_\_\_\_\_  
Home Telephone

\_\_\_\_\_  
Business Telephone

\_\_\_\_\_  
Business Telephone

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT K  
SECURITY AGREEMENT**

1-800-FLOWERS.COM FRANCHISE CO., INC.

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made on \_\_\_\_\_, by and between 1-800-FLOWERS.COM FRANCHISE CO., INC., a Delaware corporation ("Secured Party" or "Franchisor"), on the one hand, and \_\_\_\_\_ ("Debtor"), on the other hand, with reference to the following facts:

A. Debtor has [purchased from Secured Party the "Assets" of] [entered into a Franchise Agreement with Secured Party for] the 1-800-Flowers shop (the "Franchised Unit") located at \_\_\_\_\_ (the "Franchised Location") and has agreed to operate the Franchised Unit as a franchisee of Franchisor. [In conjunction with this acquisition, Debtor has agreed to pay Secured Party the sum of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) in accordance with the terms of a Promissory Note (the "Note"), a copy of which is attached hereto as Exhibit A.]

B. Secured Party and Debtor desire to enter into this Agreement to grant Secured Party a security interest in all of the "Assets" at the Franchised Unit to secure payment of the Note on the terms and conditions set forth herein.

NOW, THEREFORE, IT IS AGREED:

1. INCORPORATION OF RECITALS.

The Recitals set forth in Paragraphs A and B of this Agreement are true and correct and are incorporated herein as part of this Agreement.

2. SECURITY INTEREST.

In consideration of the foregoing, Debtor hereby grants to Secured Party a security interest as follows:

a. Collateral. Debtor hereby grants to Secured Party a continuing security interest in all of the right, title and interest of Debtor in, and to, all leasehold improvements, fixtures, furnishings and equipment, inventory, supplies and delivery vehicles located at or used in connection with Debtor's business at the Franchised Unit and the Franchised Location, now or hereafter leased or acquired by Debtor, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Debtor to use the 1-800-Flowers trademarks, service marks, trade names, trade styles, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Debtor under contracts and licenses and franchise agreements for the use of the 1-800-Flowers trademarks, service marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights (collectively, the "Collateral") (i) to secure payment and performance by Debtor of the Note; and (ii) to secure payment to Secured Party by Debtor of all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) that Secured Party may incur to enforce the terms of the Note and this Agreement.

b. Security Interest. Debtor hereby grants Secured Party a valid and continuing lien on, and perfected security interest in, the Collateral.

c. **Financing Statement.** Debtor hereby authorizes Secured Party to file UCC-1 Financing Statements with the Secretary of State for any state Secured Party deems necessary, which shall evidence the security interests in the Collateral.

3. **WARRANTIES OF DEBTOR.**

Debtor warrants, covenants and represents to Secured Party that:

a. **Ownership of Collateral.** Debtor is the owner of all of the Collateral, free and clear of all liens and encumbrances, except liens in favor of Secured Party.

b. **Encumbrances.** Until all obligations of Debtor have been paid and performed under the Note and this Agreement, Debtor shall not create, incur, assume or suffer to exist any encumbrances on the Collateral, without the prior written consent of Secured Party.

c. **Defense and Indemnity.** Debtor will defend its title, and Secured Party's interest, in the Collateral against all claims that may affect title to or Secured Party's security interest in the Collateral and will take any action necessary to remove any liens or encumbrances in the Collateral not authorized by this Agreement.

d. **Sale of Collateral.** Until all obligations of Debtor have been paid and performed under the Note and this Agreement, Debtor shall not sell or otherwise dispose of any assets or properties comprising the Collateral without the prior written consent of Secured Party.

e. **Maintenance and Insurance.** Debtor shall maintain the Collateral in good repair, working order and condition and shall maintain or cause to be maintained, at no cost or expense to Secured Party for the mutual benefit of Debtor and Secured Party, comprehensive broad form general public liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Franchised Unit and the improvements at the Franchised Unit. All insurance policies carried by Debtor shall provide that the policies cannot be canceled or materially changed except after thirty (30) days prior written notice by the insurer to Secured Party. All policies shall name Secured Party as an additional insured.

4. **EVENTS OF DEFAULT.**

If one or more of the following events shall occur, Debtor shall be in default under the Note and this Agreement:

a. **Note.** If Debtor shall default in the due and punctual payment of any installment due under the Note, whether at maturity, upon acceleration or otherwise, and such default shall continue for a period of ten (10) days after written notice of such default is given by Secured Party to Debtor.

b. **Security Agreement and Other Agreements.** If Debtor shall default in the performance of Debtor's obligations under this Agreement, or under the Note referenced herein, or under the "**Franchise Agreement**" between Debtor and Franchisor dated \_\_\_\_\_, \_\_\_\_\_, and/or under the "**Sublease**" between Debtor and Secured Party dated \_\_\_\_\_, \_\_\_\_\_, and such default shall continue for a period of ten (10) days after written notice of such default is given by Secured Party to Debtor.



c. **Sale of Collateral or Business.** If Debtor shall sell, exchange, transfer or make any other disposition of all or substantially all of the assets (other than a transfer by Debtor to an affiliated entity) of the Franchised Unit or the business located at the Franchised Location.

d. **Adjudication.** If Debtor, or any of its owners if it is an entity, shall be adjudicated bankrupt or insolvent, or make an assignment for the benefit of creditors; or Debtor, or any of its owners if it is an entity, shall apply for or consent to the appointment of a custodian, receiver, trustee, or similar officer for it or for all or any substantial part of its Collateral; or such custodian, receiver, trustee or similar officer shall be appointed without the application or consent of Debtor, and such appointment shall continue undischarged for a period of sixty (60) days.

e. **Institution of Proceedings.** If Debtor, or any of its owners if it is an entity, shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against Debtor, or any of its owners if it is an entity, and shall remain undismissed for a period of sixty (60) days.

Upon the occurrence of an event of default under Paragraphs 4(c), 4(d) or 4(e) above, automatically, and, upon the occurrence of an event of default under Paragraphs 4(a) or 4(b), upon the election of Secured Party following the expiration of the ten (10) day period provided therein, the entire principal balance of the Note, and any accrued interest, without further demand, shall immediately become due and payable. No delay or omission on the part of Secured Party in exercising any right under the Note shall operate as a waiver of such right.

f. **Remedies.** Upon any such event of default, or at any time thereafter, Secured Party may, following notice to or demand of Debtor, declare all obligations secured hereby to be immediately due and payable, and may proceed to enforce payment of the same and exercise any and all of its rights and remedies provided by the New York Uniform Commercial Code now or hereafter existing, as well as any and all other rights and remedies afforded Secured Party by law. Secured Party will give Debtor reasonable notice of the time and place of any public sale of the Collateral, or any portion thereof, and of the time after which any private sale or other intended disposition thereof is to be made. Reasonable notice shall be deemed given if such notice is given in accordance with Paragraph 5(b) hereof at least ten (10) business days prior to the time of the sale or disposition of the Collateral. Expenses incurred by Secured Party in the sale or other disposition of the Collateral shall include all Secured Party's reasonable attorneys' fees and legal expenses, and Debtor shall be liable to Secured Party for all such expenses that Secured Party incurs.

## 5. **GENERAL PROVISIONS.**

a. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of New York. Any dispute arising out of this Agreement shall be resolved by the Courts of the State of New York, and the parties hereby consent that venue must be placed in the Supreme Court of the State of New York, Nassau County, or the United States District Court in and for the Eastern District of New York, and the parties submit to the exclusive jurisdiction of said Courts. THE PARTIES SPECIFICALLY WAIVE TRIAL BY JURY.

b. **Notices.** All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery or by electronic transmission (fax). Service shall be deemed conclusively made (i) at the time of service, if personally served, (ii) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage

prepaid, if served by Express Mail, (iii) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, return receipt requested, if served by certified mail, (iv) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery, and (v) at the time of electronic transmission, if such transmission occurs prior to 5:00 p.m. on a business day and a copy of such notice is mailed within twenty-four (24) hours after the transmission.

Any notice or demand to Secured Party shall be given to:

1-800-Flowers.com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-7797  
Attention: Senior Vice President, Retail Operations

With a copy to:

1-800-Flowers.com Franchise Co., Inc.  
Two Jericho Plaza, Suite 200  
Jericho, New York 11753  
Fax: 516-237-6101  
Attention: General Counsel/Corporate Secretary

Any notice or demand to Debtor shall be given to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_

Either party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner set forth above to the other party.

c. **Waivers.** The delay, omission or forbearance by Secured Party to take action to remedy or seek damages for the breach or default of any term, covenant or condition herein contained or to exercise any right, power or duty arising from such breach or default shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach or default of the same or any other term, covenant or condition herein contained. The subsequent acceptance of payments by Secured Party shall not be deemed to be a waiver of any preceding breach or default by Debtor other than its failure to pay the particular payment so accepted, regardless of Secured Party's knowledge of such preceding breach or default at the time of acceptance of such payment.

d. **Attorneys' Fees.** If Secured Party becomes a party to any legal proceedings concerning this Agreement or the Note by reason of any act or omission of Debtor or its authorized representatives, Debtor shall be liable to Secured Party for the reasonable attorneys' fees and court costs incurred by Secured Party in the legal proceedings.

e. **Modification.** This Agreement may be modified only by a writing executed by the party sought to be bound.

f. **Entire Agreement.** This Agreement, the other agreements referred to herein and any other agreement that may be executed by the parties concurrently with the execution of this Agreement, set forth the entire agreement and understanding of the parties and any agreement, representation or understanding, express or implied, heretofore made by either party or exchanged between the parties are hereby waived and canceled.

g. **Cumulative Remedies.** Any specific right or remedy set forth in this Agreement, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth herein or allowed or allowable by law.

h. **Titles.** The various titles of the Paragraphs herein are used solely for convenience and shall not be used in interpreting or construing any word, clause, paragraph, or subparagraph of this Agreement.

i. **Gender.** All words used in this Agreement in the singular shall include the plural and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

j. **Successors.** This Agreement shall be binding upon all of the parties hereto, their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

k. **Severability.** The invalidity of any one or more of the provisions contained in this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

l. **Additional Documents.** Debtor agrees to execute, acknowledge and deliver to Secured Party and to procure the execution, acknowledgment and delivery to Secured Party of any additional documents or instruments that Secured Party may reasonably require to fully effectuate and carry out the provisions of this Agreement.

m. **Counterparts and Electronic Transmission; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Copies of this Agreement with signatures that have been transmitted by email or by facsimile shall constitute, and be deemed, original copies of this Agreement for all purposes; provided that, the copies are fully executed, dated and identical in form to the original hard copy version of this Agreement. In addition, this Agreement, and all Exhibits to this Agreement, may be signed electronically by the Parties and electronic signatures appearing on this Agreement and the Exhibits shall be deemed to be the same as handwritten signatures for the purposes of the validity, enforceability and admissibility of this Agreement and the Exhibits.

n. **Representation By Counsel.** Debtor acknowledges and agrees that Debtor has been represented by independent legal counsel of Debtor's choice in connection with the negotiation and review of the terms and conditions of this Agreement, or has had the opportunity to have legal counsel assist Debtor, but has voluntarily elected not to do so.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**SECURED PARTY:**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

A Delaware corporation

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

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

Its: \_\_\_\_\_

**DEBTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**PROMISSORY NOTE**

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT L  
FRANCHISE COMPLIANCE CERTIFICATE**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**FRANCHISE COMPLIANCE CERTIFICATE**

As you know, 1-800-Flowers.Com Franchise Co., Inc. ("**Franchisor**") and you ("**you**" or "**Franchise Applicant**") are preparing to enter into a Franchise Agreement for the establishment and operation of a "**1-800-FLOWERS**" franchised business. The purpose of this Certificate is to determine whether any statements or promises were made to you that the Franchisor has not authorized and that may be untrue, inaccurate, or misleading. Franchisor, through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights, fully understands and comprehends that the purchase of a franchise is a business decision, complete with its associated risks, and (b) that you are not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by Franchisor.

If you are intending to purchase an existing 1-800-FLOWERS franchise from an existing Franchisee, you may have received information from the transferring Franchisee who are not employees or representatives of the Franchisor. The questions below do not apply to any communications that you had with the transferring Franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Are you seeking to enter into the Franchise Agreement along with a purchase or transfer of an existing 1-800-FLOWERS franchise from an existing Franchisee?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. I had my first face-to-face meeting with a Franchisor representative on \_\_\_\_\_ .

3. Have you received and personally reviewed the Franchise Agreement and each Addendum and related agreement attached to it?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Do you understand all of the information contained in the Franchise Agreement, each Addendum and related agreement provided to you?

Yes \_\_\_\_\_ No \_\_\_\_\_

If No, what parts of the Franchise Agreement, Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary.)

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5. Have you received and personally reviewed Franchisor's Franchise Disclosure Document ("FDD")?

Yes \_\_\_\_\_ No \_\_\_\_\_

6. Did you sign a receipt for the FDD indicating the date you received it?

Yes \_\_\_\_ No \_\_\_\_

7. Do you understand all of the information contained in the FDD and any state-specific Addendum to the FDD?

Yes \_\_\_\_ No \_\_\_\_

If No, what parts of the FDD and/or Addendum do you not understand? (Attach additional pages, if necessary.)

8. Have you discussed the benefits and risks of establishing and operating a 1-800-FLOWERS franchised business with an attorney, accountant, or other professional advisor?

Yes \_\_\_\_ No \_\_\_\_

If No, do you wish to have more time to do so?

Yes \_\_\_\_ No \_\_\_\_

9. Do you understand that the success or failure of your 1-800-FLOWERS franchised business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors?

Yes \_\_\_\_ No \_\_\_\_

10. Has any employee or other person speaking on our behalf made any statement or promise concerning the revenues, profits or operating costs of a 1-800-FLOWERS franchised business that is contrary to the information contained in the FDD?

Yes \_\_\_\_ No \_\_\_\_

11. Has any employee or other person speaking on our behalf made any statement or promise regarding the amount of money you may earn in operating a 1-800-FLOWERS franchised business that is contrary to the information contained in the FDD?

Yes \_\_\_\_ No \_\_\_\_

12. Has any employee or other person speaking on our behalf made any statement or promise concerning the total amount of revenue the 1-800-FLOWERS franchised business will or may generate that is contrary to the information contained in the FDD?

Yes \_\_\_\_ No \_\_\_\_



13. Has any employee or other person speaking on our behalf made any statement or promise regarding the costs you will or may incur in operating the 1-800-FLOWERS franchised business that is contrary to the information contained in the FDD?

Yes \_\_\_\_ No \_\_\_\_

14. Has any employee or other person speaking on our behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a 1-800-FLOWERS franchised business?

Yes \_\_\_\_ No \_\_\_\_

15. Has any employee or other person speaking on our behalf made any statement, promise, or agreement concerning the advertising, marketing, training, support, service, or assistance that we will furnish to you that is contrary to the information contained in the FDD?

Yes \_\_\_\_ No \_\_\_\_

16. Have you entered into any binding agreement with us concerning the purchase of this franchise prior to today?

Yes \_\_\_\_ No \_\_\_\_

17. Have you paid any money to us concerning the purchase of this franchise prior to today?

Yes \_\_\_\_ No \_\_\_\_

18. Have you spoken to any other franchisee(s) of this system before deciding to purchase this franchise? If so, who?

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19. Do you understand that the Franchisor may modify the franchise program throughout the term of your agreements?

Yes \_\_\_\_ No \_\_\_\_

20. If you have answered "Yes" to any one of questions 10-17, please provide a full explanation of each "yes" answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.)

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I (We) signed the Franchise Agreement and Addenda (if any) on \_\_\_\_\_, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them.

By signing this Certificate, you are representing that you have responded truthfully to the above questions. In addition, by signing this Certificate, you also acknowledge that:

A. You recognize and understand that business risks, which exist along with the purchase of any business, make the success or failure of the franchise subject to many variables, including among other things, your skills and abilities, the hours worked by you, competition, interest rates, the economy, inflation, franchise location, operation costs, lease terms and costs and the marketplace. You acknowledge your awareness of and willingness to undertake these business risks.

B. You agree and state that the decision to enter into this business risk is in no manner predicated upon any oral representation, assurances, warranties, guarantees or promises made by Franchisor or any of its officers, employees or agents (including any broker) as to the likelihood of success of the franchise. Except as contained in the FDD, you acknowledge that you have not received any information from the Franchisor or any of its officers, employees or agents (including any broker) concerning actual, projected or forecasted franchise sales, profits or earnings. If you believe that you have received any information concerning actual, average, projected or forecasted franchise sales, profits or earnings other than those contained in the Disclosure Document, please describe those in the space provided below or write “None”.

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C. You also acknowledge that the President of the United States of America has issued Executive Order 13224 (the “**Executive Order**”) prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other antiterrorism measures (the “**Anti-Terrorism Measures**”). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly involved in terrorism. For that reason, you certify that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, is:

- (i) a person or entity listed in the Annex to the Executive Order;
- (ii) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (iii) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (iv) owned or controlled by terrorists or sponsors of terrorism.

You also covenant that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you will, during the term of the Franchise Agreement, become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Franchise Applicant understands that Franchisor is acting in reliance on the truthfulness and completeness of Franchise Applicant's responses to the questions above in entering into the Franchise Agreement with Franchise Applicant. FRANCHISE APPLICANT ACKNOWLEDGES AND AGREES THAT IN THE EVENT THAT ANY DISPUTE ARISES, THIS CERTIFICATE SHALL BE ADMISSIBLE AS EVIDENCE IN ANY LEGAL ACTION, AND FRANCHISE APPLICANT HEREBY WAIVES, TO THE FULLEST EXTENT PERMISSIBLE UNDER THE LAW, ANY OBJECTION TO SUCH ADMISSION OF THIS CERTIFICATE.

**FRANCHISE APPLICANT:**

**(IF FRANCHISE APPLICANT IS AN INDIVIDUAL):**

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

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

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

Date: \_\_\_\_\_

**FRANCHISE APPLICANT:**

**(IF FRANCHISE APPLICANT IS A CORPORATION, LIMITED LIABILITY COMPANY, OR PARTNERSHIP):**

\_\_\_\_\_  
[Print Name of Franchise Applicant entity]

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

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

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

**NOTICE**

Any provision of this Certificate that requires you to disclaim the occurrence and/or non-occurrence of acts that would constitute a violation of the Maryland Franchise Registration and Disclosure Law is not intended to, nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT M-1  
PREMIER ORDER FULFILLMENT AGREEMENT**

## PREMIER ORDER FULFILLMENT AGREEMENT

THIS PREMIER ORDER FULFILLMENT AGREEMENT (the "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between \_\_\_\_\_, with offices located at \_\_\_\_\_ ("Florist") and **800-FLOWERS, INC.**, with its principal place of business located at Two Jericho Plaza, Suite 200, Jericho, New York 11753 ("1-800-Flowers").

WHEREAS, 1-800-Flowers desires to contract with certain independently owned and operated businesses with respect to the fulfillment of certain of its orders for floral and related gift products (collectively, the "Products" or "orders") for making, fulfillment and delivery (collectively "fulfillment").

WHEREAS, Florist desires to be referred such orders and handle the fulfillment of them.

WHEREAS, 1-800-Flowers is willing to contract with Florist in connection with the fulfillment of orders, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 1-800-Flowers and Florist agree as follows:

### 1. Fulfillment of Orders

(a) During the term of this Agreement, 1-800-Flowers will refer orders to the Florist on a non-exclusive basis for fulfillment; provided that, Florist is able to fulfill such orders to the satisfaction of 1-800-Flowers. 1-800-Flowers reserves the absolute right to refer orders for fulfillment to other florists and floral providers at any time. No exclusivity is granted under this Agreement or otherwise.

(b) 1-800-Flowers shall handle all customer inquiries with reference to the orders. Florist shall timely render to 1-800-Flowers any and all assistance requested with reference to any such inquiries.

(c) Florist shall bear full responsibility for the fulfillment of all orders, including, without limitation: (i) the making, packaging and delivery of the orders; (ii) the fulfillment of the orders on a timely basis and in a professional manner; (iii) compliance with all applicable federal, state, and local laws, rules and ordinances in the fulfillment of the orders; (iv) compliance with the order fulfillment requirements and performance standards set forth in Exhibit A attached hereto; and (v) satisfactory completion of all of the Florist's obligations under this Agreement, and any other agreements 1-800-Flowers or its Affiliates (as defined below) may have entered into with Florist and its Affiliates.

(d) Florist acknowledges and agrees to be open for business for referral and fulfillment of 1-800-Flowers orders in all U.S. Postal Service zip codes indicated on, and as set forth in, Exhibit B attached hereto.

### 2. Grant of Rights.

(a) Subject to the terms and conditions of this Agreement, 1-800-Flowers licenses to Florist a limited, non-exclusive, non-transferable, non-sublicensable, and revocable license to use,

reproduce, and display the trademark "1-800-Flowers" and select other trademarks or service marks of 1-800-Flowers as determined within the sole discretion of 1-800-Flowers (the "Licensed Property") as needed solely for the purpose of fulfillment of Products in the USA (the "Territory"), and for no other purpose whatsoever. No right, property or interest in the Licensed Property is intended to be given to, or acquired by, the Florist by the execution or performance of this Agreement, except for the limited license granted to Florist under this Section 2.

(b) Except for the express limited license rights granted above, all right, title and interest in the Licensed Property, including all copyright, trademark, service mark, patent and other rights therein (and all renewals and extensions thereof) and all goodwill associated therewith shall be owned exclusively by 1-800-Flowers. Florist shall use the Licensed Property only to the extent permitted under this Agreement. Florist acknowledges the strength and validity of the Licensed Property and agrees not to (i) alter, modify, amend or change the Licensed Property in any way, (ii) dilute, contest, challenge, or seek to register anywhere the Licensed Property as a trademark, service mark, copyright or the like or any trademark, service mark, copyright or the like confusingly similar to the Licensed Property, (iii) create a unitary composite mark involving any of the Licensed Property, or (iv) use or seek to register any word, trademark, service mark, trade name, domain name, URL, vanity telephone number, symbol, design or the like, which is similar to or which is likely to be confused with any of the Licensed Property. This provision 2(b) shall expressly survive the termination or expiration of this Agreement.

(c) Upon expiration of this Agreement, or earlier termination pursuant to the terms hereof, all rights granted hereunder in the Licensed Property shall automatically revert to 1-800-Flowers for its sole use and disposition with no further obligation whatsoever to Florist or any third party. Upon any such expiration or termination, Florist shall immediately cease all use of the Licensed Property.

### 3. Quality Control.

(a) Florist agrees to maintain a standard of high quality for the Products sold under the Licensed Property and to perform the fulfillment of the Products to the complete satisfaction of 1-800-Flowers, including but not limited to, compliance with the order fulfillment requirements and performance standards set forth in Exhibit A. In addition, Florist agrees that the fulfillment of the Products shall be performed in a manner appropriate for the highest quality products of the type included in the categories of the Products. To monitor Florist's maintenance of the aforementioned standard of quality, Florist shall deliver to 1-800-Flowers, upon request, samples of the Products for its review. If 1-800-Flowers has any objection to the quality of any of the Products, or any packaging or other materials used in relation thereto, then Florist shall promptly comply with any changes requested by 1-800-Flowers. 1-800-Flowers has the right to approve all Products and all related materials used under or in connection with the Licensed Property.

### 4. Term.

(a) This Agreement shall become effective on the Effective Date and shall expire on the first anniversary of the Effective Date, unless sooner terminated pursuant to Section 4(b) below (the "Initial Term"). This Agreement shall be automatically

renewed for successive one (1) year terms (each an “Additional Term”), unless either party sends written notice to the other at least fifteen (15) days prior to the end of the then current Term notifying the other party of its intent not to renew. The Initial Term and any Additional Terms are hereafter referred to as the “Term”.

(b) Either Party shall have the right to terminate this Agreement, without waiving any other rights or remedies, and without any liability for such termination, upon thirty (30) days prior written notice (but in the case of non-payment, upon ten (10) days prior written notice) if the other Party breaches or otherwise fails to perform any of its obligations hereunder, unless the breaching Party remedies same within such thirty (30) day period (or in the case of non-payment, such ten (10) day period) and notifies the non-breaching Party of such remedy in writing within such period. 1-800-Flowers reserves the right to immediately terminate this Agreement, without waiving any other rights or remedies, and without any liability whatsoever, (i) should Florist (x) not comply with the requirements and standards set forth on Exhibit A, as such exhibit may be amended from time to time, (y) damage, in the sole opinion of 1-800-Flowers, to the brand or reputation of 1-800-Flowers or any of its Affiliates, or (z) use the Licensed Property in violation of this Agreement or otherwise misuse the Licensed Property, (ii) upon the sale or transfer by Florist of all or substantially all of Florist’s assets, or a majority of Florist’s capital stock or voting securities, or (iii) upon any assignment or attempted assignment of this Agreement or any of the rights or obligations hereunder by Florist. In any and all events, either party has the right to terminate this Agreement at any time, with or without cause, and without liability for any such termination, upon forty-five (45) days prior written notice.

#### 5. Fulfillment Commission.

(a) For the satisfactory performance of Florist’s services hereunder, 1-800-Flowers shall pay Florist a Fulfillment Commission as set forth in Exhibit C attached hereto.

#### 6. Protection of the Licensed Property.

(a) Florist agrees to assist 1-800-Flowers in the procurement and maintenance of 1-800-Flowers’ rights in the Licensed Property and, without limitation, in connection therewith, Florist agrees to provide samples to 1-800-Flowers as reasonably requested at no charge and to execute and deliver to 1-800-Flowers in such form as may reasonably be requested all instruments (including appropriate applications for registration and assignment) necessary to effectuate copyright, trademark and/or other intellectual property protection for 1-800-Flowers. Florist hereby appoints 1-800-Flowers its attorney-in-fact to execute such instruments on Florist’s behalf. The power granted 1-800-Flowers in the preceding sentence is acknowledged by Florist to be coupled with an interest and shall be irrevocable.

(b) Florist agrees to inform 1-800-Flowers promptly of any encroachment or infringement of the Licensed Property in the Territory that comes to the attention of Florist. Any litigation or other action to police the Licensed Property and to abate infringement shall be under the complete control of 1-800-Flowers. 1-800-Flowers may retain any money judgment or settlement in such action. Florist agrees to cooperate fully in any such litigation or action, to the extent necessary in the vigorous prosecution of the matter. 1-800-Flowers shall have the sole right

to determine what, if any, actions shall be taken on account of any such infringement or encroachment. 1-800-Flowers has the absolute right to prosecute any such claim in its own name and/or shall have the right to cause Florist to join as a party thereto. Florist shall not have any rights against 1-800-Flowers for damages or other remedy by reason of 1-800-Flowers’ decision not to prosecute any alleged infringement or encroachment.

#### 7. Florist’s Experience.

(a) Florist shall conduct its business in accordance with its own systems and standards. Florist acknowledges that it was engaged in the retail flower business prior to entering into this Agreement and acknowledges that the fulfillment of orders from 1-800-Flowers would merely be an addition to Florist’s existing business. Florist acknowledges that it does not expect, and will not receive, any marketing, training or other substantial assistance from 1-800-Flowers with reference to Florist’s obligations hereunder, and 1-800-Flowers has imposed upon Florist only those requirements necessary for the proper fulfillment of the orders and to protect the Licensed Property and the 1-800-Flowers brand. Consistent with the foregoing, Florist shall comply with all requirements and guidelines relating to the protection of the Licensed Property and the 1-800-Flowers brand, including, without limitation, those pertaining to quality, service, delivery, communications and other standards established by 1-800-Flowers from time to time for the fulfillment of its orders, as further set forth on Exhibit A, which may be amended from time to time.

(b) All employees hired by or working for Florist shall be Florist’s employees, and Florist’s alone, and shall not, for any purpose, be deemed to be employees of 1-800-Flowers or subject to 1-800-Flowers’ direct or indirect control. Florist acknowledges and agrees that 1-800-Flowers will not have the power to hire or fire Florist’s employees. Florist expressly agrees, and will never contend otherwise, that 1-800-Flowers does not directly or indirectly have the power to hire, fire or control any of Florist’s personnel. Florist alone shall be solely responsible for all hiring and employment decisions and functions relating to the Florist’s business, including, without limitation, those related to hiring, firing, training, establishing and paying remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, supervision and discipline of employees. Florist shall indemnify, defend, reimburse and hold 1-800-Flowers and its Affiliates harmless from any direct and indirect losses, costs and expenses, including attorneys’ fees, arising out of any claim made by or for the benefit of any employee of Florist against 1-800-Flowers and its Affiliates regarding employment decisions and employee functions of the Florist business, including, without limitation, those relating to hiring, firing, training, wages and hour requirements, record keeping, supervision, and discipline of employees.

#### 8. Representations and Warranties.

(a) Florist hereby represents and warrants to 1-800-Flowers that (i) it is an entity in good standing in the jurisdiction of its formation and each other jurisdiction in which it conducts business, and has the full right, power and authority to enter into this Agreement and the relationship contemplated herein and to perform its obligations hereunder, (ii) the fulfillment by Florist of the Products shall not violate or infringe upon any rights whatsoever of any third party or any applicable laws or regulations, (iii) the Products, including any making, packaging, fulfillment, labeling, or other information provided therewith, and all marketing and other materials generated by Florist, if any, will

conform in all respects with, and satisfy, applicable national, Federal, State and local laws, orders and regulations and applicable industry guidelines, (iv) Florist has obtained, or will obtain prior to conducting any activities in a particular state or locale of the Territory, all approvals, permits and certifications necessary to perform its activities hereunder in such state or locale; (v) the Products shall be free from defects in material and workmanship and, with respect to any and all food Products, are free from contaminants and spoilage and are safe for human consumption; (vi) the Products are and shall be merchantable and fit for the purpose for which they are intended, and shall conform to their applicable specifications; and (vii) Florist is rendering its services hereunder as an independent contractor and not as an agent, employee, partner, franchisee or joint venturer of 1-800-Flowers.

#### 9. Indemnification.

(a) Florist agrees to defend, indemnify and hold harmless 1-800-Flowers, its Affiliates and their respective officers, directors, shareholders, employees and representatives from, in respect of and against any and all claims, costs, losses, liabilities, expenses (including, without limitation, reasonable attorneys' fees and disbursements), judgments, damages, demands, lawsuits or similar actions or proceedings (each, a "Claim") arising out of a Claim or otherwise based on (i) the breach or alleged breach of any of Florist's representations, warranties or covenants hereunder, (ii) the performance of Florist hereunder, including, without limitation, the manufacture, packaging, distribution, fulfillment, use or sale of the Products, including, without limitation, all Claims for product liability or product defects, and/or (iii) any claim that Florist, as to the services it is rendering hereunder, is anything other than an independent contractor.

#### 10. Insurance.

(a) Florist shall maintain in full force and effect comprehensive general liability insurance (the "Florist Insurance"), including, without limitation, product liability insurance, covering all Products sold by it as well as any liability on its part in the amount of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate. The Florist Insurance shall be placed with an insurer or insurers that is rated A or better by A.M. Best rating service or at a comparable rating level by a comparable rating service, duly licensed to carry on the business of insurance in all parts of the Territory and shall name 1-800-Flowers, its Affiliates and their respective officers, directors, employees, representatives or agents as additional insureds, for coverage, including, without limitation, against all forms of liability for death or injury to any individual, and for loss or damage to property. The Florist Insurance shall provide for primary coverage and not contributory coverage, notwithstanding any other insurance that 1-800-Flowers may obtain or maintain. The Florist Insurance shall provide for at least thirty (30) days prior written notice to 1-800-Flowers of cancellation, lapse or material change in the Florist Insurance and Florist shall provide 1-800-Flowers with a certificate of insurance as evidence of the Florist Insurance prior to, or as soon as practicable after, the execution of this Agreement. The insurance, however, shall be effective as of the Effective Date of this Agreement.

#### 11. Reports.

(a) Florist shall promptly deliver to 1-800-Flowers any reports requested by 1-800-Flowers from time to time.

#### 12. Confidentiality.

(a) Confidential Information. For purposes of this Agreement, "Confidential Information" means all information relating to 1-800-Flowers and its Affiliates and their respective customers, recipients of products, including, without limitation, the Products, operations, finances and business, including, without limitation, technical and non-technical data, programs, sales and marketing methods, pricing, processes and financial data, and all Customer Data, whether or not reduced to writing.

For purposes of this Agreement, "Customer Data" includes, without limitation, any and all information by, from, or about a "Customer", including, without limitation, a Customer's name, address, email address, telephone number, credit card information and account number(s), order information, purchasing preferences or history, and all other personally identifiable information.

For purposes of this Agreement, "Customer" means all customers of 1-800-Flowers and its Affiliates, including, without limitation, all senders and recipients of products, including, without limitation, the Products from 1-800-Flowers and its Affiliates, visitors and registered users of the 1-800-Flowers Website and the websites of its Affiliates, and any individuals or entities listed in the customer databases of 1-800-Flowers or its Affiliates.

No right, title or interest in the Customer Data is conveyed, transferred, or otherwise licensed to Florist hereunder or otherwise. Accordingly, Florist shall not, during the Term or thereafter (x) disclose, sell, lease, share or rent any Customer Data; (y) send any written or verbal communications, including, without limitation, any emails or promotional or marketing materials, to any Customers, or otherwise solicit or market to any Customers; and/or (z) make any use of the Customer Data, either individually or in an aggregate form without the express prior written approval of 1-800-Flowers, signed by a duly authorized executive officer of 1-800-Flowers. Furthermore, Florist shall abide by all applicable laws in connection with any use of the Customer Data that 1-800-Flowers may permit in writing as provided above. Florist represents and warrants that Florist has read and shall, at all times, comply with all applicable federal, state and local laws, rules and regulations related to privacy and use of Customer Data, including without limitation, the California Consumer Privacy Act, as amended, and with the Privacy Policy posted on the 1-800-FLOWERS.COM Website (URL of 1800flowers.com, the "Website"), as the same may be amended from time to time.

(b) Florist shall protect the Confidential Information. Florist will not disclose, use or copy any such Confidential Information, except solely as needed in connection with the fulfillment of the Products for 1-800-Flowers, and will not otherwise disclose such Confidential Information. Upon termination or expiration of this Agreement, Florist will promptly deliver to 1-800-Flowers all materials, documents and records in Florist's possession or control, including all copies thereof, related in any way to the Confidential Information, which at all times shall be and remain 1-800-Flowers' sole property.

#### 13. General Release.

(a) In consideration of the foregoing, Florist, and the individuals identified herein below ("Principals"), for themselves and for each of their heirs, successors and permitted assigns, and each of them, hereby releases and forever discharges 1-800-

Flowers, its Affiliates, and their respective directors, officers, shareholders, employees, attorneys and agents of said entities, and each of them, from any and all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, known or unknown, based on or arising out of any fact, matter, event, act or failure to act that occurred prior to the Effective Date of this Agreement. For the avoidance of doubt, this release does not release any claims for breach of this Agreement.

(b) In the event that Florist, and/or the Principals operate and/or reside in the state of California, it is further understood and agreed that any and all rights previously granted to Florist and the Principals under California Civil Code Section 1542 are hereby expressly waived. California Civil Code Section 1542 reads as follows:

"Section 1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing this release, which if known by him must have materially affected his settlement with the debtor."

(c) Florist and the Principals waive and release any right or benefit that they had or may have had under California Civil Code Section 1542, or any other federal, state or local laws or regulations to the fullest extent that Florist and the Principals may lawfully waive all such rights and benefits. In connection with such waiver and relinquishment, Florist and the Principals acknowledge that they are aware that they may hereafter discover claims or facts in addition to or different from those that they now know or believe to be true with respect to the released items, and the claims relative thereto, which do now exist, may exist, or heretofore have existed between 1-800-Flowers, its Affiliates, and their respective officers, directors, shareholders, employees, agents, attorneys, and each of them, on the one hand, and the Florist and the Principals, on the other hand, with respect to such released items. In furtherance of such intention, the releases given in this Paragraph 13 shall be and remain in effect as full and complete releases of such released items, notwithstanding the discovery or existence of any such additional or different claims or facts relating thereto.

#### 14. Miscellaneous.

(a) Entire Agreement; Waiver. This Agreement represents the entire understanding between the parties and supersedes all other agreements, representations and covenants related to the subject matter hereof. This Agreement may not be modified except by written instrument signed by both parties. This Agreement may be signed in counterparts, including facsimile counterparts. All counterparts shall be construed together and shall constitute one instrument. No failure or delay by either party to exercise, and no course of dealing with respect to, any right of such party regarding an obligation of the other party, shall operate as a waiver thereof, unless agreed to in a writing signed by both parties. Any single or partial waiver of any such obligation of the other party shall not constitute a waiver of any other obligation.

(b) Notices. All notices and demands shall be in writing and shall be served by private overnight delivery, by Express Mail, by Certified Mail - Return Receipt Requested, by email

with proof of transmission, or by facsimile transmission with a confirmed delivery or receipt of transmission, to the parties at the respective addresses first listed above or to the email addresses or facsimile numbers listed below, or such other address, email address, or facsimile number, as a party shall specify to the other in writing and such notice or demand shall be deemed given and received when delivered by courier, email or facsimile, or, if mailed, five (5) business days after the date of mailing.

1-800-Flowers: Fax No.: 1-516-237-6030

1-800-Flowers:Email:  
FloristRelations@1800flowers.com

Florist: Fax No.: \_\_\_\_\_

Florist: Email: \_\_\_\_\_

In addition, an additional copy of any notice or demand from Florist shall also be served upon 1-800-Flowers' General Counsel at the address listed for 1-800-Flowers and also by facsimile to 516-237-6101 or email at mmanley@1800flowers.com.

(c) **No Representations/Limitation of Liability.** FLORIST ACKNOWLEDGES AND AGREES THAT NEITHER 1-800-FLOWERS NOR ANY OF ITS AFFILIATES HAVE MADE ANY PROMISES, REPRESENTATIONS OR WARRANTIES TO FLORIST CONCERNING THE EXTENT TO WHICH FLORIST MAY BENEFIT FROM THE ORDERS THAT MAY BE REFERRED HEREUNDER FOR FULFILLMENT OR OTHERWISE MAY BENEFIT UNDER THIS AGREEMENT. NO GUARANTEE OR ASSURANCE IS MADE TO FLORIST REGARDING THE NUMBER OF ORDERS, IF ANY, OR DOLLAR AMOUNT OF THE ORDERS REFERRED TO FLORIST FOR FULFILLMENT UNDER THIS AGREEMENT, OR AS TO THE AMOUNT OF THE FLORIST COMMISSIONS THAT MAY BE PAID, OR ANY OTHER BENEFIT FLORIST MAY RECEIVE, HEREUNDER. FURTHERMORE, IN NO EVENT SHALL 1-800-FLOWERS OR ANY OF ITS AFFILIATES BE LIABLE TO FLORIST UNDER THIS AGREEMENT OR ANY CIRCUMSTANCES, OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY OR REMEDY WHATSOEVER, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFITS OR LOST BUSINESS (EVEN IF 1-800-FLOWERS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER ARISING FROM A BREACH OF THIS AGREEMENT, OR FOR ANY OTHER REASON WHATSOEVER.

(d) Injunctive Relief. Florist recognizes the unique value and reputation attached to the Licensed Property and the 1-800-Flowers brand and agrees that any non-compliance with the terms of this Agreement will cause irreparable harm and damage to 1-800-Flowers. Florist therefore agrees that in the event of such non-compliance, 1-800-Flowers shall be entitled to both temporary and permanent injunctive relief (without any requirement to post a bond or undertaking) and reasonable attorneys' fees, in addition to any other legal and equitable remedies available to it.



(e) Validity. In the event that a court of competent jurisdiction determines any provision of this Agreement to be invalid, then the invalidity of any such provision shall not affect the validity of the remaining provisions and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in full force and effect pursuant to the terms hereof.

(f) Governing Law and Venue. This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of New York. Any claim directly or indirectly arising out of or relating to this Agreement, or any breach thereof, shall be resolved by the Supreme Court of the State of New York, County of Nassau or the United States District Court in and for the Eastern District of New York. The parties hereby consent that venue for purposes of any action brought in connection with or arising out of this Agreement shall be placed in such courts, and the parties hereby submit to the exclusive jurisdiction of said courts. For the expedited resolution of disputes, the parties hereto agree that all disputes shall be heard by the Court sitting without a jury and the parties **HEREBY WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL**.

(g) No Assignment. Florist's rights and obligations hereunder are personal to Florist and shall not be assigned, mortgaged, transferred or otherwise encumbered by Florist or by operation of law. Any such assignment or transfer in contravention of the foregoing shall be null and void and of no force and effect. Any change in the ownership or change in the legal structure of Florist shall be deemed an assignment. In the event 1-800-Flowers should permit any such assignment or transfer it may, in addition to any and all other conditions it may deem necessary or desirable, require the transferee to execute a new and then current Premier Order Fulfillment Agreement, and any other related agreements. 1-800-Flowers may freely assign this Agreement and/or the benefits hereof, without the consent of the Florist.

(h) Affiliate. "Affiliate" of any person or entity means any other person or entity, directly or indirectly, controlling, controlled by, or under common control with such person or entity.

(i) Relationship. Neither party shall be or be deemed to be an agent, employee, partner, franchisee, franchisor, or joint venturer of or for the other party. Florist is and shall be an independent contractor. Florist shall have no right to bind 1-800-Flowers, transact business in 1-800-Flowers' name or in any manner make any promises or representations on behalf of 1-800-Flowers, except as otherwise specifically provided in this Agreement.

(j) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, including facsimile counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

(k) Survival. The following Sections of this Agreement shall survive any termination or expiration: Sections 2(b), 2(c), and 6 through 14.

(l) Headings. The headings used in this Agreement are for convenience of reference only and are not to affect the

construction of, or to be taken into consideration in interpreting, this Agreement.

(m) Construction. The construction and interpretation of this Agreement shall not be strictly construed against either party.

(n) Agent for Service of Process. 1-800-Flowers' agent in the State of New York authorized to receive service of process is:

New York Department of State  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12231

(o) Prior Agreements. This Agreement supersedes any and all prior agreements the Florist has entered into as it relates to the fulfillment of 1-800-Flowers' orders and any such agreement is understood by the Florist to be terminated. The fulfillment of 1-800-Flowers' orders by Florist is now covered by the terms of this Agreement.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES FOLLOW]***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**800-FLOWERS, INC.**

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

**FLORIST**

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

**PRINCIPALS(s)** as to Sections 2(b), 2(c), 6, 7(b) 8, 9, 10, 12, 13 and 14 of this Agreement:

(1) \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

(2) \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

## EXHIBIT A

### **ORDER FULFILLMENT AGREEMENT REQUIREMENTS AND PERFORMANCE STANDARDS**

#### **Florist Agrees To:**

##### **Orders**

1. Bear sole responsibility for fulfilling all orders, including, without limitation: (i) the packaging and fulfillment of the orders; and (ii) the fulfillment of the orders on a timely basis and in a professional manner.
2. Have capacity to receive and fulfill up to 25 times average daily order volume on the peak day of all major floral holidays, and up to 10 times average weekly order volume on the peak week of all major floral holidays.

##### **Performance Standards**

3. Provide a product and service experience that ensures less than 1.5% of orders have customer complaints.
4. Fill every order to value and according to recipe without requiring a price change.
5. Reject less than 2% of all orders for any reason. If an order must be rejected for any reason, the reject must be submitted in a timely manner.
6. Adhere to the 1-800-Flowers.Com Substitution guidelines.
7. Be open to receive and deliver floral orders on:
  - All major floral holidays (including without limitation, Thanksgiving, Christmas Eve Day, Valentine's Day, Administrative Professionals'/ Professionals' Week, Mother's Day).
  - Monday to Friday: 9:00 am with at least a 3:00 pm cut-off time for same-day deliveries in all servicing zip codes.
  - Saturdays: 9:00 am with at least a 2:00 pm cut-off time for same-day deliveries in all servicing zip codes.
  - Sundays (optional): 9:00 am with at least a 12:00 pm cut-off time for same-day deliveries in all servicing zip codes.

##### **Fresh Floral and Hard Goods**

8. Maintain an adequate inventory of fresh flowers, greens, green and blooming plants, gourmet, fruit, hard goods and other necessary items in order to fill any 1-800-FLOWERS order in accordance with the products listed in the 1-800-Flowers Design Resource Guide (DRG), Design Resource Guide (DRG) Supplements, and the Recipe Updates.
9. Have a monitored flower freshness care system to ensure optimum post-harvest life of flowers.
10. Guarantee the freshness of arrangements for seven (7) days from order delivery date.
11. Purchase codified product at bona fide wholesale prices, including fresh floral, hard goods, and other product programs (such as gift baskets, chocolate, candles, plush, etc.) in sufficient quantities to fill any 1-800-Flowers' orders.
12. Accept automatic shipment of these codified products at bona fide wholesale prices in sufficient quantities to meet order volumes.
13. Provide updates at least every 2 weeks on codified hard good inventory on-hand.
14. Participate in BloomNet's greeting card program and fulfill 1-800-Flowers orders with the appropriate greeting card when such a card is specified in the applicable order.
15. Participate in such other programs as BloomNet may launch from time to time.

##### **Delivery**

16. For orders without a specified Delivery Time Window, deliver every floral order on the scheduled date, prior to 5:00 pm for businesses and 7:00 pm for residences in all servicing zip codes.
17. For orders with a specified Delivery Time Window, deliver every order on the scheduled date and within the start and end time of the specified Delivery Time Window.
18. Use approved 1-800-FLOWERS Licensed Packaging for all floral arrangements.

19. Provide a Delivery Notification for each and every order (100% of the time) electronically via BloomLink or any other system that is directly integrated with BloomLink, on the scheduled delivery date, no later than one (1) hour after the end time of the specified Delivery Time Window on the order, and no later than 7:00 pm for orders without a Delivery Time Window in the time zone of the fulfilling florist. “*Delivery Notification*” means both delivery confirmations and delivery attempt notifications on orders that are successfully delivered and deliveries that are left anywhere or with anyone other than with the intended recipient.
20. Capture proof of delivery on all completed deliveries in the form of a delivery signature from the recipient and/or product photo at the time and place of delivery.
21. When the appropriate technology solution is available, purchase the technology that supports real-time Delivery Notifications, delivery photos and/or signature image capture directly from 1-800-Flowers or its vendor(s) and provide Delivery Notifications, delivery photos, and signature images immediately upon delivery of every 1-800-Flowers order to the recipient.
22. Utilize clean vehicles and clearly identify your shop name on delivery vehicles or use a clearly identifiable delivery service.

**Customer Service**

23. Provide 1-800-FLOWERS any and all assistance requested with reference to any order inquiries.
24. Be responsible for tracking all orders by BloomLink sequence numbers.

**Promotions**

25. Participate in any 1-800-FLOWERS consumer promotions designed to drive additional order volume to Florists (e.g., percentage off or reduced cost promotions for certain products at certain price points) by accepting a to-be-determined lower payout percentage for these orders.



## EXHIBIT C

### FULFILLMENT COMMISSIONS

#### **Fulfillment Commissions**

For the satisfactory performance of Florist's services hereunder and, unless an alternate fixed commission payment has been established by 1-800-FLOWERS for a specific Product or Products, Florist shall receive an amount equal to 80% of the "*gross sales price*" of the orders transmitted by 1-800-Flowers to Florist and which are directly fulfilled by Florist, less the applicable Settlement Processing Fee as set forth on the BloomNet Order Referral Program Schedule, which is posted on Bloomlink, as such schedule may be amended from time to time (the "BloomNet Order Referral Schedule"). The BloomNet Order Referral Schedule is applicable to Florists and orders referred under this Agreement. The term "gross sales price" of the orders shall mean the dollar amount of the merchandise of the orders transmitted to Florist during the preceding calendar month and shall not include money refunded to customers or the amount of any sales taxes or other taxes collected from customers and paid over to governmental authorities or the amount of any service, shipping or handling charges.

Any applicable fixed commission shall be set forth in the 1-800-FLOWERS' Payment Schedule, or other writing designated by 1-800-FLOWERS, as such schedule may be amended from time to time in 1-800-FLOWERS' sole discretion (the "Payment Schedule"). The Payment Schedule, or its equivalent, can be found at <http://bloomlink.net>, or such other location as 1-800-FLOWERS shall designate. Acceptance of orders from 1-800-FLOWERS constitutes Florist's acceptance of the conditions under which the orders were referred, including the designated commission payment.

Any commission payable pursuant to this Exhibit C is defined as the "*Fulfillment Commission*".

Florist shall not be paid any Fulfillment Commission for any order if it is determined, in the sole discretion of 1-800-FLOWERS, that the order was not timely and/or satisfactorily fulfilled by Florist. In addition, Florist shall be solely responsible for the cost of any replacement order delivered to the customer and for any other costs, claims, damages, expenses (including attorneys' fees) and losses resulting directly or indirectly from or pertaining to the original order and the replacement order.

Florist hereby authorizes BloomNet to handle the payment of the Fulfillment Commissions and any other charges or fees consistent with the BloomNet Order Referral Schedule, as such schedule may be amended from time to time.

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT M-2  
FRUIT BOUQUETS ORDER FULFILLMENT AGREEMENT

## ORDER FULFILLMENT AGREEMENT

THIS ORDER FULFILLMENT AGREEMENT (the "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by \_\_\_\_\_ and \_\_\_\_\_ between \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Fulfiller") and **800-FLOWERS INC.**, with its principal place of business located at Two Jericho Plaza, Suite 200, Jericho, New York 11753 ("1-800-Flowers").

**WHEREAS**, 1-800-Flowers desires to contract with certain independently owned and operated businesses with respect to the fulfillment of certain of its orders for fresh fruit products, including fresh fruit arrangements, chocolate-dipped strawberries and related gift products (collectively, "fruit arrangements") for making (including the proper storage of all fruit arrangements and their ingredients), fulfillment and delivery (collectively "fulfillment").

**WHEREAS**, Fulfiller desires to be referred such orders (the "Products" or "orders") and handle the fulfillment of them.

**WHEREAS**, 1-800-Flowers is willing to contract with Fulfiller in connection with the fulfillment of fruit arrangements, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 1-800-Flowers and Fulfiller agree as follows:

### 1. Fulfillment of Orders

(a) During the term of this Agreement, 1-800-Flowers will refer orders to the Fulfiller on a non-exclusive basis for fulfillment; provided that, Fulfiller is able to fulfill them to the satisfaction of 1-800-Flowers. 1-800-Flowers reserves the absolute right to refer orders for fulfillment to other fulfillers and other third parties at any time. No exclusivity is granted under this Agreement or otherwise.

(b) 1-800-Flowers shall handle all customer inquiries with reference to the orders. Fulfiller shall timely render to 1-800-Flowers any and all assistance requested with reference to any such inquiries.

(c) Fulfiller shall bear full responsibility for the fulfillment of all orders referred to Fulfiller by 1-800-Flowers, including, without limitation: (i) the making, packaging and fulfillment of the orders; (ii) the fulfillment of the orders on a timely basis and in a professional manner; (iii) compliance with all applicable federal, state, and local laws, rules and ordinances in the performance of all its duties hereunder, including without limitation, the storage of all Products and Products' ingredients, as well as, the fulfillment of the orders; and (iv) the carrying out of all of Fulfiller's obligations under this Agreement, including without limitation, compliance with the order fulfillment requirements and performance standards set forth in **Exhibit A** attached hereto.

### 2. Grant of Rights.

(a) Subject to the terms and conditions of this Agreement, 1-800-Flowers licenses to Fulfiller a limited, non-exclusive, non-

transferable, non-sublicensable, and revocable license to use, reproduce, and display the trademarks "Fruit Bouquets by 1-800-Flowers", "Fruit Bouquets.com", "Shari's Berries" and select other trademarks or service marks of 1-800-Flowers as determined within the sole discretion of 1-800-Flowers and the recipes, photos and descriptions of the Products (collectively the "Licensed Property") as needed solely for the purpose of fulfillment of the Products in the USA (the "Territory"), and for no other purpose whatsoever. No right, property or interest in the Licensed Property is intended to be given to, or acquired by, the Fulfiller by the execution or performance of this Agreement, except for the limited license granted to Fulfiller under this Section 2.

(b) Except for the express limited license rights granted herein, all right, title and interest in the Licensed Property, including all copyright, trademark, service mark, patent and other rights therein (and all renewals and extensions thereof) and all goodwill associated therewith shall be owned exclusively by 1-800-Flowers. Fulfiller shall use the Licensed Property only to the extent permitted under this Agreement. Fulfiller acknowledges the strength and validity of the Licensed Property and agrees not to (i) alter, modify, amend or change the Licensed Property in any way, (ii) dilute, contest, challenge, or seek to register anywhere the Licensed Property as a trademark, service mark, copyright or the like or any trademark, service mark, copyright or the like confusingly similar to the Licensed Property and any other mark or design, (iii) create a unitary composite mark involving any of the Licensed Property, or (iv) use or seek to register any word, trademark, service mark, trade name, domain name, URL, vanity telephone number, symbol, design or the like that is similar to or that is likely to be confused with any of the Licensed Property. This Section 2(b) shall expressly survive the termination or expiration of this Agreement.

(c) Upon expiration of this Agreement, or earlier termination pursuant to the terms hereof, all rights granted hereunder in the Licensed Property shall automatically revert to 1-800-Flowers for its sole use and disposition with no further obligation whatsoever to Fulfiller or any third party. Upon any such expiration or termination, Fulfiller shall immediately cease all use of the Licensed Property.

### 3. Quality Control.

(a) Fulfiller agrees to maintain a standard of high quality for the Products sold under the Licensed Property and to perform the fulfillment of the Products to the satisfaction of 1-800-Flowers and in accordance with the conditions in **Exhibit A** attached hereto. In addition, Fulfiller agrees that the fulfillment of the Products shall be performed in a manner appropriate for the highest quality products of the type included in the categories of the Products. To monitor Fulfiller's maintenance of the aforementioned standard of quality, Fulfiller shall deliver to 1-800-Flowers, upon request, a reasonable number of samples of the Products for its review. If 1-800-Flowers has any objection to the quality of any of the Products, or any packaging or other materials used in relation thereto, then Fulfiller shall promptly comply with any changes requested by 1-800-Flowers. 1-800-Flowers has the right to approve all Products provided and all related materials used under or in connection with the Licensed Property.



#### 4. Term.

(a) This Agreement shall become effective on the Effective Date and shall expire on the first anniversary of the Effective Date, unless sooner terminated pursuant to Section 4(b) below (the "Initial Term"). This Agreement shall be automatically renewed for successive one (1) year terms ("Additional Terms"), unless either party sends written notice to the other at least thirty (30) days prior to the end of the then current term notifying the other party of its intent not to renew. The Initial Term and any Additional Terms are hereafter referred to as the "Term".

(b) Either party shall have the right to terminate this Agreement, without waiving any other rights or remedies, and without any liability for such termination, upon thirty (30) days prior written notice (but in the case of non-payment, upon ten (10) days prior written notice), if the other party breaches or otherwise fails to perform any of its obligations hereunder, unless the breaching party remedies same within such thirty (30) day period (or in the case of non-payment, such ten (10) day period) and notifies the non-breaching party of such remedy in writing within such period. 1-800-Flowers reserves the right to immediately terminate this Agreement, without waiving any other rights or remedies, and without any liability whatsoever, should Fulfiller (i) damage, in the sole opinion of 1-800-Flowers, the brand or reputation of 1-800-Flowers or any of its affiliates, (ii) use the Licensed Property in violation of this Agreement or otherwise misuse the Licensed Property, (iii) fail to comply with the requirements and standards set forth in Exhibit A, as such exhibit may amended from time to time, (iv) upon the sale or transfer by Fulfiller of all or substantially all of Fulfiller's assets, or a majority of Fulfiller's capital stock or voting securities, or (v) upon any assignment or attempted assignment of this Agreement or any of the rights or obligations hereunder by Fulfiller. In any and all events, either party has the right to terminate this Agreement at any time, with or without cause, and without liability for any such termination, upon thirty (30) days prior written notice.

#### 5. Fulfillment Commission

(a) For the satisfactory performance of Fulfiller's services hereunder, 1-800-Flowers shall pay Fulfiller a fulfillment commission as set forth in Exhibit B attached hereto (the "Fulfillment Commission"). The Fruit Bouquets Pricing Guide, which guide may be amended from time to time in the Company's sole discretion (the "Pricing Guide") also includes certain pricing information for Shari's Berries, which can be found at <http://www.fruitbouquets.com/pricing-guide> or such other location as 1-800-Flowers shall designate in writing. To facilitate payment to the Fulfiller, Fulfiller authorizes BloomNet, Inc. ("BloomNet") to handle the payment of this Fulfillment Commission consistent with BloomNet's then current procedures.

(b) Fulfiller shall not be paid any Fulfillment Commission for any orders delivered to a consumer in replacement of a prior order, if it is determined, in the sole judgment of 1-800-Flowers, that the prior order was not timely and/or satisfactorily fulfilled by Fulfiller. In addition, Fulfiller shall be solely responsible for the cost of any such replacement order and for any other costs, claims, damages, expenses (including reasonable attorneys' fees) and losses resulting directly or indirectly from, or pertaining to, the original order and the replacement order.

#### 6. Protection of the Licensed Property.

(a) Fulfiller agrees to assist 1-800-Flowers in the procurement and maintenance of 1-800-Flowers' rights in the Licensed Property and, without limitation, in connection therewith, Fulfiller agrees to provide samples to 1-800-Flowers as reasonably requested at no charge and to execute and deliver to 1-800-Flowers in such form as may reasonably be requested all instruments (including appropriate applications for registration and assignment) necessary to effectuate copyright, trademark and/or other intellectual property protection for 1-800-Flowers. Fulfiller hereby appoints 1-800-Flowers its attorney-in-fact to execute such instruments on Fulfiller's behalf. The power granted 1-800-Flowers in the preceding sentence is acknowledged by Fulfiller to be coupled with an interest and shall be irrevocable.

(b) Fulfiller agrees to inform 1-800-Flowers promptly of any encroachment or infringement of the Licensed Property in the Territory that comes to the attention of Fulfiller. Any litigation or other action to police the Licensed Property and to abate infringement shall be under the complete control of 1-800-Flowers. 1-800-Flowers may retain any money judgment or settlement in such action. Fulfiller agrees to cooperate fully in any such litigation or action, to the extent necessary in the vigorous prosecution of the matter. 1-800-Flowers shall have the sole right to determine what, if any, actions shall be taken on account of any such infringement or encroachment. 1-800-Flowers has the absolute right to prosecute any such claim in its own name and/or shall have the right to cause Fulfiller to join as a party thereto. Fulfiller shall not have any rights against 1-800-Flowers for damages or for any other remedy by reason of 1-800-Flowers' decision not to prosecute any alleged infringement or encroachment.

#### 7. Fulfiller's Experience.

(a) Fulfiller shall conduct its business in accordance with its own systems and standards. Fulfiller represents and warrants it already has an established business operation confecting and selling products, including, floral, fresh food and/or fruit products, and acknowledges that the fulfillment of 1-800-Flowers' Products would merely be an addition to Fulfiller's preexisting business. Fulfiller acknowledges that 1-800-Flowers has imposed upon Fulfiller only those controls necessary for the proper fulfillment of the orders and to protect the Licensed Property and the 1-800-Flowers, Fruit Bouquets by 1-800-Flowers, Fruitbouquets.com and Shari's Berries brands. Consistent with the foregoing, Fulfiller shall comply with all controls and guidelines relating to the protection of the Licensed Property and the 1-800-Flowers, Fruit Bouquets by 1-800-Flowers, Fruitbouquets.com and Shari's Berries brands, including, without limitation, those pertaining to quality, service, delivery, communications and other standards established by 1-800-Flowers from time to time for the fulfillment of its orders, as further set forth in Exhibit A, which may be amended from time to time.

(b) All employees hired by or working for Fulfiller are and shall remain Fulfiller's employees, and Fulfiller's alone, and shall not, for any purpose, be deemed to be employees of 1-800-Flowers or be subject to 1-800-Flowers' direct or indirect control. Fulfiller acknowledges and agrees that 1-800-Flowers will not have the power to hire or fire Fulfiller's employees. Fulfiller expressly agrees, and will never contend otherwise, that 1-800-Flowers does not directly or indirectly have the power to hire, fire or control any of Fulfiller's personnel. Fulfiller alone shall be solely responsible for

all hiring and employment decisions and functions relating to the Fulfiller's business, including, without limitation, those related to hiring, firing, training, establishing and paying remuneration, compliance with wage and hour requirements, personnel policies, benefits, recordkeeping, supervision and discipline of employees. Fulfiller shall indemnify, defend, reimburse and hold 1-800-Flowers and its Affiliates harmless from any direct and indirect losses, costs and expenses, including reasonable attorneys' fees, arising out of any claim made by or for the benefit of any employee of Fulfiller against 1-800-Flowers and its Affiliates regarding employment decisions and employee functions of the Fulfiller's business, including, without limitation, those relating to hiring, firing, training, wage and hour requirements, record keeping, supervision, and discipline of employees.

#### 8. Representations and Warranties.

(a) Fulfiller further hereby represents and warrants to 1-800-Flowers that (i) it is an entity in good standing in the jurisdiction of its formation and each other jurisdiction in which it conducts business, and has the full right, power and authority to enter into this Agreement and the relationship contemplated herein and to perform its obligations hereunder, (ii) the fulfillment by Fulfiller of the Products shall not violate or infringe upon any rights whatsoever of any third party or any applicable laws or regulations, (iii) the Products (including any storage of all Products and Products' ingredients, but excluding any codified hard goods that are provided to Fulfiller by 1-800-Flowers), the making, fulfillment, packaging, labeling, or other information provided therewith, and all marketing and other materials generated by Fulfiller, if any, will conform in all respects with, and satisfy, applicable national, Federal, State and local laws, orders and regulations and applicable industry guidelines, (iv) Fulfiller has obtained, or will obtain prior to conducting any activities in a particular state or locale of the Territory, all permits, licenses, approvals and certifications necessary to perform its activities hereunder in such state or locale; (v) the Products shall be free from defects in material and workmanship and, with respect to all food Products, are free from contaminants and spoilage and are safe for human consumption; (vi) the Products are and shall be merchantable and fit for the purpose for which they are intended, and shall conform to their applicable specifications; and (vii) it is an independent contractor and not an agent, employee, partner, franchisee or joint venturer of 1-800-Flowers.

#### 9. Indemnification.

(a) Fulfiller, and the Principals as defined in Section 13 below, each agree, jointly and severally, to defend, indemnify and hold harmless 1-800-Flowers and its Affiliates, and their respective officers, directors, shareholders, employees and representatives from, in respect of and against any and all claims, costs, losses, liabilities, expenses (including, without limitation, reasonable attorneys' fees and disbursements), judgments, damages, demands, lawsuits or similar actions or proceedings (each, a "Claim") arising out of a Claim based on (i) the breach or alleged breach of any of Fulfiller's representations, warranties or covenants hereunder, (ii) the performance of Fulfiller hereunder, including, without limitation, the storage of all Products and Products' ingredients, the manufacture, packaging, fulfillment, use or sale of the Products, including, without limitation, all Claims for product liability or product defects, and/or (iii) any claim that Fulfiller is anything other than an independent contractor.

#### 10. Insurance.

(a) Fulfiller shall maintain in full force and effect comprehensive general liability insurance (the "Fulfiller Insurance"), including, without limitation, product liability insurance, covering all Products sold by it as well as any liability on its part in the amount of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The Fulfiller Insurance shall be placed with an insurer or insurers that is rated A or better by A.M. Best rating service or at a comparable rating level by a comparable rating service, duly licensed to carry on the business of insurance in all parts of the Territory and shall name 1-800-Flowers, its Affiliates and their respective officers, directors, employees, representatives or agents as additional insureds, for coverage, including, without limitation, against all forms of liability for death or injury to any individual, and for loss or damage to property. The Fulfiller Insurance shall provide for primary coverage and not contributory coverage, notwithstanding any other insurance that 1-800-Flowers may obtain or maintain. The Fulfiller Insurance shall provide for at least thirty (30) days prior written notice to 1-800-Flowers of cancellation, lapse or material change in the Fulfiller Insurance and Fulfiller shall provide 1-800-Flowers with a certificate of insurance as evidence of the Fulfiller Insurance prior to, or as soon as practicable after, the execution hereof. The Fulfiller Insurance, however, shall be effective as of the Effective Date of this Agreement.

#### 11. Reports.

(a) Fulfiller shall promptly deliver to 1-800-Flowers any reports requested by 1-800-Flowers from time to time.

#### 12. Confidentiality.

(a) Confidential Information. For purposes of this Agreement, "Confidential Information" means all information relating to 1-800-Flowers and its Affiliates and their respective customers and recipients of products, including, without limitation, the Products, recipes, pricing, the terms of this Agreement and the fact that Fulfiller is entering into this Agreement, operations, finances and business, including, without limitation, technical and non-technical data, programs, sales and marketing methods, pricing, processes and financial data, all Customer Data, whether or not reduced to writing.

For purposes of this Agreement, "Customer Data" includes, without limitation, any and all information by, from, or about a "Customer", including, without limitation, a Customer's name, address, email address, telephone number, credit card information and account number(s), order information, purchasing preferences or history, and all other personally identifiable information.

For purposes of this Agreement, "Customer" means all customers of 1-800-Flowers and its Affiliates, including, without limitation, all senders and recipients of products, including, without limitation, the Products from 1-800-Flowers and its Affiliates, visitors and registered users of the 1-800-Flowers Website (as defined below) and the websites of its Affiliates, and any individuals or entities listed in the customer databases of 1-800-Flowers or its Affiliates.

No right, title or interest in the Customer Data is conveyed, transferred, or otherwise licensed to Fulfiller hereunder or otherwise. Accordingly, Fulfiller shall not, during the term or thereafter (x) disclose, sell, lease, share or rent any Customer Data; (y) send any written or verbal communications, including, without

limitation, any emails or promotional or marketing materials, to any Customers, or otherwise solicit or market to any Customers; and/or (z) make any use of the Customer Data, either individually or in an aggregate form without the express prior written approval of 1-800-Flowers, signed by a duly authorized executive officer of 1-800-Flowers. Furthermore, Fulfiller shall abide by all applicable laws in connection with any use of the Customer Data that 1-800-Flowers may permit in writing as provided above. Fulfiller represents and warrants that Fulfiller has read and shall, at all times, comply with all applicable federal, state and local laws, rules and regulations related to privacy and use of Customer Data and with the Privacy Notice posted on the 1-800-FLOWERS.COM website, as the same may be amended from time to time (URL of 1800flowers.com, the "Website").

(b) Fulfiller shall protect the Confidential Information. Fulfiller will not disclose, use or copy any such Confidential Information, except solely as needed in connection with the fulfillment of the Products for 1-800-Flowers, and will not otherwise disclose such Confidential Information. Upon termination or expiration of this Agreement, Fulfiller will promptly deliver to 1-800-Flowers all materials, documents and records in Fulfiller's possession or control, including all copies thereof, related in any way to the Confidential Information, which at all times shall be and remain 1-800-Flowers' sole property.

13. General Release.

(a) In consideration of the promises and the covenants herein, Fulfiller, and the individuals identified below ("Principals"), for themselves and for each of their heirs, successors and permitted assigns, and each of them, hereby releases and forever discharges 1-800-Flowers, its Affiliates, and their respective directors, officers, shareholders, employees, attorneys and agents, and each of them, from any and all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, known or unknown, based on or arising out of any fact, matter, event, act or failure to act that occurred prior to the Effective Date of this Agreement. For the avoidance of doubt, this release does not release any claims for breach of this Agreement.

(b) In the event that Fulfiller and/or the Principals operate and/or reside in the state of California, it is further understood and agreed that any and all rights previously granted to Fulfiller and the Principals under California Civil Code Section 1542 are hereby expressly waived. California Civil Code Section 1542 reads as follows:

"Section 1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing this release, which if known by him must have materially affected his settlement with the debtor."

(c) Fulfiller and the Principals waive and release any right or benefit that they had or may have had under California Civil Code Section 1542, or any other federal, state or local laws or regulations to the fullest extent that Fulfiller and the Principals may lawfully waive all such rights and benefits. In connection with such waiver and relinquishment, Fulfiller and the Principals acknowledge that they are aware that they may hereafter discover claims or facts in addition to or different from those that they now

know or believe to be true with respect to the released items, and the claims relative thereto, which do now exist, may exist, or heretofore have existed between 1-800-Flowers, its Affiliates, and their respective officers, directors, shareholders, employees, agents, attorneys, and each of them, on the one hand, and the Fulfiller and the Principals, on the other hand, with respect to such released items. In furtherance of such intention, the releases given in this Section 13 shall be and remain in effect as full and complete releases of such released items, notwithstanding the discovery or existence of any such additional or different claims or facts relating thereto.

14. Miscellaneous.

(a) Entire Agreement; Waiver. This Agreement represents the entire understanding between the parties and supersedes all other agreements, representations and covenants related to the subject matter hereof. This Agreement may not be modified except by written instrument signed by both parties. This Agreement may be signed in counterparts, including facsimile counterparts. All counterparts shall be construed together and shall constitute one instrument. No failure or delay by either party to exercise, and no course of dealing with respect to, any right of such party regarding an obligation of the other party, shall operate as a waiver thereof, unless agreed to in a writing signed by both parties. Any single or partial waiver of any such obligation of the other party shall not constitute a waiver of any other obligation.

(b) Notices. All notices and demands shall be in writing and shall be served by private overnight delivery, by Express Mail, by Certified Mail - Return Receipt Requested, by email with proof of transmission, or by facsimile transmission with a confirmed delivery or receipt of transmission, to the parties at the respective addresses first listed above or to the email address or facsimile numbers listed below, or such other address, email address, or facsimile number, as a party shall specify to the other in writing and such notice or demand shall be deemed given and received when delivered by courier, email or facsimile, or, if mailed, five (5) business days after the date of mailing.

1-800-Flowers:

Fax No.: 1-516-237-6030;  
Email address: fruitbouquets@1800flowers.com

Fulfiller:

Fax No.: \_\_\_\_\_;  
Email address: \_\_\_\_\_

In addition, an additional copy of any notice or demand from Fulfiller shall also be served upon 1-800-Flowers' General Counsel at the address listed for 1-800-Flowers and also by facsimile to 516-237-6101 or email to mmanley@1800flowers.com.

**(c) No Representations/Limitation of Liability.**  
**FULLILLER ACKNOWLEDGES AND AGREES THAT NEITHER 1-800-FLOWERS NOR ANY OF ITS AFFILIATES HAVE MADE ANY PROMISES, REPRESENTATIONS OR WARRANTIES TO FULFILLER CONCERNING THE EXTENT TO WHICH FULFILLER MAY BENEFIT FROM THE ORDERS THAT MAY BE REFERRED HEREUNDER FOR FULFILLMENT OR OTHERWISE MAY BENEFIT UNDER THIS AGREEMENT. NO GUARANTEE OR**

**ASSURANCE IS MADE TO FULFILLER REGARDING THE NUMBER OF ORDERS, IF ANY, OR DOLLAR AMOUNT OF THE ORDERS REFERRED TO FULFILLER FOR FULFILLMENT UNDER THIS AGREEMENT, OR AS TO THE AMOUNT OF THE FULFILLER COMMISSIONS THAT MAY BE PAID, OR ANY OTHER BENEFIT FULFILLER MAY RECEIVE, HEREUNDER. FURTHERMORE, IN NO EVENT SHALL 1-800-FLOWERS OR ANY OF ITS AFFILIATES BE LIABLE TO FULFILLER UNDER THIS AGREEMENT OR ANY CIRCUMSTANCES, OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY OR REMEDY WHATSOEVER, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFITS OR LOST BUSINESS (EVEN IF 1-800-FLOWERS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER ARISING FROM A BREACH OF THIS AGREEMENT, OR FOR ANY OTHER REASON WHATSOEVER.**

(d) Injunctive Relief. Fulfiller recognizes the unique value and reputation attached to the Licensed Property and the 1-800-Flowers, Fruit Bouquets by 1-800-Flowers, Fruitbouquets.com and Shari's Berries brands and agrees that any non-compliance with the terms of this Agreement will cause irreparable harm and damage to 1-800-Flowers. Fulfiller therefore agrees that in the event of such non-compliance, 1-800-Flowers shall be entitled to both temporary and permanent injunctive relief (without any requirement to post a bond or undertaking) and reasonable attorneys' fees and costs, in addition to any other legal and equitable remedies available to it.

(e) Validity. In the event that a court of competent jurisdiction determines any provision of this Agreement to be invalid, then the invalidity of any such provision shall not affect the validity of the remaining provisions and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in full force and effect pursuant to the terms hereof.

(f) Governing Law and Venue. This Agreement shall be governed by, interpreted, and enforced in accordance with the laws of the State of New York. Any claim directly or indirectly arising out of or relating to this Agreement, or any breach thereof, shall be resolved by the Supreme Court of the State of New York, County of Nassau or the United States District Court in and for the Eastern District of New York. The parties hereby consent that venue for purposes of any action brought in connection with or arising out of this Agreement shall be placed only in such courts, and the parties hereby submit to the exclusive jurisdiction of said courts. For the expedited resolution of disputes, the Parties agree that all disputes shall be heard by the Court sitting without a jury and the Parties HEREBY WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL.

(g) No Assignment. Fulfiller's rights and obligations hereunder are personal to Fulfiller and shall not be assigned, mortgaged, transferred or otherwise encumbered by Fulfiller or by operation of law, without the prior written consent of 1-800-Flowers. Any change in the ownership or change in the legal structure of Fulfiller shall be deemed an assignment. Any assignment or transfer in contravention of the foregoing shall be null and void and of no force and effect. In the event 1-800-

Flowers should permit any such assignment or transfer, it may, in addition to any and all other conditions it may deem necessary or desirable, require the assignee or transferee to execute a new and then current Order Fulfillment Agreement, and any other related agreements. 1-800-Flowers may freely assign this Agreement and/or the benefits hereof, without the consent of the Fulfiller.

(h) Affiliate. "Affiliate" of any person or entity means any other person or entity, directly or indirectly, controlling, controlled by, or under common control with such person or entity.

(i) Relationship. Neither party shall be or be deemed to be an agent, employee, partner, franchisee, franchisor, or joint venturer of or for the other party. Fulfiller is and shall be an independent contractor. Fulfiller shall have no right to bind 1-800-Flowers, transact business in 1-800-Flowers' name or in any manner make any promises or representations on behalf of 1-800-Flowers, except as otherwise specifically provided in this Agreement.

(j) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, including facsimile counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

(k) Survival. The following Sections of this Agreement shall survive any termination or expiration: Sections: 2(b), 2(c), 5(b), and 6 through 15.

(l) Headings. The headings used in this Agreement are for convenience of reference only and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

(m) Construction. The construction and interpretation of this Agreement shall not be strictly construed against either party.

(n) Agent for Service of Process. 1-800-Flowers' agent in the State of New York authorized to receive service of process is:

New York Department of State  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12231

(o) Prior Agreements. This Agreement supersedes any and all prior agreements the Fulfiller has entered into as it relates to the fulfillment of 1-800-Flowers orders for fruit arrangements and any such prior agreement is understood by the Fulfiller to be terminated. The fulfillment of such orders is now covered solely by the terms of this Agreement.

15. Non-compete.

(a) As a material inducement to 1-800-Flowers to enter into this Agreement, Fulfiller agrees that, during the Term of this Agreement, it shall not, directly or indirectly, make, design, create, market, fulfill, distribute or sell any fruit arrangements for or to any third party, except (i) orders Fulfiller receives directly from consumers through one of its normal channels of sale, such as, walk-in, by phone or via the internet, or (ii) for a Fruit Bouquet Franchisee of 1-800-Flowers.com Franchise Co., Inc., or a Fulfiller who has itself executed an Order Fulfillment

Agreement with 1-800-Flowers and which Agreement is in full force and effect at the time of Fulfiller receiving the order for fulfillment.

(b) As a material inducement to 1-800-Flowers to enter into this Agreement, Fulfiller agrees that for a period of two (2) years following the expiration or termination of this Agreement, it shall not, directly or indirectly, make, design, create, market, fulfill, distribute or sell any fruit arrangements for any third party at the business location(s) from which Fulfiller fulfills fruit arrangements or within a radius of twenty-five (25) miles of such business location(s). The restrictions contained in this subsection 15(b) shall no longer apply in the event that 1-800-Flowers terminates this Agreement with Fulfiller although Fulfiller has at all times been in full compliance with all the provisions of this Agreement.

*[BALANCE OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**800-FLOWERS, INC.**

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

Name:

Title:

**FULFILLER**

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

Name:

Title:

**PRINCIPALS(s)** as to Sections 2(b), 7, 8, 9, 12, 13, 14 and 15 of this Agreement:

(1) \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

(2) \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

## **EXHIBIT A**

### **ORDER FULFILLMENT AGREEMENT REQUIREMENTS AND PERFORMANCE STANDARDS**

#### **Fulfiller Agrees To:**

#### **Orders**

1. Bear sole responsibility for fulfilling all orders, including, without limitation: (i) the storage of the Products and the Products' ingredients, the manufacture, packaging and fulfillment of the orders; and (ii) the fulfillment of the orders on a timely basis and in a professional manner.
2. Have capacity to receive and fulfill up to 25 times average daily order volume on the peak day of all major holidays, and up to 10 times average weekly order volume on the peak week of all major holidays.

#### **Performance Standards**

3. Provide a product and service experience that ensures less than 1.5% of orders have customer complaints.
4. Fill every order to value and according to recipe without requiring a price change.
5. Abstain from rejecting any orders for any reason, unless Fulfiller is not a florist and is referred a floral order in error. If Fulfiller is not a florist and is referred a floral order in error, Fulfiller will reject the order no more than 60 minutes after receiving it, within Fulfiller's specified hours of operation.
6. Adhere to the 1-800-Flowers.com Substitution guidelines.
7. Be open to receive and deliver orders on:
  - All major holidays (Thanksgiving, Christmas Eve Day, Valentine's Day, Administrative Professionals'/Secretaries' Week, Mother's Day).
  - Monday to Friday: 9:00 am with at least a 1:00 pm cut-off time for same-day deliveries in all servicing zip codes.
  - Saturdays: 9:00 am with at least a 12:00 pm cut-off time for same-day deliveries in all servicing zip codes.
  - Sundays (optional): 9:00 am with at least a 12:00 pm cut-off time for same-day deliveries in all servicing zip codes.

#### **Fruit Arrangements**

8. Maintain an adequate inventory of fresh fruit, gourmet, fruit, strawberries, chocolate, hard goods and all other necessary food products and other items needed to fulfill any 1-800-FLOWERS orders in accordance with the products listed in the 1-800-Flowers Design Resource Guide (DRG), Design Resource Guide (DRG) Supplements, and the Recipe Update.
9. Guarantee the freshness of fruit arrangements for 24 hours from order delivery.
10. Purchase codified products at bona fide wholesale prices, including fresh fruit, strawberries, chocolate, hard goods, and other products in sufficient quantities to meet order projections for 1-800-FLOWERS orders (Holidays/Seasonal and Core Everyday).
11. Accept automatic shipment of these codified products at bona fide wholesale prices in sufficient quantities to meet order projections.
12. Maintain all fruit and fruit arrangements, including the ingredients comprising each fruit arrangement, in appropriate temperature-controlled environment right up to and including the actual delivery of the Products.
13. Participate in BloomNet's greeting card program and fulfill 1-800-Flowers order with the appropriate greeting card when such a card is specified in the applicable order.
14. Participate in such other programs as BloomNet may launch from time to time.

#### **Delivery**

15. For orders without a specified Delivery Time Window, deliver every order on the scheduled date, prior to 5:00 pm for businesses and 7:00 pm for residences in all servicing zip codes.
16. For orders with a specified Delivery Time Window, deliver every order on the scheduled date and within the start and end time of the specified Delivery Time Window.
17. Use approved 1-800-Flowers Licensed Packaging for all Products.
18. Provide a Delivery Notification for each and every order (100% of the time) electronically via BloomLink or any other system that is directly integrated with BloomLink, on the scheduled delivery date, no later than one (1) hour after the end time of the specified Delivery Time Window on the order, and no later than 7:00 p.m. for orders without a Delivery Time Window in the time zone of the Fulfiller. "Delivery Notification" means both delivery confirmations and delivery attempt notifications on orders that are successfully delivered and deliveries that are left anywhere or with anyone other than with the recipient.
19. Capture proof of delivery on all completed deliveries in the form of delivery signature from the recipient and/or product photo at the time and place of delivery.
20. When the appropriate technology solution is available, purchase the technology that supports real-time Delivery Notifications, delivery photos and/or signature image capture directly from 1-800-Flowers or its vendor(s) and provide Delivery Notification, delivery photos, and signature images immediately upon delivery of every 1-800-Flowers order to the recipient.

21. Utilize clean vehicles and clearly identify Fulfiller's shop name on delivery vehicles or use a clearly identifiable delivery service.

**Customer Service**

22. Provide 1-800-FLOWERS any and all assistance requested with reference to any order inquiries.
23. Be responsible for tracking all orders by BloomLink sequence numbers.

**Promotions**

24. Participate in any 1-800-FLOWERS consumer promotions designed to drive additional order volume to Fulfillers (e.g., percentage off or reduced cost promotions for certain products at certain price points) by accepting a to-be-determined lower payout percentage for these orders.



## EXHIBIT B

### FULFILLMENT COMMISSIONS

#### **Fulfillment Commissions**

For the satisfactory performance of Fulfiller's services hereunder and, unless an alternate fixed commission payment has been established by 1-800-FLOWERS for a specific Product or Products, Fulfiller shall receive an amount equal to 80% of the "gross sales price" of the orders referred by 1-800-Flowers to Fulfiller and which are directly fulfilled by Fulfiller, less the applicable Settlement Processing Fee as set forth on the BloomNet Order Referral Program Schedule, which is posted on Bloomlink, as such schedule may be amended from time to time (the "BloomNet Order Referral Schedule"). The BloomNet Order Referral Schedule is applicable to Fulfiller and orders referred under this Agreement. The term "gross sales price" of the orders shall mean the dollar amount of the merchandise of the orders transmitted to Fulfiller during the preceding calendar month and shall not include money refunded to customers or the amount of any sales taxes or other taxes collected from customers and paid over to governmental authorities or the amount of any service, shipping or handling charges.

Any applicable fixed commission shall be set forth in the 1-800-FLOWERS' Payment Schedule, or other writing designated by 1-800-FLOWERS, as such schedule may be amended from time to time in 1-800-FLOWERS' sole discretion (the "Payment Schedule"). The Payment Schedule, or its equivalent, can be found at <http://bloomlink.net>, or such other location as 1-800-FLOWERS shall designate. Acceptance of orders from 1-800-FLOWERS constitutes Fulfiller's acceptance of the conditions under which the orders were referred, including the designated commission payment.

Any commission payable pursuant to this Exhibit B is defined as the "*Fulfillment Commission*".

Fulfiller shall not be paid any Fulfillment Commission for any order if it is determined, in the sole discretion of 1-800-FLOWERS, that the order was not timely and/or satisfactorily fulfilled by Fulfiller. In addition, Fulfiller shall be solely responsible for the cost of any replacement order delivered to the customer and for any other costs, claims, damages, expenses (including attorneys' fees) and losses resulting directly or indirectly from or pertaining to the original order and the replacement order.

Fulfiller hereby authorizes BloomNet to handle the payment of the Fulfillment Commissions and any other charges or fees consistent with the BloomNet Order Referral Schedule, as such schedule may be amended from time to time.

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT N-1  
BLOOMNET MEMBERSHIP AGREEMENT**



World-Class Florists Worldwide Delivery

FOR INTERNAL USE ONLY:

New Application	<input type="checkbox"/>	National Account	<input type="checkbox"/>
Change of Ownership	<input type="checkbox"/>	Florist to Florist	<input type="checkbox"/>
Branch	<input type="checkbox"/>	BloomNet Only	<input type="checkbox"/>
Reinstatement	<input type="checkbox"/>	Send Only	<input type="checkbox"/>
		Affiliate	<input type="checkbox"/>

Amount Paid	_____
Credit Line	_____
FICO	_____
Other	_____

Date: \_\_\_/\_\_\_/\_\_\_\_\_

Mac Signature \_\_\_\_\_  
BloomNet Code \_\_\_\_\_

Special Instructions:

**APPLICATION FOR MEMBERSHIP**

Official Shop Name		Shop Address (No P.O. Boxes)
City	State/Province	Zip/Postal Code County Country
Business Phone Number	Mobile Number	Toll Free Number
Fax Phone Number	Fax on dedicated line?	
Email Website (FTD, Teleflora or other hosted)		

Mailing Address (if different)	City	State/Province	Zip/Postal Code	County	Country
<b>OWNERSHIP INFORMATION</b>					
Type: Proprietorship	<input type="checkbox"/>	Joint Ownership	<input type="checkbox"/>	Partnership	<input type="checkbox"/>
		Corporation	<input type="checkbox"/>	LLC	<input type="checkbox"/>

Federal Tax ID	State Sales Tax ID	
Owner Name	Owner's Social Security Number	Length of Ownership
Manager	Designer	Years of Design Experience

Corporate Information (If you checked Corp. or LLC, please provide the following information)

Corporation Legal Name	State of Incorporation
Estimated Annual Gross Retail Volume (\$)	Estimated Wire Outs (\$)

**NAMES OF OFFICERS, PARTNERS, & OWNERS**

Mr. <input type="checkbox"/>	Mrs. <input type="checkbox"/>	Miss. <input type="checkbox"/>	Ms. <input type="checkbox"/>	Full Legal Name	Title
Social Security Number				Spouse's First Name	Alternate Phone Number
Home Address		City	State /Province	Zip/Postal Code	
Mr. <input type="checkbox"/>	Mrs. <input type="checkbox"/>	Miss. <input type="checkbox"/>	Ms. <input type="checkbox"/>	Full Legal Name	Title
Social Security Number				Spouse's First Name	Alternate Phone Number
Home Address City State Zip/Postal Code					

**BANK INFORMATION & TRADE INFORMATION [FOR EFT PLEASE PROVIDE VOIDED CHECK & ROUTING NUMBER]**

Bank Name	Phone Number	Checking Account Number	Routing Number (9 digits)
Account Title	Branch Address	City	State Zip/Postal Code

**REFERENCES**

1. Trade Name	Address	City	State	Zip/Postal Code	Phone Number
2. Trade Name	Address	City	State	Zip/Postal Code	Phone Number
3. Trade Name	Address	City	State	Zip/Postal Code	Phone Number

**COMPUTER SYSTEM**

Computer Yes  No  (If yes, please give details below.)

Processor (e.g., 486 Pentium, etc.)	RAM	Hard Drive Size	Free Space	Printer Type: (Inkjet, Laser, Other)
Windows Version (e.g., XP, 98, etc.)	What is your internet connection?			
Dedicated Phone Line	How Many Modems	ISP		

**PAYMENT INFORMATION**

Check #	Credit Card Type	Credit Card Number	Exp. Date
Name on Card	Amount (\$)		

## **BloomNet Membership Agreement**

This BloomNet Membership Agreement ("*Agreement*") is entered into between BloomNet, Inc. and BloomNet Florist (as defined below). BloomNet Inc. (hereinafter referred to as BloomNet" or "BN") and BloomNet Florist, which term also includes those entities that opt in to send or fulfill fruit arrangements (hereinafter referred to as "*BloomNet Florist,*" "*BloomNet Member,*" or "*Florist*") agree as follows:

### **BLOOMNET FLORISTS**

BloomNet Florists must meet and maintain the following standards and/or criteria to qualify to be members. The determination as to whether a florist has met and is maintaining these standards is within the sole discretion of BloomNet.

### **APPEARANCE**

1. Have a clean, attractive and inviting retail storefront.
2. Have design and display areas that are attractively and adequately decorated and merchandised, and that portray a professional image and provide a pleasant shopping experience for the customer.
3. Have a clean and clearly identifiable delivery vehicle.
4. Have neat and courteous personnel.

### **CAPABILITIES**

1. Have a monitored in-house flower freshness care system to ensure optimum post-harvest life of flowers.
2. Open to receive and deliver floral orders on:
  - All major floral holidays (including without limitation, Thanksgiving, Christmas Eve Day, Valentine's Day, Administrative Professionals'/Professionals' Week, and Mother's Day).
  - Monday to Friday: 9:00 am with at least a 3:00 pm cut-off time for same-day deliveries in the time zone where the BloomNet Florist is located.
  - Saturdays: 9:00 am with at least a 2:00 pm cut-off time for same-day deliveries in the time zone where the BloomNet Florist is located.
  - Sundays (Optional): 9:00 am with at least a 12 Noon cut-off time for same-day deliveries in the time zone where the BloomNet Florist is located.
3. Confirm every delivery electronically via BloomLink by 7:00 pm on the scheduled delivery date. In addition, provide delivery information when phone or text (e.g., SMS) inquiries are made.
4. Have a design staff that is knowledgeable of current trends and design techniques and capable of incorporating the principles of design in all arrangements.
5. Be a member of BloomLink system and be responsible for tracking all orders by BloomLink sequence numbers.
6. Have a dedicated business line and an operating facsimile machine as a backup method of order referrals.
7. If fulfilling fruit arrangement orders, have a separate health certified preparation area (which complies with all federal, state and local food safety laws, rules and regulations) and all required licenses, permits and/or certificates for the sale or fulfillment of such products.
8. Maintain an adequate inventory of fresh flowers, greens, plants, fresh fruit, hard goods and other necessary items to fill any 800-FLOWERS, INC. ("*1-800-FLOWERS*") order or the order of one of its affiliates or any other BloomNet Florist.
9. Use protective and attractive packaging for all floral and fruit arrangements.
10. Deliver every order on the scheduled date and time (if time is applicable).

11. Have commercial floral refrigeration and, if delivering or fulfilling fruit arrangements, refrigeration for the fruit products.
12. Credit worthiness.

#### **ATTITUDE**

1. Be cooperative and willing to participate in services, sales and marketing promotions.
2. Contact BloomNet Customer Service prior to any changes of ownership, sale of assets, or assignment or other transfer of assets, receivables, payments or fees.
3. Provide and guarantee the freshest flowers and fruit and superior customer service that exceed the customer's expectations.
4. Guarantee the freshness of floral arrangements for one week and fruit arrangements for 24 hours from order delivery.
5. Fill every order to value, according to product description, recipe and price.
6. Staff with qualified design, retail and delivery personnel who are friendly, professional and able to provide assistance and understand the nature of the floral business.

The above standards under "Appearance", "Capabilities" and "Attitude" do not apply to "Refer Only" florists and numbers 1 & 2 under "Appearance" do not apply to "Affiliate Florists", which are florists that do not have a retail storefront.

#### **GENERAL**

1. Each BloomNet Florist is expected to refer as many orders received as possible to other BloomNet Florists. Referring orders to an acceptable level of referral is a requirement to be a member of BloomNet.
2. BN membership is not transferable. A Change of Ownership (described below) is the only exception to this rule for which BloomNet Member must submit a written request for the transfer to BN, which is dependent upon the new owner (i) receiving approval from the BN Credit Department after submission of all required financial information and documentation, (ii) maintaining the then current standards criteria, (iii) executing the then current BloomNet Membership Agreement and the BloomNet Technologies Systems (BloomNet Technologies is also referred to as "BloomLink") Agreements, and (iv) complying with any and all other conditions that BloomNet may require from time-to-time.
3. Any and all debits and credits sustained against a BloomNet Florist's identification number will be the sole responsibility, obligation and liability of the owner of record for that membership account number.
4. BloomNet Florist agrees and consents that BloomNet Florist's application and membership shall be effective only upon acceptance by BloomNet. BloomNet Florist consents to communication by BloomNet via BloomLink, e-mail, text or regular mail.
5. The current BloomNet Directory is the official record of notice and supersedes all previous publications.
6. BloomNet reserves the right to amend or change the rules, rates, fees, commissions, terms of this and any other agreements with BloomNet Florists, and charges now existing, or as may exist from time to time, at any time. Any amendments or changes shall be effective on the first day of the month following publication or mailing, which includes regular mail, by email or text, unless otherwise indicated. **Continued acceptance of orders after such publication or mailing constitutes acceptance of such amendment or changes.**
7. It is a requirement that all BloomNet Florists (excluding any non-florist entities that opted in to refer or fulfill fruit arrangements only) purchase and openly display the current Floral Selection Guide. BloomNet authorizes and encourages use of the images that are available on the BloomNet Floral Selection Guide CD or online at the BloomNet FTP website.
8. All BloomNet Florists must display the current BloomNet window decal on their shop window or door.

9. BloomNet fees and charges are provided for on the BloomNet Order Referral Program Fee Schedule, as such schedule may be amended from time to time, which schedule is published on BloomLink.
10. BloomNet Florist shall comply with all applicable federal, state and local laws, rules and regulations. BloomNet Florist will not discriminate on the basis of race, color, creed, religion, national origin, age, sex, gender or any other characteristic protected by applicable federal, state, or local laws and ordinances.

#### **CONFIDENTIAL INFORMATION**

*"Confidential Information"* means all information relating to BloomNet, BloomLink, BloomNet Florists, 1-800-FLOWERS.COM, Inc. and its affiliates, and all of their respective customers, recipients or orders, operations, finances and business, including, without limitation, technical and non-technical data, manuals, programs, sales, marketing methods, pricing, customer and recipient names and addresses, phone numbers and any other information whether or not reduced to writing.

BloomNet Florist shall protect all Confidential Information from unauthorized disclosure. BloomNet Florist shall not use or copy the Confidential Information, except in connection with the acceptance, referring, and/or fulfillment of BN orders, and for no other purpose. Upon termination of this Agreement, BloomNet Florist shall promptly return to BN all materials, documents and records in any way related to the Confidential Information.

#### **REFERRING FLORISTS RESPONSIBILITIES**

1. BloomNet Florists will earn a twenty percent (20%) commission on the "gross sales price" of all orders referred to, and fulfilled by, other BloomNet Florists.
2. The referring BloomNet Florist will be responsible for any and all state or local taxes required in connection with an order and for the payment of the same to the appropriate governmental authority.
3. When referring an order, the referring BloomNet Florist will transfer the full dollar amount of the merchandise, including delivery allowance. On 1-800-FLOWERS orders, the full dollar amount of the merchandise, as defined on the product recipe, which includes the delivery allowance, will be referred to the fulfilling florist.
4. It is recommended that the referring BloomNet Florist will communicate to customer that conditions where the order is to be delivered may differ and will influence the quantity and quality of orders. It is also recommended to obtain second and third choices and explain substitutions may be necessary.
5. Should BN determine that the referring BloomNet Florist has violated any of the terms of this Agreement, or the rules, regulations and procedures of BloomNet, the referring BloomNet Florist shall, upon the request of BloomNet, immediately cease referring orders.

#### **RECEIPT OF ORDERS**

1. All BloomNet Florists, as a condition of membership, agree to fill all orders at one hundred percent (100%) of full value in accordance with the applicable product recipe.
2. All BloomNet Florists are required to notify the referring BloomNet Florists immediately if substitutions are required.
3. Except as otherwise set forth in item "4" immediately following below, fulfilling florists are entitled to receive a commission equal to eighty percent (80%) of the "gross sales price" of referred BloomNet orders they fulfill, less the applicable Settlement Processing Fee as set forth on the BloomNet Order Referral Program Fee Schedule, as such schedule may be amended from time to time. The term "gross sales price" shall mean the dollar amount of the merchandise of the orders referred to the BloomNet Florist during the preceding calendar month, which shall not include money refunded to customers or the amount of any sales taxes or other taxes collected from customers and paid to governmental authorities or the amount of any service,

shipping or handling charges. In addition, the BloomNet Order Referral Program Fee Schedule is also applicable to BloomNet Florists.

4. The commissions payable to BloomNet Florists on referred 1-800-FLOWERS orders or those of its affiliates, that are timely and satisfactorily fulfilled, are as set forth in item "3" immediately above, except in those cases where (i) a written order fulfillment agreement between such BloomNet Florist and 1-800-FLOWERS, or its applicable affiliate, is in effect; or (ii) a fixed commission for specific product(s) has been established by 1-800-FLOWERS, which commission will be set forth in the 1-800-FLOWERS Payment Schedule or other writing designated by 1-800-FLOWERS (the "*Payment Schedule*"), as such schedule may be amended from time to time in 1-800-FLOWERS' sole discretion. The Payment Schedule can be found at <http://bloomlink.net>, or such other location as 1-800-FLOWERS shall designate. The commission for products that are timely and satisfactorily fulfilled shall be the commission set forth in the Payment Schedule on the date such product is fulfilled by the BloomNet Florist. In the event there is a written order fulfillment agreement between such BloomNet Florist and 1-800-FLOWERS, then the terms of the order fulfillment agreement shall control. Acceptance of 1-800-FLOWERS orders constitutes BloomNet Florists' acceptance of the conditions under which the orders are referred, including without limitation, the designated commission payment. In addition, the BloomNet Order Referral Program Fee Schedule also is applicable to BloomNet Florists for 1-800-FLOWERS' orders.
5. All use of 1-800-FLOWERS images must be approved in writing by 1-800-FLOWERS before being published in print or online and the BloomNet Florist must enter into the appropriate images license agreement(s) governing such uses. 1-800-FLOWERS and its affiliates reserve the right, each in its sole discretion, to decide which agreement or agreements, if any, it will enter into with any BloomNet Florist.
6. BloomNet cannot guarantee payment of any order reported in excess of ninety (90) days from the delivery date.
7. Duplicate orders reported to BN will be charged back to the reporting BloomNet Florist. A duplicate charge may be assessed by BloomNet.
8. It is a requirement of all BloomNet Florists to accept and deliver orders received through BloomLink, by fax, text or over the phone if, in the case of non-1-800-FLOWERS' orders, the order meets your delivery charge specifications.

#### **SETTLEMENT PROCESSING STATEMENT**

1. BloomNet guarantees payment of the applicable fees and/or commissions for successfully delivered floral and fruit arrangement orders if they are properly reported by any BloomNet Florist listed in the current BN Directory within ninety (90) days from the time the order was delivered.
2. BloomNet statements are posted on BloomLink on or about the 15th day of each month.
3. BloomNet Florist agrees to pay BN on or before the 25th day of each month for all monies (less commission) collected as a referring Florist or any other monies any BloomNet Florist currently owes BloomNet.
4. A monthly membership fee is charged to all BN Florists, plus any additional services, if applicable.
5. Disputes and requests for credits on an order received from 1-800-FLOWERS, or one of its affiliates, or an order received from another BloomNet Florist must be submitted to [customerservice@bloomnet.net](mailto:customerservice@bloomnet.net) within thirty (30) days of receipt of the statement in question.
6. In the event that any BloomNet Florist does not pay in full the current statement by the 25th day of the month, a late fee will be applied once a month until the account becomes current. There will also be an interest rate charge of eight percent (8%) per annum on any past due balance on the following month's statement.
7. Checks returned by the bank will incur a \$35.00 service charge on each item and BN membership may be subject to cancellation.

## **AUTHORIZATION**

BloomNet Florist hereby expressly authorizes BloomNet, 1-800-FLOWERS.COM, Inc. and/or its affiliates to, at the option of any of them, deduct and retain from any fees or commissions due BloomNet Florist, any and all fees, charges, interest or penalties due to BloomNet, 1-800-FLOWERS.COM, Inc. and/or their affiliates, including, but not limited to: (i) franchise fees (if applicable), (ii) marketing fees and co-op advertising fees, (iii) rent payments on shop location(s), (iv) all fees due under the BloomNet Technologies Systems Agreement, (v) all fees due for BloomNet and Napco Products purchased, and (vi) any fees or other charges due 1-800-FLOWERS.COM, Inc. and/or its affiliates under any other agreement that exists between 1-800-FLOWERS.COM, Inc. and/or its affiliates and BloomNet Florist.

## **DIRECTORY**

The current published directory is to be considered the system of record and all information should be reviewed and kept up-to-date with BloomNet. All BloomNet Florists (excluding any non-florist entities who opted in to refer or fulfill fruit arrangements only) shall be listed in the city/town or area where their shop is physically located in accordance with the BloomNet Order Referral Program Fee Schedule. A BloomNet Florist may choose to advertise their shop in additional cities/towns or areas they service. These listings are referred to as “*Extra Listings*” for which the BloomNet Florist shall be charged. BloomNet Florists will be codified with their basic shop information, such as address and phone number. BloomNet Florists also have the option to purchase additional advertising, such as display ads, expanded listings and color ads.

## **ERRORS, OMISSIONS, AND DISPUTES**

Except for disputes and requests for credit as noted in item 5 of the “*Settlement Processing Statement*” section above, any errors or omissions in the BloomNet Settlement Processing statements must be reported to BloomNet in writing within sixty (60) days of the statement date. After sixty (60) days, the statement shall be deemed correct and BloomNet is not liable for errors or omissions. BloomNet Florists may send any such written notifications to: BloomNet Florist Services Department, 7800 Bayberry Road, Jacksonville, FL 32256.

It is requested that all BloomNet Florists attempt to settle any differences regarding the dissatisfaction of the delivery, quality and value of any order between the two BloomNet Florists involved. In the event that the BloomNet Florists fail to agree on a settlement and the BloomNet Florists turn over disposition to BloomNet, the decision made by the BloomNet Customer Service Department shall be binding and final upon all parties. Any request for adjustments must be made within sixty (60) days of receipt of the statement on which the order appears.

## **TERMINATION**

A BloomNet Florist may terminate their membership at any time; provided that, the account is current and the cancellation letter is received in writing by BloomNet. The letter should be signed and dated on company letterhead and sent registered mail to the BloomNet Florist Services Department. Termination by e-mails and fax are not an acceptable format for cancellations and will not be processed. Termination shall become effective only when the Florist’s listing is removed from the BloomNet Directory. BloomNet Florist shall be responsible for all applicable membership dues and fees during this time period. BloomNet Florist is expected to fulfill orders from BloomNet and other BloomNet Florists until cancellation becomes effective. BloomNet Florists are subject to a \$99.00 final statement preparation charge and the account will go into an automatic hold status for 120 days to allow reporting of any orders by referring and receiving BloomNet Florists.

BloomNet reserves the right to cancel and terminate a membership at any time for any reason, including, but not limited to, delinquency of payment and/or non-compliance with terms and conditions of this Agreement and the then current



rules, regulations and procedures of BloomNet, as same may be modified from time-to-time, or for no reason. Any such termination by BloomNet shall be effective upon the date of notification to the BloomNet Florist.

#### **CHANGE OF OWNERSHIP**

It is the responsibility of all BloomNet Florists to notify BloomNet prior to any change regarding ownership of the BloomNet Florist's business, including without limitation, any sale of assets, assignment, grant of a security interest in or other transfer of assets, receivables, payments or fees, and, if seeking approval of the transfer of the membership, then to follow the provisions herein listed under item 2 of the "General" section of this Agreement. It is expressly understood that the membership, along with all rights and privileges thereto, shall not be assigned and are non-transferable, unless expressly approved in writing by BloomNet. In any event, both the BloomNet Florist and the owner of record are and shall remain responsible for any and all fees, charges, or other liabilities related to BloomNet Florist, including without limitation, the code number assigned to the BloomNet Florist, until the change of ownership is approved by BloomNet.

#### **INDEMNIFICATION**

BloomNet Florist shall defend, indemnify and hold harmless BloomNet, 1-800-FLOWERS.COM, Inc. and their affiliates, and their respective officers, directors, agents and employees, from and against any and all loss, cost, expense (including reasonable attorney's fees), claims, damages, and liabilities, however caused, resulting directly or indirectly, from or pertaining to, any acts or omissions of BloomNet Florist, BloomNet, 1-800-FLOWERS.COM, Inc. and their respective affiliates' acts, omissions, and/or performance hereunder. Whenever used in this Agreement, an "affiliate" of 1-800-FLOWERS.COM or 1-800-FLOWERS.COM, Inc., means any entity that is, directly or indirectly, controlling, controlled by, or under common control with 1-800-FLOWERS.COM, Inc.

#### **RELATIONSHIP OF THE PARTIES**

BloomNet Florist is and shall remain an independent contractor and shall have no right to bind BloomNet or 1-800-FLOWERS.COM, Inc., or any of its affiliates. BloomNet Florist shall not transact business in the name of BloomNet, 1-800-FLOWERS.COM, Inc., or any of its affiliates, unless expressly permitted to do so as evidenced in writing signed by an officer of BloomNet and 1-800-FLOWERS.COM, Inc.

#### **TRADEMARKS**

Except as expressly pre-approved in writing signed by an officer of BloomNet and 1-800-FLOWERS.COM, Inc., BloomNet Florist shall not use the trade names, service marks, trademarks, copyrights or other identifying marks of BN and 1-800-FLOWERS.COM, Inc., or its affiliates (collectively, the "Marks") in any manner whatsoever. At all times, the Marks are and shall remain the sole property of 1-800-FLOWERS.COM, Inc., and its affiliates and BloomNet Florist shall not use any trade names, service marks, trademarks, copyrights, telephone numbers or internet domain names similar to the Marks or take any action to interfere with the Marks. In addition, BloomNet Florist acknowledges the strength and validity of the Marks and agrees not to dilute, contest, challenge, or seek to register anywhere as a trademark, service mark, copyright or the like the Marks or any term confusingly similar to any of the Marks.

#### **NO REPRESENTATIONS**

**BLOOMNET FLORIST ACKNOWLEDGES AND AGREES THAT NEITHER BLOOMNET, 1-800-FLOWERS.COM, INC., NOR ITS AFFILIATES HAVE MADE ANY PROMISES, REPRESENTATIONS OR WARRANTIES TO BLOOMNET FLORIST CONCERNING THE EXTENT TO WHICH BLOOMNET FLORIST MAY BENEFIT FROM THIS AGREEMENT OR THE ORDERS THAT IT MAY RECEIVE HEREUNDER. NO GUARANTEES OR ASSURANCES ARE MADE TO BLOOMNET FLORIST WHATSOEVER. BLOOMNET FLORIST ACKNOWLEDGES THAT IT IS AND HAS BEEN ENGAGED IN THE RETAIL FLOWER AND FRUIT ARRANGMENT BUSINESS PRIOR TO ENTERING INTO THIS AGREEMENT AND THAT IT WILL RECEIVE NO MARKETING,**

**TRAINING OR OTHER SUBSTANTIAL ASSISTANCE FROM BLOOMNET, 1-800-FLOWERS.COM, INC., OR ITS AFFILIATES WITH REGARD TO THE OPERATION OF ITS BUSINESS OR ITS OBLIGATIONS HEREUNDER.**

**INJUNCTIVE RELIEF**

BloomNet Member recognizes the unique value and reputation attached to the Marks and agrees that any non-compliance with the terms of this Agreement will cause irreparable harm and damage to BloomNet, 1-800-FLOWERS.COM, Inc. and/or their affiliates. BloomNet Florist therefore agrees that in the event of such non-compliance, BloomNet, 1-800-FLOWERS.COM, Inc., and their affiliates shall be entitled to both temporary and permanent, equitable or injunctive relief in addition to any other legal and equitable remedies available to them, including reasonable attorneys' fees.

**GOVERNING LAW & VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principals. Venue for the purposes of any action brought in connection with or arising out of this Agreement shall be placed in the applicable New York State or Federal courts sitting in Nassau or Suffolk Counties, New York, and the parties hereby submit to the exclusive jurisdiction of said courts. For the expedited resolution of disputes, the BloomNet Florist agrees that all disputes shall be heard by the Court sitting without a jury and BloomNet Florist **HEREBY WAIVES ANY AND ALL RIGHTS TO A JURY TRIAL.**

**PERSONAL GUARANTEE**

The undersigned, individually, and if the undersigned are more than one, each of them, jointly and severally, absolutely and unconditionally guarantee to BloomNet, the prompt payment, when due, of the principal and interest owing on the BloomNet Florist account in question and any and all other obligations or indebtedness owed to BloomNet now existing or hereinafter arising in favor of BloomNet against the BloomNet Florist, or assigned by BloomNet Florist to BloomNet. The undersigned hereby waives all defenses that might constitute a legal or equitable discharge of a guarantor or surety and agrees such guaranty is valid and binding regardless of the reorganization or bankruptcy of the BloomNet Florist. The undersigned hereby waives notice of any default, nonpayment or nonperformance on the part of the BloomNet Florist, as well as any other notice, demand, presentment or protest of any kind. This is an irrevocable continuing guarantee and shall remain in full force and effect irrespective of any interruption or discontinuance of business relations between BloomNet and the BloomNet Florist. This guarantee shall cover the renewal of any obligations or indebtedness guaranteed by this instrument or extension of time for the payment thereof, and shall not be affected by any surrender or release of any security or obligation owed by the BloomNet Florist. The failure of BloomNet to insist on the strict performance on any one or more occasions shall not be deemed to be a waiver. This guarantee shall be governed, construed and enforced in accordance with the laws of the State of New York. By signing below, the undersigned authorizes BloomNet to obtain credit bureau reports from time-to-time on any and all of the undersigned for credit and collections purposes in connection with establishing, maintaining and enforcing BloomNet's credit relationship with the BloomNet Florist.

**BLOOMNET FLORIST BY:**

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EFT AUTHORIZATION**

I authorize 1-800-FLOWERS.COM, Inc. and/or its affiliates to deposit and/or debit automatically to or from my bank account(s) by initiating deposit and/or debit entries to my bank account(s) electronically or by any other commercially accepted method, and I authorize my financial institution(s) to credit the same to my bank account(s) for the deposit of funds for monies due to BloomNet Florist and the debit of funds due to BloomNet, 1-800-FLOWERS.COM., Inc. and/or its affiliates for receivables and other monies due them. This authority will remain in effect until you have received written notice from me of its cancellation in such time and manner as to afford you and the financial institution(s) a reasonable opportunity to act on it.

BLOOMNET FLORIST BY:

Signature: \_\_\_\_\_

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT N-2  
BLOOMNET TECHNOLOGIES SYSTEMS AGREEMENT



## **BloomNet Technologies System Agreement**

This Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2020 is between BloomNet, Inc., a New York corporation with offices at 7800 Bayberry Road, Jacksonville, FL 32256 ("BloomNet Technologies"), and \_\_\_\_\_, with offices at \_\_\_\_\_ ("Customer").

BloomNet Technologies and Customer agree that the following terms and conditions apply to the provision and use of the BloomNet Technologies System, which currently includes Bloomlink, as well as additional available services and systems, including Directory Online, Hosted Websites, BloomNet Business Management System, BloomNet Products and Napco Imports (collectively for the purpose of this Agreement the "System") referenced in this Agreement.

1. **FEES**. The fees for the System can be found on the BloomNet Order Referral Fee Schedule available from BloomNet Technologies, which Schedule can be amended from time to time by BloomNet Technologies.

2. **TERM**. This Agreement is effective when signed by Customer and accepted in writing by BloomNet Technologies ("Agreement Effective Date") and shall continue in effect until terminated in accordance with the provisions of this Agreement (the "Term").

3. **LICENSES**. BloomNet Technologies hereby grants to Customer a personal, non-exclusive, non-transferable, limited license during the term of this Agreement to use all software, documentation and copyrighted content provided in or in connection with the System or Services ("Licensed Material"), if any, which may be furnished to Customer under this Agreement. Customer agrees to ensure that Customer and any Users of all Licensed Material hereunder comply with the terms and conditions set forth in this Agreement. A "User" is defined as any person or entity that accesses or attempts to access the System. BY ACCESSING THE SYSTEM OR ANY PORTION THEREOF, THE CUSTOMER AND USER AGREE TO BE BOUND BY, AND ARE BOUND BY, THE TERMS OF THIS AGREEMENT AND THE USER AGREEMENT AS ATTACHED AS **EXHIBIT A**, WHICH MAY BE AMENDED FROM TIME TO TIME. BloomNet Technologies reserves the right from time to time to modify, substitute for or add additional software, documentation and content, which shall be deemed to be Licensed Material for the purposes of this Agreement and subject to the terms of this Agreement. Customer also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive source code from the System or any related software. Customer shall take all steps reasonably necessary to preserve or protect the confidentiality of the Licensed Materials and the proprietary interest of BloomNet Technologies and its Licensors therein. The Licensed Material shall not be reproduced or copied in whole or in part, shall not be removed from the United States, and shall be returned to BloomNet Technologies at Customer's expense at the conclusion of the Term of this Agreement. In addition, to the extent Licensed Material includes software or documentation provided by any third party pursuant to a license ("Third Party Material"), Customer agrees, as a condition to the right to use such Third Party Material, to abide by the terms and conditions of said licenses (including such additional User terms and conditions that shall be required by such license), to ensure that any Users abide by same and Customer shall be bound by such terms and conditions by virtue of its execution of this Agreement. Customer hereby acknowledges that it has acquired no rights in or to the System, Services, or Licensed Material, except for the limited license specifically set forth in this Agreement. Without in any way limiting the foregoing, Customer agrees to use any and all software and hardware that may be required, from time to time, to properly operate the System and shall accept and promptly use all updates received from BloomNet Technologies. Customer agrees that the System will be configured pursuant to the requirements of BloomNet Technologies, without any non-operating system software. In addition, the System must be configured to print to a physical printer only and any configuration that intercepts and/or redirects the printout into a third-party program is strictly prohibited.

## **4. CUSTOMER'S RESPONSIBILITIES**

(a) Customer shall obtain and maintain the necessary hardware to interface with the System and shall connect Customer's Computer System to the internet via an internet service provider upon the execution of this Agreement. Once Customer has connected Customer's Computer System to the System via the internet, Customer shall maintain Customer's Computer System online with the System during normal business hours (minimum of 9:00 a.m. - 5:00 p.m., local time, on each business day, with extended hours during holiday periods) and to immediately advise BloomNet Technologies if the connection is discontinued. The Computer System minimum requirements may change from time to time and Customer shall modify its Computer System to meet the then current minimum requirements within thirty (30) days of notification by BloomNet Technologies.

(b) Customer will ensure that its employees who use the System, or any portion thereof, comply with the terms of this Agreement, the User Agreement and any other rules or provisions governing the use of the System. In addition, Customer shall be responsible for, and shall defend, hold harmless and indemnify BloomNet Technologies and its Affiliates and their respective officers, directors, employees and agents from and against any and all claims, losses, and expenses (including attorneys' fees and expenses) arising from, or related to, the use of the System by Customer and any of its employees who use the System.

(c) Customer will timely pay all fees and charges due hereunder.

(d) Customer shall limit access to the System and use of the Services only for Customer's legal business purposes. Customer is entirely liable for all activities conducted through Customer's Computer System and for the content of any communications using the System, or for any use of the Services, by Customer or any User. Customer agrees that it and any User will use the System and the Services in compliance with any applicable user manual and shall not use the foregoing for illegal purposes, to violate the rights of any third party or BloomNet Technologies, or its Affiliates, or to interfere with or disrupt the System, other Users, Services or equipment. Violations of the foregoing by Customer or any User may result in removal of access to the System and/or Services and termination of this Agreement.

(e) Customer shall limit access to the System and the use of the Services to its authorized employees who will have agreed to the restrictions contained herein for Customer's own legal business purposes. Customer shall not provide access to or sell the Services or access to the System to any third party. Customer is not authorized to act as an agent of BloomNet Technologies in any way.

(f) Customer shall implement security procedures necessary to limit access to the System to Customer's authorized employees and, to the extent deemed necessary by Customer, to maintain a procedure external to the System for reconstruction or retrieval of lost or altered files, data or programs.

(g) Subject to Customer's compliance with this Agreement, BloomNet Technologies will provide the Services in such a manner as to interface with Customer's Computer System. However, BloomNet Technologies may from time to time modify, remove or supplement features of the System and the Services as provided to Customer under this Agreement. BloomNet Technologies may, and reserves the right to, from time to time, change, modify or update this Agreement and the User Agreement and any such changes shall take effect thirty (30) days after notice to Customer and Customer's continued use thereafter shall constitute Customer's acceptance of all such changes, modifications or updates.

(h) The pricing, terms and conditions of this Agreement are proprietary information of BloomNet Technologies. Customer shall use a reasonable



degree of care (in no event less than the same degree of care as it uses for its own proprietary information) to prevent the unauthorized disclosure or use of such proprietary information.

(i) Customer shall, at all times, maintain in good working order, Customer's Computer System in compliance with the terms of this Agreement. Without limiting the foregoing, Customer shall keep Customer's Computer System in a suitable operating environment consistent with the manufacturers' environmental requirements and will not install the same in any area in which it may be susceptible to accidental spills or other damage.

(j) Except for hardware purchased by Customer, for which Customer has paid in full, Customer shall not take or fail to take any action that may result in a lien being placed against any Licensed Material or against any software or hardware components supplied by BloomNet Technologies or supplied by any third party pursuant to this Agreement.

(k) Some or all of the software or hardware components may be owned by a third party from whom BloomNet Technologies leases ("Lessor") or licenses ("Licensor") same in order to rent or license same to Customer. In such event, Customer's rights under this Agreement to use and possess any such software or hardware components owned or licensed by any third party is specifically and expressly subject to and subordinate to BloomNet Technologies' lease or license with such third party.

(l) Customer will comply with all applicable federal, state, local and other laws, regulations, rules, and ordinances applicable to the provision and use of the System and the Services under this Agreement, including, but not limited to, laws regarding transmission of technical data that is exported from the United States using the System.

(m) Customer shall defend, indemnify and hold harmless BloomNet Technologies, BloomNet Technologies' Affiliates, and their respective officers, directors, shareholders and employees, Lessors, Lessors, telecommunications providers, content providers, and third party providers, from and against all claims, losses, liabilities, costs, expenses (including reasonable attorneys fees) and damages whatsoever, whether or not arising out of third party claims and regardless of the form of action, whether in contract, tort, strict liability or otherwise, concerning or relating to: (i) any noncompliance by Customer or Users with any provisions of this Agreement, including, without limitation, the schedules and exhibits attached hereto and the User Manual; (ii) negligent acts or omissions by Customer or Users; (iii) the content of any communications of Customer or Users. BloomNet Technologies reserves the right, at its option, and at Customer's expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer hereunder.

## 5. BILLING PAYMENT.

(a) Customer shall pay BloomNet Technologies, or its designee, all charges and fees due under this Agreement, without deduction or set-off. The fees due under this Agreement are provided for in Section 1 above. Invoices will be issued monthly by mail or electronically via the System and shall be payable by Customer within thirty (30) days of the invoice date, or as otherwise provided pursuant to BloomNet Technologies then current process. All payments shall be mailed to the address stated on the invoice or as otherwise designated by BloomNet Technologies. In addition to the fees provided for in Section 1 hereof, Customer agrees to pay any sales, use, value-added, personal property or other governmental tax or levy imposed on goods or services billed to Customer. In addition to any other remedies available to BloomNet Technologies, in the event any payment is not made within said thirty (30) day period, then interest shall accrue on the unpaid balance at the rate of one and one-half percent (1.5%)(or the highest rate permitted by law, whichever is lower), per month until fully paid.

(b) Notwithstanding anything to the contrary in this Section 5, the Service shall not be activated and billing shall not begin until the completion by BloomNet Technologies to its satisfaction of a credit check of Customer, which Customer hereby authorizes be conducted. Customer agrees to defend, indemnify and hold BloomNet Technologies harmless from and

against any and all interest, penalties and other liabilities of any nature arising out of or in connection with Customer's failure to timely pay any and all taxes or file returns with respect thereto.

(c) BloomNet Technologies may, at any time and from time to time, increase any fees provided for hereunder upon not less than thirty (30) days prior written or electronic notice to Customer.

(d) Customer is solely responsible for all telecommunication/internet access charges and any other charges from Customer's telephone and telecommunications providers; including, without limitation, usage charges and any charges incurred for installing and maintaining any telephone or communications lines.

## 6. OWNERSHIP.

(a) Ownership of the System, the Services and the Licensed Material shall at all times remain with BloomNet Technologies and its Lessors. This Agreement conveys to Customer the limited right to access and use the System, the Services and the Licensed Material in accordance with the terms of this Agreement only and no other rights in the System, the Services and the Licensed Material are conveyed to Customer by this Agreement. The Customer shall not remove from the System, the Services and any Licensed Material any markings or proprietary notices placed thereon by BloomNet Technologies, its Affiliates, or its Lessors. User passwords are the property of BloomNet Technologies and may be deleted or replaced by BloomNet Technologies.

(b) Customer shall promptly supply to the satisfaction of BloomNet Technologies such Uniform Commercial Code Financing Statements and other documents that BloomNet Technologies may request to evidence and protect the title to and ownership interest of BloomNet Technologies, its Lessors and Lessors and assigns in any hardware sold to Customer by BloomNet Technologies for which Customer has not paid in full.

## 7. WARRANTY AND LIMITATION OF LIABILITY.

**(A) FOR PURPOSES OF THIS SECTION 7, BLOOMNET TECHNOLOGIES, INCLUDES BLOOMNET TECHNOLOGIES, ANY AFFILIATED, PARENT AND SUBSIDIARY ENTITIES OF BLOOMNET TECHNOLOGIES, ANY SUB-CONTRACTORS AND SUPPLIERS OF THE FOREGOING, ANY THIRD PARTY LICENSORS AND LESSORS, AND THE DIRECTORS, EMPLOYEES, OFFICERS, AGENTS, SUB-CONTRACTORS AND SUPPLIERS OF ALL OF THEM.**

**(B) BLOOMNET TECHNOLOGIES MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, ANY SERVICES UNDER THE SYSTEM, ANY SOFTWARE, HARDWARE, OR OTHER EQUIPMENT PROVIDED UNDER THIS AGREEMENT AND BLOOMNET TECHNOLOGIES EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.**

**(C) FOR HARDWARE AND EQUIPMENT SOLD BY BLOOMNET TECHNOLOGIES TO CUSTOMER HEREUNDER, BLOOMNET TECHNOLOGIES MAKES NO WARRANTY OR GUARANTEE AS TO SAME, EXPRESS OR IMPLIED, AND CUSTOMER SHALL LOOK SOLELY TO THE MANUFACTURER OF ANY SUCH HARDWARE AND EQUIPMENT FOR ANY CLAIMS CUSTOMER MAY HAVE REGARDING SAME.**

**(D) CUSTOMER ASSUMES TOTAL RESPONSIBILITY AND RISK FOR USE OF THE SYSTEM AND THE SERVICES, AND BLOOMNET TECHNOLOGIES AND ANY THIRD PARTIES WHO CONTRIBUTE TO THE SYSTEM SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS, OR LOST REVENUES, EVEN IF**



BLOOMNET TECHNOLOGIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. BLOOMNET TECHNOLOGIES ALSO SHALL NOT BE LIABLE FOR ANY DAMAGE A CUSTOMER MAY SUFFER ARISING OUT OF OR RELATING TO: SERVICE INTERRUPTIONS, INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR SYSTEMS PROVIDED BY CUSTOMER OR THIRD PARTIES, OR, UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S OR USERS' APPLICATION, DATA PROGRAMS, INFORMATION (TRANSACTIONAL AND OTHERWISE), SYSTEM, COMPUTER SYSTEM OR SYSTEMS TO OR THROUGH ACCIDENT, FRAUDULENT MEANS OR ANY OTHER METHOD, BY CUSTOMER, USERS OR THIRD PARTIES. BLOOMNET TECHNOLOGIES DOES NOT GUARANTEE THAT CUSTOMER OR USERS WILL BE ABLE TO ACCESS THE SERVICE AT A TIME OR LOCATION OF THEIR CHOOSING, OR THAT IT WILL HAVE ADEQUATE CAPACITY FOR THE SERVICE AS A WHOLE OR FOR PARTICULAR PRODUCTS. IN ANY INSTANCE INVOLVING PERFORMANCE OR NONPERFORMANCE BY BLOOMNET TECHNOLOGIES WITH RESPECT TO SERVICES PROVIDED HEREUNDER, CUSTOMER'S AND USERS' SOLE REMEDY (IN THE AGGREGATE) SHALL BE THE RECOVERY OF AMOUNTS PAID BY CUSTOMER TO BLOOMNET TECHNOLOGIES UNDER THIS AGREEMENT DURING THE PREVIOUS THREE (3) MONTHS (NOT INCLUDING ORDER PROCESSING OR TRANSACTION FEES). BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, BLOOMNET TECHNOLOGIES' LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. BLOOMNET TECHNOLOGIES DOES NOT ENDORSE, WARRANT OR GUARANTEE ANY PRODUCT OR SERVICE OFFERED THROUGH THE SYSTEM, EXCEPT AS MAY BE EXPRESSEDLY PROVIDED FOR HEREIN.

(E) THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION 7 SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, AND SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

(F) THE SYSTEM IS PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS AND BLOOMNET TECHNOLOGIES DOES NOT WARRANT THAT IT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. BLOOMNET TECHNOLOGIES SHALL NOT BE RESPONSIBLE FOR: (i) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CUSTOMER, ITS EMPLOYEES, AGENTS, USERS, SUBCONTRACTORS, OR SUPPLIERS; (ii) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS; (iii) INABILITY OF CUSTOMER TO ACCESS OR INTERACT WITH ANY OTHER SERVICE PROVIDER THROUGH THE INTERNET OR OTHER COMMUNICATIONS NETWORKS, OTHER SYSTEMS OR USERS THAT ARE ACCESSIBLE THROUGH THE INTERNET OR OTHER COMMUNICATIONS NETWORKS, OR THE INFORMATIONAL OR COMPUTING RESOURCES AVAILABLE THROUGH THE INTERNET OR OTHER COMMUNICATIONS NETWORKS; (iv) INTERACTION WITH OTHER SERVICE PROVIDERS, SYSTEMS, USERS OR INFORMATIONAL OR COMPUTING RESOURCES THROUGH THE INTERNET OR OTHER COMMUNICATIONS NETWORKS; (v) SERVICES PROVIDED BY OTHER SERVICE PROVIDERS; (vi) USE OF ANY THIRD PARTY SOFTWARE OR HARDWARE COMPONENTS AND/OR SYSTEM; (vii) CUSTOMER'S FAILURE TO USE THE SYSTEM OR ANY SERVICES PROVIDED UNDER THE SYSTEM IN ACCORDANCE

WITH ANY MANUALS OR INSTRUCTIONS PROVIDED BY BLOOMNET TECHNOLOGIES; (viii) PERFORMANCE IMPAIRMENTS CAUSED ELSEWHERE ON THE INTERNET OR OTHER COMMUNICATIONS NETWORKS; OR (ix) USE OF THE SYSTEM OR ANY SERVICES AVAILABLE UNDER THE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY SOFTWARE OR HARDWARE COMPONENT THEREOF, IN A MANNER CONTRARY TO THE TERMS OF THIS AGREEMENT OR THE USER AGREEMENT.

(G) WITHOUT LIMITING ANY OTHER PROVISION OF THIS SECTION 7, BLOOMNET TECHNOLOGIES DOES NOT SUPPORT OR ASSUME, AND HEREBY DISCLAIMS, ANY RESPONSIBILITY WHATSOEVER FOR THE SELECTION, USE, AND CONSEQUENCES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA (TRANSACTIONAL OR OTHERWISE), OF ANY THIRD PARTY COMPONENTS AND/OR A THIRD PARTY SYSTEM AND THEIR COMPATIBILITY WITH THE SYSTEM. CUSTOMER HEREBY ACKNOWLEDGES AND AGREES THAT CUSTOMER ASSUMES FULL AND TOTAL RESPONSIBILITY FOR SELECTION, USE AND CONSEQUENCES OF ANY THIRD-PARTY COMPONENTS AND/OR SYSTEM AND FOR ANY IMPACT ON SUCH COMPONENTS OR SYSTEM ON CUSTOMER'S COMPUTER SYSTEM, THE SYSTEM AND/OR ANY OTHER SYSTEM OR FACILITY OF CUSTOMER.

(H) WITHOUT LIMITING ANY OTHER PROVISION OF THIS SECTION 7, CUSTOMER SHALL BE RESPONSIBLE FOR AND BLOOMNET TECHNOLOGIES SHALL NOT HAVE ANY RESPONSIBILITY FOR INCOMPATIBILITY BETWEEN SOFTWARE, MODIFICATIONS OR UPDATES PROVIDED BY BLOOMNET TECHNOLOGIES FOR CUSTOMER'S COMPUTER SYSTEM OR CHANGES IN THE SYSTEM PROVING INCOMPATIBLE WITH CUSTOMER'S COMPUTER SYSTEM OR WITH ANY THIRD PARTY COMPONENTS AND/OR SYSTEM, NOR SHALL BLOOMNET TECHNOLOGIES BE LIABLE IF SUCH UPDATES CORRUPT ANY THIRD PARTY COMPONENTS AND/OR SYSTEM OR DATA GENERATED OR USED IN ANY THIRD PARTY COMPONENTS AND/OR SYSTEM OR TO RENDER ANY THIRD PARTY COMPONENTS AND/OR SYSTEM INOPERABLE.

(I) BLOOMNET TECHNOLOGIES DISCLAIMS ALL LIABILITY FOR AND CUSTOMER AGREES THAT BLOOMNET TECHNOLOGIES SHALL NOT BE LIABLE FOR FAILURE OF OR DELAY IN TRANSMISSION OF ORDERS OR LOSS OF ORDERS OR ANY TRANSACTIONAL INFORMATION RESULTING FROM SYSTEM MALFUNCTION, DISRUPTION OF CARRIER LINES, LOSS OF POWER, NATURAL DISASTERS OR ANY AND ALL CAUSES REASONABLY BEYOND BLOOMNET TECHNOLOGIES' CONTROL.

(J) YOU ACKNOWLEDGE THAT BLOOMNET TECHNOLOGIES CANNOT, AND DOES NOT INTEND TO, SCREEN COMMUNICATIONS IN ADVANCE FOR ACCURACY OR CONFORMANCE TO THIS AGREEMENT OR ANY LAWS. HOWEVER, BLOOMNET TECHNOLOGIES MAY ELECT, AT ITS OWN DISCRETION, TO MONITOR SOME, ALL, OR NONE OF THE SYSTEM'S AREAS FOR ADHERENCE TO THE AGREEMENT. ACCORDINGLY, YOU ACKNOWLEDGE THAT NEITHER BLOOMNET TECHNOLOGIES, ANY OF ITS AFFILIATES, NOR ANY THIRD PARTIES WHO CONTRIBUTE TO THE SYSTEM SHALL ASSUME OR HAVE ANY LIABILITY FOR ANY ACTION OR INACTION BY BLOOMNET TECHNOLOGIES, OR ITS AFFILIATES, WITH RESPECT TO ANY CONTENT ON THE SYSTEM. ANY CONDUCT BY A CUSTOMER OR USER THAT IN BLOOMNET TECHNOLOGIES' SOLE DISCRETION RESTRICTS OR INHIBITS ANY OTHER CUSTOMER, USER, PERSON OR ENTITY FROM USING OR ENJOYING THE SYSTEM SHALL ENTITLE BLOOMNET TECHNOLOGIES TO IMMEDIATELY TERMINATE THIS



**AGREEMENT WITHOUT NOTICE. YOU AGREE TO USE THE SYSTEM ONLY FOR LAWFUL PURPOSES, AND TO ENSURE THAT USERS USE THE SYSTEM IN COMPLIANCE WITH THIS AGREEMENT AND THE USER AGREEMENT.**

**(K) BLOOMNET TECHNOLOGIES RESERVES THE RIGHT TO PROTECT ITS CUSTOMERS AND BLOOMNET TECHNOLOGIES FROM OFFENSIVE E-MAIL COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO BLOCK MASS E-MAIL SOLICITATIONS, OR "JUNK E-MAIL".**

**(L) YOU ALSO AGREE AND ACCEPT THAT AS NEW PRODUCTS AND SERVICES BECOME AVAILABLE ON OR THROUGH THE SYSTEM, YOUR USE OF THESE PRODUCTS OR SERVICES IS SUBJECT TO THIS AGREEMENT. FAILURE TO ABIDE BY THESE TERMS AND CONDITIONS MAY RESULT IN TERMINATION OF THIS AGREEMENT.**

#### **8. TERMINATION.**

(a) Each of BloomNet Technologies and Customer shall have the absolute right to terminate this Agreement for any reason upon thirty (30) days prior notice to the other party.

(b) BloomNet Technologies may terminate this Agreement at any time immediately upon giving notice if Customer (i) fails to pay any outstanding charges within ten (10) days of when due, (ii) fails to perform or observe any material term or condition of this Agreement relating to the content of any communications by Customer or any User, or interferes with, disrupts, or otherwise improperly utilizes the System, or violates any provision of this Agreement concerning the intellectual property rights of BloomNet Technologies or others, (iii) fails to perform or observe any other material term or condition of this Agreement within fifteen (15) days after BloomNet Technologies sends written notice, including electronic notice, to Customer of such failure, or (iv) if Customer ceases doing business as a going concern or files or has filed against it any petition in bankruptcy or any state insolvency law, has a receiver appointed for it or its property, or commits an act of bankruptcy, becomes insolvent, makes a consignment for the benefit of creditors or offers a composition or extension of any of its indebtedness. If Customer repeats a violation with respect to which it has been notified by BloomNet Technologies pursuant to subpart (iii) above, BloomNet Technologies may terminate this Agreement without advance notice. Upon any termination, Customer shall be liable for all charges incurred as of the date of termination.

(c) If BloomNet Technologies fails to perform or observe any material term and condition of this Agreement, Customer may terminate this Agreement provided Customer gives to BloomNet Technologies written notice specifying the nature and extent of any such alleged breach by BloomNet Technologies and BloomNet Technologies fails to cure said alleged default within thirty (30) days after receipt of written notice from Customer.

(d) Upon termination or expiration of this Agreement for any reason, Customer shall (i) immediately cease using the System and all Licensed Material; (ii) within five (5) days of such termination or expiration, return to BloomNet Technologies, at Customer's sole cost and expense, all Licensed Material and software, manuals and other written materials therefore and shall delete and destroy all copies of the Licensed Material installed on the Computer System or otherwise in its or any User's possession; and (iii) within seven (7) days, return to BloomNet Technologies, at Customer's sole cost and expense, all BloomNet Technologies supplied hardware properly packaged in accordance with shipping instructions received from BloomNet Technologies, unless Customer has paid the purchase price in full for same. If BloomNet Technologies determines upon receipt of any hardware returned by Customer to BloomNet Technologies that such hardware has been damaged by abuse, misuse, improper packing or use in a manner other than permitted by this Agreement, BloomNet Technologies shall be entitled to the then reasonable costs of repair and replacement of such hardware, as determined by BloomNet Technologies, and Customer shall be liable for and shall promptly pay to BloomNet Technologies all such costs and charges related to same.

(e) Termination or expiration of this Agreement shall not extinguish any right or obligation of either party accruing prior to the termination or expiration of this Agreement, including, without limitation, the obligation to pay any charges accruing under this Agreement. Moreover, the provisions of paragraphs 4(h), 4(j), 4(l), 4(m), 5(a), 5(b), 5(d), 6, 7, 8(d), 8(e), 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(i), and 9(k), and the parties' rights and obligations thereunder, together with all other limitations of liability contained herein shall survive the expiration or termination of this Agreement.

#### **9. MISCELLANEOUS PROVISIONS.**

(a) This Agreement shall be construed and governed by the laws of the State of New York without regard to its choice of law rules.

(b) BloomNet Technologies and Customer agree to submit to binding arbitration for resolution of any dispute arising out of or in connection with this Agreement. Arbitration shall be held in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and the dispute will be heard by a sole arbitrator selected by the parties or by the American Arbitration Association. Arbitration shall be held at the office of the American Arbitration Association located in Nassau County, New York, or, in the event no such office exists in Nassau County, New York, then the arbitration shall be held in an office of the American Arbitration Association in New York, New York. Judgment upon any arbitration award rendered may be entered in any Court having jurisdiction thereof. The arbitrator shall not limit, expand or modify the terms of this Agreement nor award damages in excess of compensatory damages permitted under this Agreement, and each party waives any claim to such excess damages. The arbitrator shall not have any ability to award any equitable remedies and shall be limited to remedies available at law. Each party shall bear its own expenses (including attorneys' fees) and share equally all costs and fees of the arbitration. The content and result of the arbitration shall be held in confidence by all participants.

(c) Notwithstanding anything to the contrary contained in Section (b) above, the Parties agree that irreparable harm and damage would occur if there is any breach, or threatened or attempted breach by Customer or any User of this Agreement and that in addition to any other remedies that may be available (all remedies being cumulative) to BloomNet Technologies, BloomNet Technologies will be entitled to obtain equitable relief, including specific performance and injunctive relief, restraining any such breach or any further, attempted or threatened breaches, of such obligations without the necessity of posting any bond or showing any damages, and the Parties hereby irrevocably consent to the exclusive jurisdiction of the Supreme Court of the State of New York, County of Nassau, for any such action or proceeding.

(d) Customer shall not publish or use any advertising, sales promotions, press releases or other publicity that use the name, logo, trademarks or service marks of BloomNet Technologies, its Affiliates or any third parties who contribute to the System without the prior written approval of BloomNet Technologies, its Affiliates or any such third party provider.

(e) Nothing in this Agreement shall create or vest in Customer any right, title, or interest in the System and/or Licensed Materials, other than the right to use the System and/or Licensed Materials under the terms and conditions of this Agreement. This is the entire Agreement between the parties with respect to the System and Services provided hereunder and supersedes all prior agreements, proposals, representations, statements or understandings, whether written or oral, concerning the System and Services. No change, modification, or waiver of any of the terms of this Agreement shall be binding unless included in a written agreement and signed by both parties.

(f) If any portion of this Agreement is found to be invalid or unenforceable, the remaining portions shall remain in effect and each such portions of this Agreement shall be valid and shall be enforced to the full extent permitted by law.



(g) CUSTOMER MAY NOT ASSIGN ANY OF CUSTOMER'S RIGHTS, DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF BLOOMNET TECHNOLOGIES, AND ANY ATTEMPTED ASSIGNMENT NOT EXPRESSLY CONSENTED TO IN WRITING BY AN OFFICER OF BLOOMNET TECHNOLOGIES SHALL BE NULL AND VOID. ANY ATTEMPT BY CUSTOMER TO SUBLICENSE, ASSIGN OR TRANSFER ANY OF THE CUSTOMER'S RIGHTS, DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT SHALL BE NULL AND VOID.

(h) BLOOMNET TECHNOLOGIES SHALL HAVE THE RIGHT TO ASSIGN THIS AGREEMENT AND ANY OF ITS RIGHTS AND OBLIGATIONS HEREUNDER, EITHER IN WHOLE OR IN PART, WITHOUT THE CONSENT OF CUSTOMER.

(i) BloomNet Technologies' performance obligations under this Agreement shall be solely to Customer and not to any third party. Other than as may be expressly set forth herein, this Agreement shall not be deemed to provide third parties with any remedy, claim, right or action or other right.

(j) All formal notices, requests, demands and other communications required or permitted under this Agreement shall be sent electronically through the System or in writing and shall be deemed to have been duly made and received when sent, if sent electronically or personally served, or three (3) days after mailed by first class mail, certified mail, postage prepaid, to the addresses indicated on page one of this Agreement as to Customer and as to BloomNet to 7800 Bayberry Road, Jacksonville, Florida 32256, or to any such other address as a party shall specify to the other in writing. Customer agrees to regularly check for such notices and to bear the risk of failing to do so. If sent electronically to Customer, the notice will be sent to Customer's account. If sent electronically to BloomNet Technologies the notice will be sent to:

**customerservice@bloomnet.net**

(k) No failure or delay by a party in exercising any right, power or remedy hereunder will operate as a waiver. No waiver will be effective unless it is in writing and signed by the waiving party. A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of a subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and none of them shall be a limitation of any other remedy, right, undertaking, obligation or agreement by either party.

(l) For purposes of this Agreement, the term "Affiliate" means with respect to any party, any person or entity controlling, controlled by or under common control with such party. "Control" (including the term "Controlling", "Controlled By" and "Under Common Control With") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities or otherwise.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

BloomNet, Inc.

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

Name:

Title:

CUSTOMER

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

Name:

Title:

**EXHIBIT A**

**USER AGREEMENT**

See attached.

## EXHIBIT A

### **BLOOMNET TECHNOLOGIES SYSTEM USER AGREEMENT**

IMPORTANT! Your use of the BloomNet Technologies System (as defined below) is permitted only pursuant to a license granted to your employer ("Customer") and you on the condition that you comply with the terms and conditions set forth below.

PLEASE CAREFULLY REVIEW THIS BLOOMNET TECHNOLOGIES SYSTEM USER AGREEMENT BETWEEN YOU, AS USER, AND BLOOMNET, INC. ("BLOOMNET TECHNOLOGIES") ("USER AGREEMENT"). BY ACCESSING THE BLOOMNET TECHNOLOGIES SYSTEM, OR ANY PORTION THEREOF, YOU AGREE TO BE BOUND BY, AND ARE BOUND BY, THE TERMS OF THIS AGREEMENT. AT SUCH TIME OF ACCESS, YOU SHALL HAVE ENTERED INTO THIS AGREEMENT WITH BLOOMNET TECHNOLOGIES. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THEN DO NOT ACCESS THE SYSTEM, OR ANY PORTION THEREOF, AND RETURN TO BLOOMNET TECHNOLOGIES ANY SOFTWARE AND/OR MATERIALS PROVIDED TO YOU.

#### 1. TERMS OF SERVICE; CHARGES AND BILLING PRACTICES

A. BloomNet Technologies provides its BloomNet Technologies System, which currently includes Bloomlink, as well as additional available services and systems, including Directory Online, Hosted Websites, BloomNet Management System, BloomNet Products and Napco Imports (collectively for the purpose of this Agreement referred to as "BloomNet Technologies System" or the "System") to you as a registered user ("User" or "you"), subject to the terms of this User Agreement and the BloomNet Technologies System Agreement between Customer and BloomNet Technologies (the "Master Agreement"). This User Agreement and the Master Agreement comprise the entire agreement between BloomNet Technologies and you, superseding any prior agreements between you and BloomNet Technologies with respect to its subject matter. You acknowledge and agree that you are permitted to use the BloomNet Technologies System only due to and in connection with your employment by Customer and are subject to the terms of the Master Agreement. You agree to use the System as specified from time to time by BloomNet Technologies. Additionally, you may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, software, or services. This User Agreement and the limited rights granted to you hereunder shall terminate upon the termination of the Master Agreement or earlier as provided in this Agreement.

B. BloomNet Technologies may change the User Agreement at any time, and such change shall take effect thirty (30) days after notice to the Customer and you ("Effective Date"). The then current User Agreement will be posted on BloomNet Essential (formerly Bloomlink). You agree to review the User Agreement periodically to be aware of such changes. If any change is unacceptable to you, you may terminate your registration by giving notice to BloomNet Technologies at customerservice@bloomnet.net. YOUR CONTINUED USE OF THE SYSTEM, OR ANY PORTION THEREOF, FOLLOWING THE EFFECTIVE DATE OF ANY SUCH CHANGES TO THE USER AGREEMENT CONSTITUTES ACCEPTANCE OF ALL SUCH CHANGES.

C. Rates and fees for using the System are set forth in and governed by the Master Agreement.

#### 2. USER INFORMATION

You certify that YOU ARE AT LEAST EIGHTEEN (18) YEARS OLD. You agree to provide BloomNet Technologies with accurate, complete, and current registration information.

Unauthorized access to the System could result in immediate termination of your and the Customer's account and subject you to civil and criminal liability. By registering as a User, you will receive a password. BloomNet Technologies owns all passwords, may delete the same, and licenses them to you. You may not use your password name in violation of this User Agreement. You are entirely liable for all activities conducted using your password. A User may not permit another individual to use your password. Because BloomNet Technologies sends important notices about your registration to the Customer and/or you, you agree to check the System regularly and bear the risk of failing to do so. Users who have had their BloomNet Technologies registration terminated may not access the



System without BloomNet Technologies' prior express written (including e-mail) permission. Users may not allow a former User or other agent whose registration has been terminated to use their account.

### 3. RIGHTS AND RESPONSIBILITIES

You acknowledge that:

(i) The System contains information (transactional and otherwise), communications, and software, and may contain photos, video, graphics, music, sounds, and other material and services (collectively "Content"); (ii) certain Content is the property of BloomNet Technologies and its affiliates and other Content may be provided under license by independent providers of Content ("ICPs") and other Users; and (iii) at a minimum, BloomNet Technologies owns a copyright in the selection, coordination, arrangement, and enhancement of such Content.

Each Customer and any User must evaluate, and bear the risk associated with any reliance on the accuracy, completeness or usefulness of, any Content.

BloomNet Technologies does not pre-screen Content as a matter of policy; however, BloomNet Technologies, its affiliates, and ICPs shall have the right, but not the responsibility, to remove Content that they deem harmful, offensive or otherwise in violation of this User Agreement or the Master Agreement. Accordingly, you acknowledge that neither BloomNet Technologies, its affiliates, nor any ICP shall assume or have any liability for any action or inaction by BloomNet Technologies or its affiliates, or any ICP, with respect to Content on, or Content changes within, the System or otherwise.

You acknowledge the following: (i) BloomNet Technologies permits access to Content that is protected by copyrights, trademarks, and other intellectual and proprietary rights ("Rights"); (ii) these Rights are valid and protected in all media and technologies existing now or later developed; and (iii) except as explicitly provided otherwise, the User Agreement, applicable copyright and other laws govern your use of Content.

You agree that you may upload to the System, or otherwise transmit on or through the System only Content that (1) is not subject to any Rights or (2) any holder of Rights has given express authorization for distribution on the System. You represent that if you upload any files or Content, you have the legal authorization to do so. You agree that BloomNet Technologies may employ virus-checking technology to protect the System and its Customers and users from viruses. By submitting Content to any "public area" of the System (e.g., any Chat Rooms, message boards, or forums, messages, and orders), you grant BloomNet Technologies and its affiliates the royalty-free, perpetual, irrevocable, non-exclusive right (including any moral rights) and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, communicate to the public, perform and display the Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or later developed, for the full term of any rights that may exist in such Content.

You also warrant that the holder of any Rights, including moral rights in such Content, has completely and effectively waived all such Rights and validly and irrevocably granted to you the right to grant the license stated above. You also permit any User and authorized user to access, display, view, store and reproduce the Content for personal use. Subject to the foregoing, the owner of Content placed on the System retains any and all Rights that may exist in such Content.

You recognize that communication over the System often occurs in real time. You acknowledge that BloomNet Technologies cannot, and does not intend to, screen communication in advance for accuracy or conformance to the User Agreement or any laws. However, BloomNet Technologies may elect, at its sole discretion, to monitor some, all, or none of the public areas for adherence to the User Agreement. Accordingly, you acknowledge that neither BloomNet Technologies, its affiliates, nor any ICP shall assume or have any liability for any action or inaction by BloomNet Technologies, its affiliates, or any ICP with respect to Content on the System. Any conduct by a User that in BloomNet Technologies' sole discretion restricts or inhibits any other user, person or entity from using or enjoying the System or another service shall entitle BloomNet Technologies to immediately terminate registration without notice. You agree to use the System only for lawful purposes. YOU MAY NOT USE, OR ALLOW OTHERS TO USE, YOUR SYSTEM ACCOUNT, EITHER DIRECTLY OR INDIRECTLY, TO:



- (1) post, transmit, or promote any unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, hateful, racially, ethnically or otherwise objectionable Content;
- (2) harass, threaten, embarrass, or cause distress, unwanted attention or discomfort upon another user of the System or other person or entity;
- (3) post, transmit, promote, link, or facilitate the distribution of sexually explicit or other Content that is deemed by BloomNet Technologies to be offensive;
- (4) disrupt the normal flow of orders or messages or the dialogue in a chat room or on a message board, if any, or otherwise act in a manner that negatively affects other Users, users, individuals or entities, such as causing the screen to "scroll" faster than other Users or users are able to type to it or any action to a similar disruptive effect;
- (5) impersonate any person or entity, including, but not limited to, a BloomNet Technologies official, or an ICP, or communicate under a false name or a name that you are not entitled or authorized to use, or impersonate a minor;
- (6) post or transmit, or cause to be posted or transmitted, chain letters or pyramid schemes;
- (7) post or transmit or cause to be posted or transmitted, any unsolicited advertising, promotional materials, or other forms of solicitation to other Users, individuals or entities, except in those areas, if any, that are expressly designated for such a purpose, or collect or harvest screen names or other users, without permission;
- (8) post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private financial information from any user;
- (9) violate any operating rule, policy or guideline of any other interactive service;
- (10) intentionally or unintentionally violate any applicable local, state, national, international or foreign law, including, but not limited to, any rules or regulations having force of law, or
- (11) violate any terms of this Agreement or the Master Agreement, or any other rules, directives or policies of BloomNet Technologies. BloomNet Technologies reserves the right to protect its customers, users, BloomNet Technologies and others from offensive email communication, including, but not limited to, the right to block mass e-mail solicitations, or "junk e-mail."

You also agree and accept that as new products or services become available on or through the System, your use of these products is subject to this User Agreement and the Master Agreement. In addition to Content and services provided by ICPs, BloomNet Technologies, and its affiliates, others may offer Content, software or other services to Users with their own terms and conditions relating to your use. Failure to abide by these terms and conditions may result in termination of your registration.

#### 4. NAVIGATIONAL AND TRANSACTIONAL INFORMATION.

BloomNet Technologies may collect and store certain navigational and transactional information, such as data on the choices you make from the range of available services or merchandise and the times and ways you use the System, or information on the orders sent through the System.

BloomNet Technologies may use navigational and transactional information to personalize the System, for programming and editorial research and to otherwise facilitate the transmission of orders and otherwise for the operation of the System. For example, and without limiting the foregoing, BloomNet Technologies may use this information to understand User's reaction to menu items, Content, services and merchandise offered through the System and to customize the System based on User's interest. BloomNet Technologies may disclose to third parties navigational or transactional information and you hereby authorize such disclosure.



## 5. BLOOMNET TECHNOLOGIES SOFTWARE LICENSES

To the extent BloomNet Technologies delivers any software to you, BloomNet Technologies grants to you a non-exclusive, limited, revocable, limited license to use such software to connect to the System via the Customer's computer system. This license is subject to the restriction that, except where expressly permitted by law, you may not, or permit others to, translate, reverse-engineer or reverse-compile or decompile, disassemble or make derivative works from, any such software. You may not, or permit others to, modify such software or use it in any way not expressly authorized in this Agreement. This license will terminate upon the termination of this Agreement.

## 6. WARRANTY AND LIMITATION OF LIABILITY

**FOR PURPOSES OF THIS SECTION 6, BLOOMNET TECHNOLOGIES INCLUDES BLOOMNET TECHNOLOGIES, AND ANY AFFILIATED, PARENT AND SUBSIDIARY ENTITIES OF BLOOMNET TECHNOLOGIES, ANY SUBCONTRACTORS AND SUPPLIERS OF THE FOREGOING, ANY THIRD-PARTY LICENSORS AND LESSORS, AND THE DIRECTORS, EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS AND SUPPLIERS OF ALL OF THEM.**

**USER EXPRESSLY AGREES THAT THE SYSTEM, THE USE OF THE SYSTEM, ANY SERVICES UNDER THE SYSTEM, ANY SOFTWARE, HARDWARE OR OTHER EQUIPMENT PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. FURTHERMORE, BLOOMNET TECHNOLOGIES EXPRESSELY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. CUSTOMER AND USER ASSUME TOTAL RESPONSIBILITY AND RISK FOR USE OF THE SYSTEM AND THE SERVICES, AND BLOOMNET TECHNOLOGIES AND ANY THIRD PARTIES WHO CONTRIBUTE TO THE SYSTEM SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS, OR LOST REVENUES, EVEN IF BLOOMLINK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. BLOOMNET TECHNOLOGIES ALSO SHALL NOT BE LIABLE FOR ANY DAMAGE CUSTOMER OR USER MAY SUFFER ARISING OUT OF OR RELATING TO: SERVICE INTERRUPTIONS; INTEROPERABILITY, INTERACTION OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES OR SYSTEMS PROVIDED BY CUSTOMER OR THIRD PARTIES; OR, UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S OR USERS' APPLICATION, DATA PROGRAMS, INFORMATION, SYSTEM, COMPUTER SYSTEM OR SYSTEMS TO OR THROUGH ACCIDENT, FRAUDULENT MEANS OR ANY OTHER METHOD, BY CUSTOMER, USERS OR THIRD PARTIES. BLOOMNET TECHNOLOGIES DOES NOT GUARANTEE THAT USERS WILL BE ABLE TO ACCESS THE SERVICE AT A TIME OR LOCATION OF THEIR CHOOSING, OR THAT IT WILL HAVE ADEQUATE CAPACITY FOR THE SERVICE AS A WHOLE OR FOR PARTICULAR PRODUCTS. BLOOMNET TECHNOLOGIES' ENTIRE AGGREGATE LIABILITY UNDER THIS AGREEMENT AND THE MASTER AGREEMENT AND THE SOLE REMEDY WITH RESPECT TO USE OF SYSTEM, ANY SERVICES UNDER THE SYSTEM, AND ANY SOFTWARE, HARDWARE OR OTHER EQUIPMENT PROVIDED UNDER THIS AGREEMENT, SHALL BE RECOVERY BY CUSTOMER OF AMOUNTS PAID BY CUSTOMER TO BLOOMNET TECHNOLOGIES UNDER THE MASTER AGREEMENT DURING THE PREVIOUS THREE (3) MONTHS, (NOT INCLUDING ORDER PROCESSING OR TRANSACTION FEES). BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, BLOOMNET TECHNOLOGIES' LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. BLOOMNET TECHNOLOGIES DOES NOT ENDORSE, WARRANT OR GUARANTEE ANY PRODUCT OR SERVICE OFFERED THROUGH THE SYSTEM, EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE.**



THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION 6 SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, AND SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

BLOOMNET TECHNOLOGIES SHALL NOT BE RESPONSIBLE FOR: (i) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CUSTOMER, ITS EMPLOYEES, AGENTS, USERS, SUBCONTRACTORS, OR SUPPLIERS; (ii) INTEROPERABILITY OF SPECIFIC CUSTOMER OR USER APPLICATIONS; (iii) INABILITY OF CUSTOMER OR USER TO ACCESS OR INTERACT WITH ANY OTHER SERVICE PROVIDER THROUGH THE INTERNET OR OTHER COMMUNICATIONS NETWORKS OR THE INFORMATIONAL OR COMPUTING RESOURCES AVAILABLE THROUGH THE INTERNET OR OTHER COMMUNICATIONS NETWORKS; (iv) INTERACTION WITH OTHER SERVICE PROVIDERS, SYSTEMS, USERS OR INFORMATIONAL OR COMPUTING RESOURCES THROUGH THE INTERNET OR OTHER COMMUNICATIONS NETWORKS; (v) SERVICES PROVIDED BY OTHER SERVICE PROVIDERS; (vi) USE OF ANY THIRD PARTY SOFTWARE OR HARDWARE COMPONENTS AND/OR SYSTEMS; (vii) CUSTOMER'S OR USER'S FAILURE TO USE THE SYSTEM OR ANY SERVICES PROVIDED UNDER THE SYSTEM IN ACCORDANCE WITH ANY MANUALS OR INSTRUCTIONS PROVIDED BY BLOOMNET TECHNOLOGIES; (viii) PERFORMANCE IMPAIRMENTS CAUSED ELSEWHERE ON THE INTERNET OR OTHER COMMUNICATIONS NETWORKS; OR (ix) USE OF THE SYSTEM OR ANY SERVICES AVAILABLE UNDER THE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY SOFTWARE OR HARDWARE COMPONENT THEREOF, IN A MANNER CONTRARY TO THE TERMS OF THIS AGREEMENT OR THE MASTER AGREEMENT.

WITHOUT LIMITING ANY OTHER PROVISION OF THIS SECTION 6, BLOOMNET TECHNOLOGIES DOES NOT SUPPORT OR ASSUME, AND HEREBY DISCLAIMS, ANY RESPONSIBILITY WHATSOEVER FOR THE SELECTION, USE, AND CONSEQUENCES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, OF ANY THIRD PARTY COMPONENTS AND/OR A THIRD PARTY SYSTEM AND THEIR COMPATIBILITY WITH THE SYSTEM. USER HEREBY ACKNOWLEDGES AND AGREES THAT USER ASSUMES FULL AND TOTAL RESPONSIBILITY FOR SELECTION, USE AND CONSEQUENCES OF ANY THIRD PARTY COMPONENTS AND/OR SYSTEM AND FOR ANY IMPACT ON SUCH COMPONENTS OR SYSTEM ON USER OR CUSTOMER'S COMPUTER SYSTEM, THE SYSTEM AND/OR ANY OTHER SYSTEM OR FACILITY OF CUSTOMER OR USER.

WITHOUT LIMITING ANY OTHER PROVISION OF THIS SECTION 6, CUSTOMER AND USER SHALL BE RESPONSIBLE FOR AND BLOOMNET TECHNOLOGIES SHALL NOT HAVE ANY RESPONSIBILITY FOR INCOMPATIBILITY BETWEEN SOFTWARE, MODIFICATIONS OR UPDATES PROVIDED BY BLOOMNET TECHNOLOGIES FOR CUSTOMER'S COMPUTER SYSTEM OR CHANGES IN THE SYSTEM PROVING INCOMPATIBLE WITH CUSTOMER'S COMPUTER SYSTEM OR WITH ANY THIRD PARTY COMPONENTS AND/OR SYSTEM, NOR SHALL BLOOMNET TECHNOLOGIES BE LIABLE IF SUCH UPDATES CORRUPT ANY THIRD PARTY COMPONENTS AND/OR SYSTEM OR DATA GENERATED OR USED IN ANY THIRD PARTY COMPONENTS AND/OR SYSTEM OR RENDER ANY THIRD PARTY COMPONENTS AND/OR SYSTEM OR RENDER ANY THIRD PARTY COMPONENTS AND/OR SYSTEM INOPERABLE.

BLOOMNET TECHNOLOGIES DISCLAIMS ALL LIABILITY FOR AND USER AGREES THAT BLOOMNET TECHNOLOGIES SHALL NOT BE LIABLE FOR FAILURE OF OR DELAY IN TRANSMISSION OF ORDERS OR LOSS OF ORDERS OR TRANSACTIONAL INFORMATION RESULTING FROM SYSTEM MALFUNCTION, DISRUPTION OF CARRIER LINES, LOSS OF POWER, NATURAL DISASTERS OR ANY AND ALL CAUSES REASONABLY BEYOND BLOOMNET TECHNOLOGIES' CONTROL.

YOU ACKNOWLEDGE THAT BLOOMNET TECHNOLOGIES CANNOT AND DOES NOT INTEND TO SCREEN COMMUNICATIONS IN ADVANCE FOR ACCURACY OR CONFORMANCE TO THIS AGREEMENT OR ANY LAWS. HOWEVER, BLOOMNET TECHNOLOGIES MAY ELECT, AT ITS OWN DISCRETION, TO MONITOR SOME, ALL, OR NONE OF THE SYSTEM'S AREAS FOR ADHERENCE TO THIS USER AGREEMENT. ACCORDINGLY, YOU ACKNOWLEDGE THAT NEITHER BLOOMNET TECHNOLOGIES, ANY OF ITS AFFILIATES, NOR ANY THIRD PARTIES WHO CONTRIBUTE TO

**THE SYSTEM SHALL ASSUME OR HAVE ANY LIABILITY FOR ANY ACTION OR INACTION BY BLOOMNET TECHNOLOGIES, OR ITS AFFILIATES, WITH RESPECT TO ANY CONTENT ON THE SYSTEM. ANY CONDUCT BY A CUSTOMER OR USER THAT IN BLOOMNET TECHNOLOGIES' SOLE DISCRETION RESTRICTS OR INHIBITS ANY OTHER CUSTOMER, USER, PERSON OR ENTITY FROM USING OR ENJOYING THE SYSTEM SHALL ENTITLE BLOOMNET TECHNOLOGIES TO IMMEDIATELY TERMINATE THIS AGREEMENT WITHOUT NOTICE. YOU AGREE TO USE THE SYSTEM ONLY FOR LAWFUL PURPOSES, AND TO ENSURE THAT USERS USE THE SYSTEM IN COMPLIANCE WITH THIS USER AGREEMENT AND THE MASTER AGREEMENT.**

#### 7. INDEMNIFICATION

User agrees to defend, indemnify and hold harmless BloomNet Technologies, its affiliated companies, and their respective employees, contractors, officers, directors, telecommunications providers, and ICPs from all liabilities, claims and expenses, including attorneys' fees, that arise from breach of this User Agreement, by use of, or in connection with, the transmission of any Content on the System or the Internet by or through User's account. BloomNet Technologies reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by User hereunder.

#### 8. GOVERNING LAW AND VENUE; REMEDIES; NOTICES

If any portion of this User Agreement shall be found invalid or unenforceable, the remaining portions shall remain in effect and shall be enforced to the full extent permitted by law. This Agreement shall be construed and governed by the laws of the State of New York, without regard to its choice of law rules. Any dispute arising out of this Agreement shall be submitted to binding arbitration as provided in the Master Agreement. User also has read and agrees to the provisions concerning equitable relief and exclusive jurisdiction and venue (in the Supreme Court of the State of New York, County of Nassau) in the Master Agreement.

Notices required or permitted under this Agreement shall be sent electronically to the Customer at its account on the System or to BloomNet Technologies at [customerservice@bloomnet.net](mailto:customerservice@bloomnet.net) and shall be deemed duly made and received when sent.



**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT N-3  
BLOOMNET ORDER REFERRAL PROGRAM RATE SCHEDULE**

## Order Referral Program

\$5.50 per order for 20+ orders successfully referred per month from order #1

\$3.50 per order for 1-19 orders successfully referred per month



NOTE: No minimum order dollar value or minimum monthly order referral requirement.  
 Earned rebates are paid on the last day of the month for those accounts that are current on the statement due date.

<b>MEMBERSHIP RATES (Based on Total Orders Fulfilled)</b>		
<b>Monthly Orders Fulfilled</b>	<b>Monthly Rate</b>	
0-10	\$0.00	
11-29	\$49.99	
30-59	\$129.99	
60-99	\$199.99	
100-199	\$299.99	
200-299	\$499.99	
300-499	\$799.99	
500-749	\$999.99	
750-999	\$1,249.99	
1000+	\$1,499.99	
<b>Payment Processing Fee</b>	<b>Monthly Orders Fulfilled</b>	<b>Standard Rate</b>
Florist to Florist	1 order	7%
1-800-FLOWERS.com to Florist	1-24 orders	7%
1-800-FLOWERS.com to Florist	25 or more orders	9%
<b>Optional Low Referral Rate</b>	<b>Monthly Rate</b>	
Less than 20 orders per month referred	\$19.99	
<b>Optional Reciprocity Surcharge</b>	<b>Monthly Rate</b>	<b>Ratio of Orders</b>
5% of order gross merchandise fulfilled		Successfully referred to fulfilled 3:1
<b>Marketing &amp; Education Surcharges</b>	<b>Monthly Rate</b>	<b>Ratio of Orders</b>
BloomNet's Floral Selection Guide	\$14.99	
Floriology Magazine	\$5.99	

<b>BLOOMNET TECHNOLOGIES (BloomLink Access Rate)</b>	
<b>BloomLink Access</b>	<b>Monthly Rate</b>
1 - 10 monthly orders fulfilled	\$0.00
11 - 29 monthly orders fulfilled	\$49.99
30 - 59 monthly orders fulfilled	\$79.99
60 - 99 monthly orders fulfilled	\$119.99
100 - 199 monthly orders fulfilled	\$164.99
200 - 299 monthly orders fulfilled	\$199.99
300 - 499 monthly orders fulfilled	\$244.99
500+ monthly orders fulfilled	\$294.99
<b>BloomNet Essentials</b>	<b>Monthly Rate</b>
Licensing Fee	\$5.00
<b>Third Party POS</b>	<b>Monthly Rate</b>
Integration Fee	\$10.00
<b>Florist Hosted Website Program</b>	<b>Rates</b>
Initial Setup (one time fee)	\$159.00 (one time)
Service Fee	\$79.99/month
URL Registration Fee	\$19.99/year
Additional Domain Name Fee	\$19.99/year
Domain Name Change Fee (one time fee)	19.99 (one time)
Order Capture Rate	\$3.99/order
Web Marketing Program	\$24.99/month
<b>Order Fulfillment</b>	<b>Rates</b>
Fulfillment Rate	\$3.50/order
Delivery Confirmation Credit	\$1.00/order
All other messages	NO CHARGE
<b>International</b>	<b>Rates</b>
BloomLink messages	NO CHARGE

**BloomNet Rate Schedule (Effective July 2021)**

<b>DIRECTORY ADVERTISING</b>		<b>Monthly Rate</b>	
Directory Online		\$17.99	
Consumer Directory (locatemyflorist.com)		\$9.99	
Printed Directory (shipping & handling)		\$12.99/mailing	
<b>Listings</b>	<b>Rates/Listing</b>	<b>ONLINE</b>	<b>PRINT</b>
Resident Listing	\$17.99	X	X
Extra Listings	\$17.99	X	X
Customized Listing	\$18.99	X	X
Facility Listing	\$4.99	X	
Open Sunday Listing (includes all listings)	\$10.99	X	
<b>Display Advertising</b>	<b>Monthly Rate/Ad</b>	<b>ONLINE</b>	<b>PRINT</b>
6" ad	\$89.99	X	X
9" ad	\$119.99	X	X
Half Page ad	\$199.99	X	X
Full Page ad	\$299.99	X	X
Set Up Charge (one time fee)	\$9.99	X	X

**TIMELY REPLY PROGRAM**

<b>Conditions</b>	<b>Assessment</b>
Order Rejected more than 2 standard business hours	\$10.00
Order Rejected more than 24 hours	\$20.00
Order Rejected more than 72 hours	Full Order Value
Order Rejected more than 2 standard business hours and after cutoff time on the day of delivery	2x Full Value of Order
<b>Conditions, Delivery Notifications</b>	<b>Assessment</b>
Delivery notification missing on order	\$2.25
Delivery notifications sent after cutoff time	\$2.25

**QUALITY ASSURANCE PROGRAM****\$19.99 /monthly Assessment****TERMINATION**

*Florists are subject to a \$99.00 final statement preparation charge and the account will go into an automatic hold status for 120 days to allow reporting of any orders by sending and receiving Florists. Proprietary and confidential information. In compliance with individual state laws, please note certain products and services are subject to taxation.*

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT O  
LIST OF CURRENT FRANCHISEES AS OF JUNE 27, 2021

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**LIST OF CURRENT FRANCHISEES AS OF JUNE 27, 2021**

<b>Arizona</b>	
Bloom Tree, Inc. Seoung H. Kim & Yoon Patty Kim 1350 South Longmore Road Mesa, AZ 480-733-4041	Woo Yong Chang & Vivian Eunmi Chang 3579 West Northern Avenue Phoenix, AZ 85051 602-242-4744
Topchiy Blooms LLC Anna Topchiy 4444 E. Grant Road, Suite 125 Tucson, AZ 85712 520-325-0877	
<b>California</b>	
Behrooz Ghaysari 2404 Central Avenue Alameda, CA 94501 510-864-0809	Blue Maple Tree, LLC Jaime Castellanos / Cesar Hernandez 1100 W. Valley Blvd. Alhambra, CA 91803 626-281-0927
Pzahss, Inc. M. Saleem Joya & Sadaf Joya 905 Orpheus Ave. Encinitas, CA 92024 760-634-7923	Roohi Rouhani 100 W. El Camino Real, #80 Mountain View, CA 94040 650-969-1500
Ramin Shirazi & Roya Rouhizadeh 3201 Stanford Ranch Road, #400 Rocklin, CA 95765 916-824-2851	Emilia Borz 2300 Arden Way Sacramento, CA 95825 916-488-4888
Ali Arbabi 255 N. White Road San Jose, CA 95127 408-288-8007	Ali Arbabi 1679 Hollenbeck Road Sunnyvale, CA 94087 408-732-7673
<b>Colorado</b>	
Diamond Floral Designs, LLC George Diamond 7425 E. Iliff Avenue Denver, CO 80231 303-399-5543	

<b>Florida</b>	
DBG LLC Bart Guzzardo & Amy Guzzardo 2001 Corporate Drive Boynton Beach, FL 33426 561-369-2990	Charlotte L. Webb, Inc. Matthew R. Webb 12747 49 <sup>th</sup> Street Clearwater, FL 33762 727-592-9096
Lorenzo & Juana Isabel Lora 1323 W. Broadway Street Oviedo, FL 32765 407-359-2484	Joel Ricci 9941 Pines Blvd. Pembroke Pines, FL 33024 954-432-2300
	Mary Ann Dessipris 1500 West Fairbanks Ave Winter Park, FL 32789 407-975-4935
<b>Georgia</b>	
SRE Florals, Inc. Matthew P. & Liliana P. Nicholls Grant 2365 S.E. Windy Hill Road Marietta, GA 30667 770-988-0755	
<b>Illinois</b>	
Colleen's Flower Basket, Inc. Colleen Hardekopf 302 N. Lake Street Aurora, IL 60506 630-892-7673	DBG LLC Bart Guzzardo & Amy Guzzardo 3400 Bloomingdale Avenue Melrose Park, IL 60160 708-344-1004
John Kowalczyk & Tamara Church 1926 S. Mannheim Road Westchester, IL 60154 708-531-9800	

<b>Maryland</b>	
Rutland Beard Florist Inc. Rutland Beard Paal Jr. 5639 Baltimore National Pike Baltimore, MD 21228 410-747-6440	Elkton Florist, Inc. Dwight E. & Diane B. Hair & Dawn R. Hair Schwartz 132 West Main Street Elkton, MD 21921 410-398-0550
Rutland Beard Florist of Frederick LLC Rutland Beard Paal Jr. 1816 Rosemont Avenue Frederick, MD 21702 301-695-5555	
<b>Massachusetts</b>	
Paul J. & Lisa J. Sandoe 1147 Main Street Melrose, MA 02176 781-662-6879	Paul J. & Lisa J. Sandoe 22 Prospect Street, Unit 9 Woburn, MA 01801 781-932-3351
<b>Michigan</b>	
DBG LLC Bart Guzzardo & Amy Guzzardo 1300 Woodward Heights Ferndale, MI 48220 248-399-5664	DBG LLC Bart Guzzardo & Amy Guzzardo 46569 Hayes Road Shelby Township, MI 48315 586-247-1500
<b>Minnesota</b>	
Adam Haidet 563 Old Hwy 8 SW New Brighton, MN 55112 651-631-3535	
<b>Nevada</b>	
Greenrose LV, Inc. Woo Yong Chang & Vivian Eunmi Chang 3990 S. Eastern Avenue Las Vegas, NV 89119 702-739-8484	
<b>New Jersey</b>	
George Allen 881 Main Street Belford, NJ 07718 732-787-8528	CLFE LLC Paul & Ella Sudakov / Sam & Pamela Barrett 122 Central Avenue Clark, NJ 07066 732-680-9300

George Allen 101 Crawfords Corner Road Holmdel, NJ 07733 732-787-8528	Patricia Foo 534 Westside Avenue Jersey City, NJ 07304 201-433-1884
Anthony A. Foti 108 N. Wood Avenue Linden, NJ 07036 908-925-1605	Kevin J. & Catherine A. Conroy-Dormer 28 East Hanover Avenue Morris Plains, NJ 07950 973-267-8662
Exotika Floral Designs, Inc. Francisco Carrillo & Martha Valencia 343 Monroe Avenue Passaic, NJ 07055 973-470-9377	Catalina Aguilar 912 Summit Avenue Union City, NJ 07087 201-867-8682
<b>New York</b>	
Ann Marie Pierce 776 Merrick Road Baldwin, NY 11510 516-223-3364	Carlos Romero 272 Willis Avenue Bronx, NY 10454 646-401-8854
Linda Elise Karatzas 6572 Jericho Turnpike Commack, NY 11725 631-462-9393	Raymond Tilton 73-05 88 <sup>th</sup> Street Glendale, NY 11385 718-641-1800
Raymond Tilton 37 West Jericho Turnpike Huntington Station, NY 11746 631-424-6401	Raymond Tilton 4303 Merrick Road Massapequa, NY 11758 516-799-7748
C & J Wholesale Floral Services, Ltd. Joseph Edwards 537 East 3 <sup>rd</sup> Street Mount Vernon, NY 10550 914-663-9460	Graceland Flowers By Joe, Inc. Joseph Edwards 527 Gramatan Avenue Mount Vernon, NY 10552 914-664-3111
Raymond Tilton 2101 Hillside Avenue New Hyde Park, NY 11040 516-248-2300	
Raymond Tilton 397 Jericho Turnpike Syosset, NY 11791 516-921-9200	



<b>Oklahoma</b>	
Sophie D. Clary 9201 East Reno Midwest City, OK 73130 405-737-9466	
<b>Oregon</b>	
Wendell & Carole Cook 620 NE Burnside Road Gresham, OR 97030 503-661-0911	
<b>Pennsylvania</b>	
Axelrod, Al, Flowers, Inc. Bruce Axelrod 4429 Whitaker Avenue Philadelphia, PA 19120 215-843-3904	
<b>Texas</b>	
Texas-Nebraska Management, Inc. Steve Gilster 710 East Main Allen, TX 75002 972-908-3993	Flowers & More #3, Inc. Judy Sicola 11901 Barker Cypress Rd, #1 Cypress, TX 77433
LCC Son Flowers Inc. Jose L. & Cristina Cuevas 3380 Belt Line Road Dallas, TX 75234 972-458-6957	LCC Son Flowers Inc. Jose L. & Cristina Cuevas 3380 Belt Line Road Dallas, TX 75234 972-458-2021
Janet Lynn Glonek / Denise Lynn Beckmann 8424 Lakewood Hill Dr., #110 Ft Worth, TX 76244 817-849-9000	
Judy Sicola 9516 Jones Road Houston, TX 77064 713-686-6447	
Margarita Pena 5708 McPherson Road Laredo, TX 78041 956-724-4258	James Donald & Sandra & Marc McMillan 7117 Blanco Road San Antonio, TX 78216 210-524-1006

<b>Virginia</b>	
Twinbrook Floral Design, Inc. Robert Bruce & Margaret A. Fleegal 4151 Lafayette Center Drive Chantilly, VA 20501 703-323-5991	Twinbrook Floral Design, Inc. Robert Bruce & Margaret A. Fleegal 4151 Lafayette Center Drive Chantilly, VA 20501 703-978-0771
	Simon Li 1430 High Street, Unit 1104 Williamsburg, VA 23185 757-259-1999
<b>Washington</b>	
Capital Hill Flowers 4 Gifts 1, Inc. Qiang Tan & Xiaorong Rong 300 15 <sup>th</sup> Avenue East Seattle, WA 98112 206-325-5068	Deborah Mohagen 10411 NE Fourth Plain Blvd. Vancouver, WA 98662 360-254-0706
<b>Wisconsin</b>	
	DBG LLC Bart Guzzardo & Amy Guzzardo 5402 West State Street Milwaukee, WI 53208 414-454-0828

IF YOU BUY THIS FRANCHISE, YOUR CONTACT INFORMATION MAY BE DISCLOSED TO OTHER BUYERS WHEN YOU LEAVE THE FRANCHISE SYSTEM.

**LIST OF FRANCHISEES WHO HAVE SIGNED FRANCHISE AGREEMENTS,  
BUT ARE NON-OPERATIONAL AS OF JUNE 27, 2021**

NONE	
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IF YOU BUY THIS FRANCHISE, YOUR CONTACT INFORMATION MAY BE DISCLOSED TO OTHER BUYERS WHEN YOU LEAVE THE FRANCHISE SYSTEM.

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT P

LIST OF FORMER FRANCHISEES WHO HAVE LEFT THE SYSTEM AS OF JUNE 27, 2021

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**FRANCHISEES WHO HAVE LEFT THE SYSTEM AS OF JUNE 27, 2021**

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

<b>Florida</b>	
Florida Blooms And Bouquets, LLC (DC) Claire Bell-Irving 10920 Baymeadows Road, Suite 1 Jacksonville, FL 32256 904-538-0010	Florida Blooms And Bouquets, LLC Claire Bell-Irving 10920 Baymeadows Road, Suite 1 Jacksonville, FL 32256 904-538-0010
Retail Promotions Incorporated Robert Korman 2171 Tamiami Trail Port Charlotte, FL 33948 941-624-5050	
<b>New York</b>	
Victor R. & Maria Chiriboga 66-33 Fresh Pond Road Ridgewood, NY 11385 718-497-0070	
<b>Texas</b>	
Judy Sicola (DC) 5617 Broom Street Houston, TX 77065 713-686-0627	Flowers & More #5, Inc. Judy Sicola 5616 Pinemont Drive Houston, TX 77092 713-290-1136
<b>Virginia</b>	
T & T Reed Enterprises, Inc. Kenneth Thomas Reed, Jr. & Teresa Ann Reed 2781 Jefferson Davis Highway, Suite 113 Stafford, VA 22554 540-720-1459	
<b>Wisconsin</b>	
Steven Kolowith 333 West Brown Deer Road, #17 Milwaukee, WI 53217 414-434-0380	

**IF YOU BUY THIS FRANCHISE, YOUR CONTACT INFORMATION MAY BE DISCLOSED TO OTHER BUYERS WHEN YOU LEAVE THE FRANCHISE SYSTEM.**

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT Q  
FINANCIAL STATEMENTS**



**EISNERAMPER**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**FINANCIAL STATEMENTS**

**YEARS ENDED JUNE 27, 2021 and JUNE 28, 2020**





## INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholder of  
1-800-Flowers.com Franchise Co., Inc.

### Report on the Financial Statements

We have audited the accompanying financial statements of 1-800-Flowers.com Franchise Co., Inc. (the "Company"), which comprise the balance sheets as of June 27, 2021 and June 28, 2020, and the related statements of operations and accumulated deficit, and cash flows for each of the fiscal years then ended, and the related notes to the financial statements.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Opinion*

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of 1-800-Flowers.com Franchise Co., Inc. as of June 27, 2021 and June 28, 2020, and the results of its operations and its cash flows for each of the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.



EISNERAMPER LLP

New York, New York

October 8, 2021



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**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**Balance Sheets**

	<u>June 27, 2021</u>	<u>June 28, 2020</u>
<b>ASSETS</b>		
Current assets:		
Cash	\$ 204,864	\$ 204,862
Accounts receivable	139,732	128,401
Prepaid expenses	8,067	5,346
Notes receivable, less allowance for doubtful accounts of \$0 in 2021 and \$5,000 in 2020	2,573	13,752
Total current assets	<u>355,236</u>	<u>352,361</u>
Operating lease right-of-use assets	728,799	897,368
Security deposits	32,753	32,753
Deferred tax assets	-	20,742
Total assets	<u>\$ 1,116,788</u>	<u>\$ 1,303,224</u>
<b>LIABILITIES AND SHAREHOLDER'S DEFICIT</b>		
Current liabilities:		
Accrued expenses	\$ 142,715	\$ 124,231
Deferred sublease rental income	29,182	33,264
Deferred franchise fee revenue	387,955	479,457
Current portion of operating lease liabilities	153,630	164,096
Total current liabilities	<u>713,482</u>	<u>801,048</u>
Security deposits	36,865	39,455
Operating lease liabilities, net of current portion	567,595	737,134
Deferred tax liabilities	13,670	-
Due to affiliates, net	7,460,080	7,176,887
Total liabilities	<u>8,791,692</u>	<u>8,754,524</u>
Shareholder's deficit:		
Common stock, no par value, 1,500 shares authorized, 10 shares issued and outstanding	100,000	100,000
Accumulated deficit	(7,774,904)	(7,551,300)
Total shareholder's deficit	<u>(7,674,904)</u>	<u>(7,451,300)</u>
Total liabilities and shareholder's deficit	<u>\$ 1,116,788</u>	<u>\$ 1,303,224</u>



**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**Statements of Operations and Accumulated Deficit**

	<b>Years Ended</b>	
	<b>June 27, 2021</b>	<b>June 28, 2020</b>
<b>Revenues:</b>		
Continuing license fees	\$ 972,914	\$ 829,148
Initial franchise fees	109,502	113,814
Sublease rent	370,329	361,334
Interest income	958	2,929
Total revenues	<u>1,453,703</u>	<u>1,307,225</u>
<b>Costs and expenses:</b>		
Selling, general, and administrative	1,420,390	1,640,406
Rent	333,498	334,916
Total costs and expenses	<u>1,753,888</u>	<u>1,975,322</u>
Loss before income tax benefit	(300,185)	(668,097)
Income tax benefit	76,581	170,140
<b>Net loss</b>	<u>(223,604)</u>	<u>(497,957)</u>
<b>Accumulated deficit:</b>		
Beginning of year	<u>(7,551,300)</u>	<u>(7,053,343)</u>
<b>End of year</b>	<u>\$ (7,774,904)</u>	<u>\$ (7,551,300)</u>



**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**Statements of Cash Flows**

	<b>Years Ended</b>	
	<b>June 27, 2021</b>	<b>June 28, 2020</b>
<b>Operating activities:</b>		
Net loss	\$ (223,604)	\$ (497,957)
Reconciliation of net loss to net cash used in operating activities:		
Recovery of bad debt expense	(5,000)	
Depreciation		20
Deferred income taxes	34,412	(7,626)
Changes in operating assets and liabilities:		
Accounts receivable	(11,331)	57,477
Notes receivable	16,179	41,621
Prepaid expenses	(2,721)	16,289
Accrued expenses and other accrued liabilities	11,812	21,495
Deferred franchise fee revenue	(91,502)	(37,814)
Other assets and other liabilities	(11,436)	3,862
Net cash used in operating activities	<u>(283,191)</u>	<u>(402,633)</u>
<b>Financing activities:</b>		
Advances from affiliates, net	283,193	371,288
Net cash provided by financing activities	<u>283,193</u>	<u>371,288</u>
<b>Net increase (decrease) in cash</b>	<b>2</b>	<b>(31,345)</b>
Cash at beginning of year	<u>204,862</u>	<u>236,207</u>
<b>Cash at end of year</b>	<b>\$ 204,864</b>	<b>\$ 204,862</b>



## 1-800-FLOWERS.COM FRANCHISE CO., INC.

### Notes to Financial Statements

#### NOTE A - ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

##### [1] Organization:

1-800-Flowers.com Franchise Co., Inc. (the "Company") is a franchisor of retail flower shops under the 1-800-Flowers and 1-800-Flowers.com trademarks. The Company was incorporated on February 8, 2000 and is a wholly-owned subsidiary of 1-800-FLOWERS Retail, Inc. (the retail subsidiary of 1-800-FLOWERS.COM, Inc., a public company). As of June 27, 2021 and June 28, 2020, the Company had 65 and 73 franchise locations in operation, respectively.

The Company may incur operating losses and negative cash flows as it develops its market and expands its operations. While there can be no assurance that the Company will achieve its business plan or that it will be able to generate the necessary cash flows to sustain operations, the Company has a commitment from its shareholder through October 5, 2022 to provide additional financial support if needed. Such commitment for financial support may be in the form of loans or advances or the additional investment of capital in the Company.

The Company's fiscal year is a 52- or 53-week period ending on the Sunday nearest to June 30. Fiscal year 2021, which ended on June 27, 2021, and fiscal year 2020, which ended on June 28, 2020, each consisted of 52 weeks.

##### [2] Revenue recognition:

Revenue is derived from initial franchise fees, continuing license fees and sublease rental income.

A description of its principal revenue generating activities is as follows:

- Continuing license fees – are either variable (calculated based on a percentage of the franchisees' gross sales) or fixed royalties, related to its performance obligation to our franchisees to maintain the Marks, the System and the Trade Practices being licensed. The fixed royalties are recognized in the month earned and the variable royalties are recognized in the period in which the related floral sales are made by the franchisee. Continuing license fees are typically billed and collected monthly.
- Initial franchise fees – are primarily fees paid by the franchisees for the license to use the Company's Marks, System and Trade Practices on initial store opening. Recognition of these fees is deferred until the commencement date of the agreement and occurs over time on a straight-line basis, based on the term of the underlying franchise agreement (typically 10 years). In the event a franchise agreement is terminated, any remaining deferred fees are recognized in the period of termination. Initial franchise fees are billed and received upon the signing of the franchise agreement.
- Sublease rent – the Company leases certain property from third parties for use by franchisees and records rent expense related to those leases. The Company then subleases those properties to the franchisees and records sublease rental revenue (see Note C). Sublease rental revenue is recognized in the period incurred and is typically billed and collected monthly.

Current accounting standards require that companies disaggregate revenue from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. The revenue disaggregation included within the Company's Statements of Operations and Accumulated Deficit satisfies this requirement.



# 1-800-FLOWERS.COM FRANCHISE CO., INC.

## Notes to Financial Statements

### NOTE A - ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

#### [3] Deferred franchise fee revenue:

Deferred revenues are recorded when the Company has received consideration (i.e., advance payment) before satisfying its performance obligations. Deferred franchise fees consist primarily of the unamortized portion of initial franchise fees and represent our remaining performance obligations to its franchisees – see Note A[2] for details.

The components of the change in deferred franchise fee revenue are as follows:

<b>Balance - June 30, 2019</b>	<b>\$ 517,271</b>
Franchise fees collected	76,000
Current year revenue recognized	(113,814)
<b>Balance - June 28, 2020</b>	<b>479,457</b>
Franchise fees collected	18,000
Current year revenue recognized	(109,502)
<b>Balance - June 27, 2021</b>	<b>\$ 387,955</b>

#### [4] Advertising expense:

The Company expenses advertising costs as incurred. For the fiscal years ended June 27, 2021 and June 28, 2020, the Company incurred \$8,055 and \$25,580, respectively, of advertising expense, which is included in selling, general, and administrative expenses line item in the Company's Statements of Operations and Accumulated Deficit.

#### [5] Concentration of credit risk:

The Company's accounts and notes receivable balances are from its franchisees that operate in various states, and collateral is generally not required. Notes receivable are principally related to short-term loans for initial franchise fees, store rebranding, renovation costs and, to a lesser extent, the result of converting certain past due franchise receivable balances into promissory notes. Allowances, if any, relating to accounts and notes receivable balances have been recorded based on previous experiences and management's evaluation.

#### [6] Fair values of financial instruments:

The recorded amounts of the Company's notes receivable and accrued liabilities approximate their fair values principally because of the short-term nature of these items.

#### [7] Comprehensive loss:

For the fiscal years ended June 27, 2021 and June 28, 2020, the Company has no items of other comprehensive income (loss), and therefore, the comprehensive loss equals the Company's net loss.

#### [8] Use of estimates:

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.



## 1-800-FLOWERS.COM FRANCHISE CO., INC.

### Notes to Financial Statements

#### NOTE A - ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

##### [9] Recently issued accounting pronouncements – adopted:

In February 2016, the FASB issued ASU No. 2016-02, "Leases (Topic 842)" ("ASC 842"). Under this guidance, an entity is required to recognize right-of-use assets and lease liabilities on its balance sheet and disclose key information about leasing arrangements. This guidance offers specific accounting guidance for a lessee, a lessor and sale and leaseback transactions. Lessees and lessors are required to disclose qualitative and quantitative information about leasing arrangements to enable a user of the financial statements to assess the amount, timing and uncertainty of cash flows arising from leases. The Company adopted the new standard effective July 1, 2019 and elected the optional transition method and therefore, it will not apply the standard to the comparative periods presented in our financial statements. The new standard provides a number of optional practical expedients in transition. The Company elected the 'package of practical expedients', that did not require it to reassess, under the new standard, the Company's prior conclusions about lease identification, lease classification and initial direct costs. Further, the Company elected a short-term lease exception policy, permitting it to not apply the recognition requirements of this standard to short-term leases (i.e., leases with terms of 12 months or less) and an accounting policy to account for lease and non-lease components as a single component for certain classes of assets. The adoption of the new standard had a material impact to the Company's Balance Sheets, but no impact to the Statements of Operations and Accumulated Deficit or Statements of Cash Flows. As such, in the year of adoption, the Company recorded operating lease liabilities of approximately \$709,100, based on the present value of the remaining minimum rental payments using discount rate as of the effective date, and a corresponding right-of-use assets of approximately \$725,000, based on the operating lease liabilities. The difference in amounts of right-of-use assets and operating lease liabilities reflect the prepaid rent at adoption of ASC 842. See Note C– Leases for further information about our transition to ASC 842 and the newly required disclosures.

Financial Instruments - Measurement of Credit Losses. In June 2016, the FASB issued ASU No. 2016-13, "Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments." ASU 2016-13 introduces a new forward-looking "expected loss" approach, to estimate credit losses on most financial assets and certain other instruments, including trade receivables. The estimate of expected credit losses will require entities to incorporate considerations of historical information, current information and reasonable and supportable forecasts. This ASU also expands the disclosure requirements to enable users of financial statements to understand the entity's assumptions, models and methods for estimating expected credit losses. ASU 2016-13 was effective for the Company's fiscal year ending June 27, 2021, and the guidance was applied using the modified-retrospective approach. There was no material impact of adopting this guidance on our consolidated financial statements.

#### NOTE B - INCOME TAXES

The Company is included in the consolidated federal and certain combined state income tax returns of 1-800-FLOWERS.COM, Inc. Income taxes are provided as though the Company filed separate tax returns using the current statutory federal tax rate and the applicable state tax rates. In addition, the Company files separate income tax returns in certain states.



# 1-800-FLOWERS.COM FRANCHISE CO., INC.

## Notes to Financial Statements

### NOTE B - INCOME TAXES (CONTINUED)

The income tax expense (benefit) is comprised of the following:

	<u>Fiscal Year Ended</u>	
	<u>June 27, 2021</u>	<u>June 28, 2020</u>
Current:		
Federal	\$ (85,748)	\$ (124,969)
State	<u>(25,246)</u>	<u>(37,545)</u>
	<u>(110,994)</u>	<u>(162,514)</u>
Deferred:		
Federal	26,380	(5,807)
State	<u>8,033</u>	<u>(1,819)</u>
	<u>34,413</u>	<u>(7,626)</u>
	<u>\$ (76,581)</u>	<u>\$ (170,140)</u>

The Company accounts for income taxes under the liability method of accounting for income taxes. Under the liability method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. The deferred tax liability of \$13,670, and deferred tax asset of \$20,742, as of June 27, 2021 and June 28, 2020, respectively, principally relate to deferred revenue, accrued liabilities, allowance for notes receivable and depreciation. The net operating loss carryforward for various stand-alone states was \$54,536 and \$57,687 (tax-effected), for the fiscal years ended June 27, 2021 and June 28, 2020, respectively. The Company has set up a full valuation allowance against these net operating loss carryforwards, for both fiscal years, because it was deemed more likely than not that these assets would not be realized.

It is the Company's policy to provide for uncertain tax positions and the related interest and penalties based upon management's assessment of whether a tax benefit is more likely than not to be sustained upon examination by taxing authorities. To the extent that the Company prevails in matters for which a liability for an unrecognized tax benefit is established or is required to pay amounts in excess of the liability, the Company's effective tax rate in a given financial statement period may be affected. Accrued interest and penalties, where appropriate, are recorded in income tax expense. As of June 27, 2021 and June 28, 2020, no interest and penalties were required to be recorded. Assumptions, judgment and the use of estimates are required in determining if the "more likely than not" standard has been met when developing the provision for income taxes. As of June 27, 2021 and June 28, 2020, the Company did not have any uncertain tax positions. By statute, tax years starting from 2017 through 2020 remain open to examination by the major taxing authorities to which the Company is subject.

Pursuant to an informal tax sharing arrangement between the Company and 1-800-FLOWERS.COM, Inc., the income tax receivable recorded for the fiscal years ended June 27, 2021 and June 28, 2020 has been offset against amounts due to affiliates.

For the fiscal years ended June 27, 2021 and June 28, 2020, the difference between the Company's effective tax rates of 25.5% and 25.5%, respectively, and the U.S. federal statutory tax rate of 21.0% is principally related to state income taxes and permanent differences for meals and entertainment.



# 1-800-FLOWERS.COM FRANCHISE CO., INC.

## Notes to Financial Statements

### NOTE C - LEASES

#### Lessee

The Company leases certain property from third parties for use by franchisees and records rent expense related to those leases. The Company then subleases those properties to the franchisees and records sublease rental revenue. Lease agreements may contain renewal options and rent escalation clauses and require the Company to pay real estate taxes, insurance, common area maintenance and operating expenses applicable to the leased properties. At contract inception, the Company determines whether a contract is, or contains, a lease by determining whether it conveys the right to control the use of the identified asset for a period of time, by assessing whether it has the right to obtain substantially all of the economic benefits from use of the identified asset, and the right to direct the use of the identified asset.

At the lease commencement date, the Company determines if a lease should be classified as an operating or a finance lease (it currently has no finance leases) and recognize a corresponding lease liability and a right-of-use asset on its balance sheet. The lease liability is initially and subsequently measured as the present value of the remaining fixed minimum rental payments (including base rent and fixed common area maintenance) using discount rates as of the commencement date. Variable payments (including most utilities, real estate taxes, insurance and variable common area maintenance) are expensed as incurred. The right-of-use asset is initially and subsequently measured at the carrying amount of the lease liability adjusted for any prepaid or accrued lease payments, remaining balance of lease incentives received, unamortized initial direct costs, or impairment charges relating to the right-of-use asset. Right-of-use assets are assessed for impairment using the long-lived assets impairment guidance. The discount rate used to determine the present value of lease payments is our estimated collateralized incremental borrowing rate, based on the yield curve for the respective lease terms, as we generally cannot determine the interest rate implicit in the lease.

The Company recognizes expense for its operating leases on a straight-line basis over the lease term. As these leases expire, it can be expected that in the normal course of business they will be renewed or replaced. Renewal option periods are included in the measurement of lease liability, where the exercise is reasonably certain to occur. Key estimates and judgments in accounting for leases include how the Company determines: (1) lease payments, (2) lease term, and (3) the discount rate used in calculating the lease liability.

Additional information related to leases is as follows:

	Year Ended June 27, 2021	Year Ended June 28, 2020
<b>Lease costs:</b>		
Operating lease costs	\$ 195,374	\$ 194,765
Variable lease costs	101,240	103,267
Short-term lease cost	36,884	36,884
Sublease income	(370,329)	(361,334)
Total lease costs	<u>\$ (36,831)</u>	<u>\$ (26,418)</u>
Cash paid for amounts included in measurement of operating lease liabilities	\$ 190,902	\$ 174,994
Right-of-use assets obtained in exchange for new operating lease liabilities	-	344,985



**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
**Notes to Financial Statements**

**NOTE C - LEASES (CONTINUED)**

**Lessee**

	<u>June 27, 2021</u>
Weighted-average remaining lease term - operating leases (in years)	4.6
Weighted-discount rate - operating leases	3.3%

	<u>June 27, 2021</u>
2022	\$ 175,110
2023	198,156
2024	148,156
2025	131,906
2026	63,156
Thereafter	<u>63,156</u>
Total Future Minimum Lease Payments	779,640
Less Imputed Remaining Interest	<u>(58,415)</u>
Total	<u>\$ 721,225</u>

**Lessor**

The Company leases or subleases certain properties to its franchisees and occasionally to third parties. The lease descriptions, terms, variable lease payments and renewal options are the same as the lessee leases described above.

	<u>June 27, 2021</u>
2021	
2022	\$ 191,019
2023	198,156
2024	148,156
2025	131,906
2026	63,156
Thereafter	<u>63,156</u>
Total future minimum lease receipts	<u>\$ 795,549</u>



## **1-800-FLOWERS.COM FRANCHISE CO., INC.**

### **Notes to Financial Statements**

#### **NOTE D - RELATED-PARTY TRANSACTIONS**

##### **Due to affiliates:**

At June 27, 2021 and June 28, 2020, the Company had \$7,460,080 and \$7,176,887 due to affiliates, net, respectively. This balance arose principally through the Company's participation in 1-800-Flowers.com, Inc.'s affiliates' cash management program, whereby the affiliates' excess cash is swept into a consolidated investment account and advanced to affiliated entities as needed to enable the affiliates to pay various operating expenses and debt service. The Company was a net recipient of funds from this cash management program, which enabled it to fund operating deficiencies. Terms have not been established for collection of the amounts due to the affiliated entities. In addition, these advances do not bear interest.

#### **NOTE E - COMMITMENTS AND CONTINGENCIES**

##### **[1] COVID-19:**

The Company is closely monitoring the impact of COVID-19 on its business, including how it will affect its customers, workforce, suppliers, vendors, franchisees, florists, and production and distribution channels, as well as its financial statements. The extent to which COVID-19 impacts the Company's business and financial results will depend on numerous evolving factors, including, but not limited to: the magnitude and duration of COVID-19, the extent to which it will impact macroeconomic conditions, including interest rates, employment rates and consumer confidence, the speed of the anticipated recovery, and governmental, business and individual consumer reactions to the pandemic. The Company assessed certain accounting matters that generally require consideration of forecasted financial information in context with the information reasonably available to the Company and the unknown future impacts of COVID-19 as of June 27, 2021 and through the date of this report. The accounting matters assessed included, but were not limited to, the Company's allowance for doubtful accounts and credit losses. While there was not a material impact to the Company's financial statements as of and for the year ended June 27, 2021, the Company's future assessment of these factors and the evolving factors described above, could result in material impacts to the Company's financial statements in future reporting periods.



## 1-800-FLOWERS.COM FRANCHISE CO., INC.

### Notes to Financial Statements

#### NOTE E - COMMITMENTS AND CONTINGENCIES (CONTINUED)

##### [2] Litigation:

*Arizona Family Florists LLC, et al. V. 1-800-FLOWERS.COM, Inc., et al:*

On May 24, 2016, three of the Company's franchisees (the, "Plaintiffs") filed a Complaint in the United States District Court for the Eastern District of New York against 1-800-FLOWERS.COM, Inc. and certain of its affiliated companies (the, "Defendants"), which was followed by the filing of an Amended Complaint on July 15, 2016 and a Second Amended Complaint on February 3, 2017. The claims include breach of contract and the covenant of good faith and fair dealing, common law unfair competition, violation of Arizona Consumer Fraud Act, violation of Florida's Deceptive and Unfair Trade Practices Act, Violation of New York's Franchise Sales Act, common law fraud, negligent misrepresentation and fraudulent inducement and conversion. The Plaintiffs seek an accounting, money damages, declaration discharging non-compete restrictions, declaratory relief and permanent injunction. On April 7, 2017, the Defendants filed their Answers and Counter-Claims to the Second Amended Complaint. The Answer denied the allegations in the Complaint and asserted numerous affirmative defenses, including release or waiver of certain claims by all or some of the Plaintiffs and that certain claims were barred by applicable statutes of limitation, statute of frauds, and rights of set-off. The Counter-Claims seek dismissal of the Complaint, monetary damages for breach of contract, breach of the Arizona Franchise Agreement and abandonment of the Arizona Franchise by the Arizona Plaintiffs, and injunctive relief regarding the Arizona Plaintiffs' continued unauthorized use of the 1- 800-Flowers marks and for enforcement of the non-competition provisions in the Plaintiffs' agreements, plus legal fees and expenses. The claims of one of the Plaintiffs were settled and dismissed with prejudice on February 8, 2017. No monies were paid to this Plaintiff. The fact and expert discovery stages of the litigation have been completed. On February 21, 2020, a Magistrate Judge rendered a Report and Recommendation as to the Summary Judgment motions previously filed by the Plaintiffs and the Defendants. In the Report, the Magistrate Judge dismissed certain of the Claims of the Plaintiffs, including the Breach of Contract claims of one Plaintiff. Plaintiffs' Motions for Summary Judgment against the Defendants were denied. Since that time, the Plaintiffs have filed their respective Objections to the Magistrate's Report and Recommendation and, in turn, the Defendants filed their Responses thereto. Certain of the Plaintiffs have obtained new counsel and the Stay on the case has been lifted by the Judge. The matter now has been fully briefed and the parties await the decision of the Judge as to whether or not the Judge will affirm, in its entirety, the Magistrate's Report and Recommendation, or, in the alternative, make any modifications thereto.

The Company believes the remaining Plaintiffs' claims to be without merit and will vigorously defend against the Plaintiffs' claims and prosecute its Counter-Claims.

##### *Other*

There are various claims, lawsuits and pending actions against the Company incident to the operations of its business. It is the opinion of management, after consultation with counsel, that the ultimate resolution of such claims, lawsuits and pending actions will not have a material adverse effect on the Company's financial position, results of operations or liquidity.

#### NOTE F - SUBSEQUENT EVENTS

The Company evaluated subsequent events through October 8, 2021, the date these financial statements were available to be issued. The Company is not aware of any subsequent events that would require recognition or disclosure in the financial statements.



**EISNERAMPER**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**FINANCIAL STATEMENTS**

**YEARS ENDED JUNE 28, 2020 and JUNE 30, 2019**



# 1-800-FLOWERS.COM FRANCHISE CO., INC.

<b>Contents</b>	<b>Page</b>
<b>Independent Auditors' Report</b>	1
Balance sheets as of June 28, 2020 and June 30, 2019	3
Statements of operations and accumulated deficit for the years ended June 28, 2020 and June 30, 2019	4
Statements of cash flows for the years ended June 28, 2020 and June 30, 2019	5
Notes to financial statements	6

## INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholder of  
1-800-Flowers.com Franchise Co., Inc.

### Report on the Financial Statements

We have audited the accompanying financial statements of 1-800-Flowers.com Franchise Co., Inc. (the "Company"), which comprise the balance sheets as of June 28, 2020 and June 30, 2019, and the related statements of operations and accumulated deficit, and cash flows for each of the fiscal years then ended, and the related notes to the financial statements.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Opinion*

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of 1-800-Flowers.com Franchise Co., Inc. as of June 28, 2020 and June 30, 2019, and the results of its operations and its cash flows for each of the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.



***Emphasis of Matter - Change in Accounting Principle***

As discussed in Note A to the financial statements, the Company has changed its method of accounting for leases effective July 1, 2019 in connection with the adoption of Accounting Standards Codification Topic 842, Leases. Our opinion is not modified with respect to this matter.

*EisnerAmper LLP*

EISNERAMPER LLP  
New York, New York  
October 5, 2020

EISNERAMPER  
LLP





# 1-800-FLOWERS.COM FRANCHISE CO., INC.

## Balance Sheets

	<u>June 28, 2020</u>	<u>June 30, 2019</u>
<b>ASSETS</b>		
Current assets:		
Cash	\$ 204,862	\$ 236,207
Accounts receivable	128,401	185,878
Prepaid expenses	5,346	21,635
Notes receivable, less allowance for doubtful accounts of \$5,000 in 2020 and 2019	<u>13,752</u>	<u>55,373</u>
Total current assets	<u>352,361</u>	<u>499,093</u>
Equipment, net	-	20
Operating lease right-of-use assets	897,368	-
Security deposits	32,753	32,753
Deferred tax assets	<u>20,742</u>	<u>13,116</u>
Total assets	<u>\$ 1,303,224</u>	<u>\$ 544,982</u>
<b>LIABILITIES AND SHAREHOLDER'S DEFICIT</b>		
Current liabilities:		
Accrued expenses	\$ 124,231	\$ 105,965
Deferred sublease rental income	33,264	30,035
Deferred franchise fee revenue	479,457	517,271
Current portion of long-term operating lease liabilities	<u>164,096</u>	<u>-</u>
Total current liabilities	<u>801,048</u>	<u>653,271</u>
Security deposits	39,455	39,455
Long-term operating lease liabilities	737,134	-
Due to affiliates, net	<u>7,176,887</u>	<u>6,805,599</u>
Total liabilities	<u>8,754,524</u>	<u>7,498,325</u>
Shareholder's deficit:		
Common stock, no par value, 1,500 shares authorized, 10 shares issued and outstanding	100,000	100,000
Accumulated deficit	<u>(7,551,300)</u>	<u>(7,053,343)</u>
Total shareholder's deficit	<u>(7,451,300)</u>	<u>(6,953,343)</u>
Total liabilities and shareholder's deficit	<u>\$ 1,303,224</u>	<u>\$ 544,982</u>

**1-800-FLOWERS.COM FRANCHISE CO., INC.****Statements of Operations and Accumulated Deficit**

	<b>Years Ended</b>	
	<b>June 28, 2020</b>	<b>June 30, 2019</b>
<b>Revenues:</b>		
Continuing license fees	\$ 829,148	\$ 850,354
Initial franchise fees	113,814	93,994
Sublease rent	361,334	380,532
Interest income	2,929	6,205
Total revenues	<u>1,307,225</u>	<u>1,331,085</u>
<b>Costs and expenses:</b>		
Selling, general, and administrative	1,640,406	1,580,018
Rent	334,916	359,790
Total costs and expenses	<u>1,975,322</u>	<u>1,939,808</u>
Loss before income tax benefit	(668,097)	(608,723)
Income tax benefit	170,140	149,415
<b>Net loss</b>	<u>(497,957)</u>	<u>(459,308)</u>
<b>Accumulated deficit:</b>		
Beginning of year	(7,053,343)	(6,150,770)
Cumulative effect of change in accounting principle - beginning of the year	-	(443,265)
<b>End of year</b>	<u>\$ (7,551,300)</u>	<u>\$ (7,053,343)</u>

**1-800-FLOWERS.COM FRANCHISE CO., INC.****Statements of Cash Flows**

	<b>Years Ended</b>	
	<b>June 28, 2020</b>	<b>June 30, 2019</b>
<b>Operating activities:</b>		
Net loss	\$ (497,957)	\$ (459,308)
Reconciliation of net loss to net cash used in operating activities:		
Depreciation	20	129
Deferred income taxes	(7,626)	(3,351)
Changes in operating assets and liabilities:		
Accounts receivable	57,477	8,074
Notes receivable	41,621	1,901
Prepaid expenses	16,289	15,485
Accrued expenses and other accrued liabilities	21,495	14,780
Deferred franchise fee revenue	(37,814)	74,006
Other assets and other liabilities	3,862	-
Net cash used in operating activities	<u>(402,633)</u>	<u>(348,284)</u>
<b>Financing activities:</b>		
Advances from affiliates, net	<u>371,288</u>	<u>376,557</u>
Net cash provided by financing activities	371,288	376,557
<b>Net increase (decrease) in cash</b>	<b>(31,345)</b>	<b>28,273</b>
Cash at beginning of year	<u>236,207</u>	<u>207,934</u>
<b>Cash at end of year</b>	<b>\$ 204,862</b>	<b>\$ 236,207</b>

## 1-800-FLOWERS.COM FRANCHISE CO., INC.

### Notes to Financial Statements

#### NOTE A - ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

##### [1] Organization:

1-800-Flowers.com Franchise Co., Inc. (the "Company") is a franchisor of retail flower shops under the 1-800-Flowers and 1-800-Flowers.com trademarks. The Company was incorporated on February 8, 2000 and is a wholly-owned subsidiary of 1-800-FLOWERS Retail, Inc. (the retail subsidiary of 1-800-FLOWERS.COM, Inc.). As of June 28, 2020 and June 30, 2019, the Company had 73 and 77 franchise locations in operation, respectively.

The Company may incur operating losses and negative cash flows as it develops its market and expands its operations. While there can be no assurance that the Company will achieve its business plan or that it will be able to generate the necessary cash flows to sustain operations, the Company has a commitment from its shareholder through October 5, 2021 to provide additional financial support if needed. Such commitment for financial support may be in the form of loans or advances or the additional investment of capital in the Company.

The Company's fiscal year is a 52- or 53-week period ending on the Sunday nearest to June 30. Fiscal year 2020, which ended on June 28, 2020, and fiscal year 2019, which ended on June 30, 2019, each consisted of 52 weeks.

##### [2] Revenue recognition:

Revenue is derived from initial franchise fees, continuing license fees and sublease rental income.

A description of its principal revenue generating activities is as follows:

- Continuing license fees – are either variable (calculated based on a percentage of the franchisees' gross sales) or fixed royalties, related to its performance obligation to our franchisees to maintain the Marks, the System and the Trade Practices being licensed. The fixed royalties are recognized in the month earned and the variable royalties are recognized in the period in which the related floral sales are made by the franchisee. Continuing license fees are typically billed and collected monthly.
- Initial franchise fees – are primarily fees paid by the franchisees for the license to use the Company's Marks, System and Trade Practices on initial store opening. Recognition of these fees is deferred until the commencement date of the agreement and occurs over time on a straight-line basis, based on the term of the underlying franchise agreement (typically 10 years). In the event a franchise agreement is terminated, any remaining deferred fees are recognized in the period of termination. Initial franchise fees are billed and received upon the signing of the franchise agreement.
- Sublease rent – the Company leases certain property from third parties for use by franchisees and records rent expense related to those leases. The Company then subleases those properties to the franchisees and records sublease rental revenue (see Note C). Sublease rental revenue is recognized in the period incurred and is typically billed and collected monthly.

Current accounting standards require that companies disaggregate revenue from contracts with customers into categories that depict how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors. The revenue disaggregation included within the Company's Statements of Operations and Accumulated Deficit satisfies this requirement.

# 1-800-FLOWERS.COM FRANCHISE CO., INC.

## Notes to Financial Statements

### NOTE A - ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

#### [3] Deferred franchise fee revenue:

Deferred revenues are recorded when the Company has received consideration (i.e. advance payment) before satisfying its performance obligations. Deferred franchise fees consist primarily of the unamortized portion of initial franchise fees and represent our remaining performance obligations to its franchisees – see Note A[2] for details.

The components of the change in deferred franchise revenue are as follows:

<b>Balance - July 1, 2018</b>	\$	-
Cumulative effect of change in accounting principle		443,265
Franchise fees collected		168,000
Current year revenue recognized		(93,994)
<b>Balance - June 30, 2019</b>	<b>\$</b>	<b>517,271</b>
Franchise fees collected		76,000
Current year revenue recognized		(113,814)
<b>Balance - June 28, 2020</b>	<b>\$</b>	<b>479,457</b>

#### [4] Advertising expense:

The Company expenses advertising costs as incurred. For the fiscal years ended June 28, 2020 and June 30, 2019, the Company incurred \$25,580 and \$13,160, respectively, of advertising expense, which is included in selling, general, and administrative expenses line item in the Company's Statements of Operations and Accumulated Deficit.

#### [5] Concentration of credit risk:

The Company's accounts and notes receivable balances are from its franchisees that operate in various states, and collateral is generally not required. Notes receivable are principally related to short-term loans for initial franchise fees and store rebranding and renovation costs and, to a lesser extent, the result of converting certain past due franchise receivable balances into promissory notes. Allowances, if any, relating to accounts and notes receivable balances have been recorded based on previous experiences and management's evaluation.

#### [6] Fair values of financial instruments:

The recorded amounts of the Company's cash, notes receivable, accounts receivable, accounts payable, and accrued liabilities approximate their fair values principally because of the short-term nature of these items.

#### [7] Comprehensive loss:

For the fiscal years ended June 28, 2020 and June 30, 2019, the Company has no items of other comprehensive income (loss), and therefore, the comprehensive loss equals the Company's net loss.

#### [8] Use of estimates:

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

## 1-800-FLOWERS.COM FRANCHISE CO., INC.

### Notes to Financial Statements

#### NOTE A - ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

##### [9] Recently issued accounting pronouncements - adopted

In February 2016, the FASB issued ASU No. 2016-02, "Leases (Topic 842)" ("ASC 842"). Under this guidance, an entity is required to recognize right-of-use assets and lease liabilities on its balance sheet and disclose key information about leasing arrangements. This guidance offers specific accounting guidance for a lessee, a lessor and sale and leaseback transactions. Lessees and lessors are required to disclose qualitative and quantitative information about leasing arrangements to enable a user of the financial statements to assess the amount, timing and uncertainty of cash flows arising from leases. The Company adopted the new standard effective July 1, 2019 and elected the optional transition method and therefore, it will not apply the standard to the comparative periods presented in our financial statements. The new standard provides a number of optional practical expedients in transition. The Company elected the 'package of practical expedients', that did not require it to reassess, under the new standard, the Company's prior conclusions about lease identification, lease classification and initial direct costs. Further, the Company elected a short-term lease exception policy, permitting it to not apply the recognition requirements of this standard to short-term leases (i.e. leases with terms of 12 months or less) and an accounting policy to account for lease and non-lease components as a single component for certain classes of assets. The adoption of the new standard had a material impact to the Company's Balance Sheets, but no impact to the Statements of Operations and Accumulated Deficit or Statements of Cash Flows. As such, the Company recorded operating lease liabilities of approximately \$709,100, based on the present value of the remaining minimum rental payments using discount rate as of the effective date, and a corresponding right-of-use assets of approximately \$725,000, based on the operating lease liabilities. The difference in amounts of right-of-use assets and operating lease liabilities reflect the prepaid rent at adoption of ASC 842. See Note C— Leases for further information about our transition to ASC 842 and the newly required disclosures.

##### [10] Recently issued accounting pronouncements - not yet adopted

Financial Instruments - Measurement of Credit Losses. In June 2016, the FASB issued ASU No. 2016-13, "Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments." ASU 2016-13 introduces a new forward-looking "expected loss" approach, to estimate credit losses on most financial assets and certain other instruments, including trade receivables. The estimate of expected credit losses will require entities to incorporate considerations of historical information, current information and reasonable and supportable forecasts. This ASU also expands the disclosure requirements to enable users of financial statements to understand the entity's assumptions, models and methods for estimating expected credit losses. ASU 2016-13 is effective for the Company's fiscal year ending June 27, 2021, and the guidance is to be applied using the modified-retrospective approach. The Company is currently evaluating the potential impact of adopting this guidance on our financial statements.

##### [11] Reclassifications:

Certain balances in the prior fiscal years have been reclassified to conform to the presentation in the current fiscal year.

#### NOTE B - INCOME TAXES

The Company is included in the consolidated federal and certain combined state income tax returns of 1-800-FLOWERS.COM, Inc. Income taxes are provided as though the Company filed separate tax returns using the current statutory federal tax rate and the applicable state tax rates. In addition, the Company files separate income tax returns in certain states.

**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
**Notes to Financial Statements**

**NOTE B - INCOME TAXES (CONTINUED)**

The income tax expense (benefit) is comprised of the following:

	<b>Fiscal Year Ended</b>	
	<b>June 28, 2020</b>	<b>June 30, 2019</b>
Current:		
Federal	<b>\$ (124,969)</b>	\$ (115,969)
State	<u><b>(37,545)</b></u>	<u>(30,095)</u>
	<u><b>(162,514)</b></u>	<u>(146,064)</u>
Deferred:		
Federal	<b>(5,807)</b>	(2,539)
State	<u><b>(1,819)</b></u>	<u>(812)</u>
	<u><b>(7,626)</b></u>	<u>(3,351)</u>
	<u><b>\$ (170,140)</b></u>	<u>\$ (149,415)</u>

The Company accounts for income taxes under the liability method of accounting for income taxes. Under the liability method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets, of \$20,742 and \$13,116 as of June 28, 2020 and June 30, 2019, respectively, principally relate to deferred revenue, accrued liabilities, allowance for notes receivable and depreciation. The net operating loss carryforward for various stand-alone states was \$57,687 and \$52,414 (tax-effected), for the fiscal years ended June 28, 2020 and June 30, 2019, respectively. The Company has set up a full valuation allowance against these net operating loss carryforwards, for both fiscal years, because it was deemed more likely than not that these assets would not be realized.

It is the Company's policy to provide for uncertain tax positions and the related interest and penalties based upon management's assessment of whether a tax benefit is more likely than not to be sustained upon examination by taxing authorities. To the extent that the Company prevails in matters for which a liability for an unrecognized tax benefit is established or is required to pay amounts in excess of the liability, the Company's effective tax rate in a given financial statement period may be affected. Accrued interest and penalties, where appropriate, are recorded in income tax expense. As of June 28, 2020 and June 30, 2019, no interest and penalties were required to be recorded. Assumptions, judgment and the use of estimates are required in determining if the "more likely than not" standard has been met when developing the provision for income taxes. As of June 28, 2020 and June 30, 2019, the Company did not have any uncertain tax positions. By statute, tax years starting from 2015 through 2018 remain open to examination by the major taxing authorities to which the Company is subject.

Pursuant to an informal tax sharing arrangement between the Company and 1-800-FLOWERS.COM, Inc., the income tax receivable recorded for the fiscal years ended June 28, 2020 and June 30, 2019 has been offset against amounts due to affiliates.

For the fiscal years ended June 28, 2020 and June 30, 2019, the difference between the Company's effective tax rates of 25.5% and 24.6%, respectively, and the U.S. federal statutory tax rate of 21% is principally related to state income taxes and permanent differences for meals and entertainment.



**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
**Notes to Financial Statements**

**NOTE C - Leases**

**Lessee**

The Company leases certain property from third parties for use by franchisees and records rent expense related to those leases. The Company then subleases those properties to the franchisees and records sublease rental revenue. Lease agreements may contain renewal options and rent escalation clauses and require the Company to pay real estate taxes, insurance, common area maintenance and operating expenses applicable to the leased properties. The Company accounts for its leases in accordance with ASC 842. At contract inception, the Company determines whether a contract is, or contains, a lease by determining whether it conveys the right to control the use of the identified asset for a period of time, by assessing whether it has the right to obtain substantially all of the economic benefits from use of the identified asset, and the right to direct the use of the identified asset.

At the lease commencement date, the Company determines if a lease should be classified as an operating or a finance lease (it currently has no finance leases) and recognize a corresponding lease liability and a right-of-use asset on its balance sheet. The lease liability is initially and subsequently measured as the present value of the remaining fixed minimum rental payments (including base rent and fixed common area maintenance) using discount rates as of the commencement date. Variable payments (including most utilities, real estate taxes, insurance and variable common area maintenance) are expensed as incurred. The right-of-use asset is initially and subsequently measured at the carrying amount of the lease liability adjusted for any prepaid or accrued lease payments, remaining balance of lease incentives received, unamortized initial direct costs, or impairment charges relating to the right-of-use asset. Right-of-use assets are assessed for impairment using the long-lived assets impairment guidance. The discount rate used to determine the present value of lease payments is our estimated collateralized incremental borrowing rate, based on the yield curve for the respective lease terms, as we generally cannot determine the interest rate implicit in the lease.

The Company recognizes expense for its operating leases on a straight-line basis over the lease term. As these leases expire, it can be expected that in the normal course of business they will be renewed or replaced. Renewal option periods are included in the measurement of lease liability, where the exercise is reasonably certain to occur. Key estimates and judgments in accounting for leases include how the Company determines: (1) lease payments, (2) lease term, and (3) the discount rate used in calculating the lease liability.

Additional information related to leases is as follows:

	<b>Year Ended June 28, 2020</b>
<b>Lease costs:</b>	
Operating lease costs	\$ 194,765
Variable lease costs	103,267
Short-term lease cost	36,884
Sublease income	(361,334)
Total lease costs	<u>\$ (26,418)</u>

	<b>Year Ended June 28, 2020</b>
Cash paid for amounts included in measurement of operating lease liabilities	\$ 174,994
Right-of-us assets obtained in exchange for new operating lease liabilities	344,985

**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
**Notes to Financial Statements**

**NOTE C - LEASES (CONTINUED)**

**Lessee**

	<u>June 28, 2020</u>
Weighted-average remaining lease term - operating leases (in years)	5.5
Weighted-discount rate - operating leases	3.3%

Maturities of lease liabilities in accordance with ASC 842 as of June 28, 2020 are as follows:

2021	\$ 190,902
2022	191,019
2023	198,156
2024	148,156
2025	131,906
Thereafter	<u>126,312</u>
Total Future Minimum Lease Payments	986,451
Less Imputed Remaining Interest	<u>85,221</u>
Total	<u>\$ 901,230</u>

**Lessor**

The Company leases or subleases certain properties to its franchisees and occasionally to third parties. The lease descriptions, terms, variable lease payments and renewal options are the same as the lessee leases described above.

Future minimum lease receipts under long-term operating subleases as of June 28, 2020 are as follows:

2021	\$ 190,902
2022	191,019
2023	198,156
2024	148,156
2025	131,906
Thereafter	<u>126,312</u>
Total future minimum lease receipts	<u>\$ 986,451</u>

**1-800-FLOWERS.COM FRANCHISE CO., INC.**  
**Notes to Financial Statements**

**NOTE C - LEASES (CONTINUED)**

**Lessor**

At June 30, 2019, the aggregate future rental expense under long-term operating leases for land and buildings and corresponding sublease rental income under long-term operating subleases are as follows:

<u>Fiscal Year</u>	<u>Sublease Income</u>	<u>Lease Expense</u>
2020	\$ 184,769	\$ 434,633
2021	117,300	367,164
2022	117,300	367,164
2023	123,156	373,020
2024	73,156	323,020
Thereafter	189,468	1,626,168
	<u>\$ 805,149</u>	<u>\$ 3,491,169</u>

The future sublease rental income is lower than the future rental expense above, as the lease for one of our locations expired in fiscal 2019 and had not been renewed at June 30, 2019. This lease was renewed during fiscal 2020.

**NOTE D - RELATED PARTY TRANSACTIONS**

**Due to affiliates:**

At June 28, 2020 and June 30, 2019, the Company had \$7,176,887 and \$6,805,599 due to affiliates, net, respectively. This balance arose principally through the Company's participation in 1-800-Flowers.com, Inc.'s affiliates' cash management program, whereby the affiliates' excess cash is swept into a consolidated investment account and advanced to affiliated entities as needed to enable the affiliates to pay various operating expenses and debt service. The Company was a net recipient of funds from this cash management program, which enabled it to fund operating deficiencies. Terms have not been established for collection of the amounts due to the affiliated entities. In addition, these advances do not bear interest.

**NOTE E - COMMITMENTS AND CONTINGENCIES**

**[1] COVID-19:**

The Company is closely monitoring the impact of COVID-19 on its business, including how it will affect its customers, workforce, suppliers, vendors, franchisees, florists, and production and distribution channels, as well as its financial statements. The extent to which COVID-19 impacts the Company's business and financial results will depend on numerous evolving factors, including, but not limited to: the magnitude and duration of COVID-19, the extent to which it will impact macroeconomic conditions, including interest rates, employment rates and consumer confidence, the speed of the anticipated recovery, and governmental, business and individual consumer reactions to the pandemic. The Company assessed certain accounting matters that generally require consideration of forecasted financial information in context with the information reasonably available to the Company and the unknown future impacts of COVID-19 as of June 28, 2020 and through the date of this report. The accounting matters assessed included, but were not limited to, the Company's allowance for doubtful accounts and credit losses. While there was not a material impact to the Company's financial statements as of and for the year ended June 28, 2020, the Company's future assessment of these factors and the evolving factors described above, could result in material impacts to the Company's financial statements in future reporting periods.

## 1-800-FLOWERS.COM FRANCHISE CO., INC.

### Notes to Financial Statements

#### NOTE E - COMMITMENTS AND CONTINGENCIES (CONTINUED)

##### [2] Litigation:

*Arizona Family Florists LLC, et al. V. 1-800-FLOWERS.COM, Inc., et al:*

On May 24, 2016, three of the Company's franchisees (the, "Plaintiffs") filed a Complaint in the United States District Court for the Eastern District of New York against 1-800-FLOWERS.COM, Inc. and certain of its affiliated companies (the, "Defendants"), which was followed by the filing of an Amended Complaint on July 15, 2016 and a Second Amended Complaint on February 3, 2017. The claims include breach of contract and the covenant of good faith and fair dealing, common law unfair competition, violation of Arizona Consumer Fraud Act, violation of Florida's Deceptive and Unfair Trade Practices Act, Violation of New York's Franchise Sales Act, common law fraud, negligent misrepresentation and fraudulent inducement and conversion. The Plaintiffs seek an accounting, money damages, declaration discharging non-compete restrictions, declaratory relief and permanent injunction. On April 7, 2017, the Defendants filed their Answers and Counter-Claims to the Second Amended Complaint. The Answer denied the allegations in the Complaint and asserted numerous affirmative defenses, including release or waiver of certain claims by all or some of the Plaintiffs and that certain claims were barred by applicable statutes of limitation, statute of frauds, and rights of set-off. The Counter-Claims seek dismissal of the Complaint, monetary damages for breach of contract, breach of the Arizona Franchise Agreement and abandonment of the Arizona Franchise by the Arizona Plaintiffs, and injunctive relief regarding the Arizona Plaintiffs' continued unauthorized use of the 1- 800-Flowers marks and for enforcement of the non-competition provisions in the Plaintiffs' agreements, plus legal fees and expenses. The claims of one of the Plaintiffs were settled and dismissed with prejudice on February 8, 2017. No monies were paid to this Plaintiff. The fact and expert discovery stages of the litigation have been completed. On February 21, 2020, a Magistrate Judge rendered a Report and Recommendation as to the Summary Judgment motions previously filed by the Plaintiffs and the Defendants. In the Report, the Magistrate Judge dismissed certain of the Claims of the Plaintiffs, including the Breach of Contract claims of one Plaintiff. Plaintiffs' Motions for Summary Judgment against the Defendants were denied. Since that time, the Plaintiffs have filed their respective Objections to the Magistrate's Report and Recommendation and, in turn, the Defendants filed their Responses thereto. Certain of the Plaintiffs have obtained new counsel and the Stay on the case has been lifted by the Judge. The matter now has been fully briefed and the parties await the decision of the Judge as to whether or not the Judge will affirm, in its entirety, the Magistrate's Report and Recommendation, or, in the alternative, make any modifications thereto.

The Company believes the remaining Plaintiffs' claims to be without merit and will vigorously defend against the Plaintiffs' claims and prosecute its Counter-Claims.

##### *Other*

There are various claims, lawsuits and pending actions against the Company incident to the operations of its business. It is the opinion of management, after consultation with counsel, that the ultimate resolution of such claims, lawsuits and pending actions will not have a material adverse effect on the Company's financial position, results of operations or liquidity.

#### NOTE F - SUBSEQUENT EVENTS

The Company evaluated subsequent events through October 5, 2020, the date these financial statements were available to be issued. The Company is not aware of any subsequent events that would require recognition or disclosure in the financial statements.

**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EXHIBIT R  
AGENTS FOR SERVICE OF PROCESS AND STATE ADMINISTRATORS**

**1-800-FLOWERS.COM FRANCHISE CO., INC.**

**LIST OF STATE ADMINISTRATORS AND STATE AGENTS FOR SERVICE OF PROCESS**

<b>STATE</b>	<b>STATE ADMINISTRATOR</b>	<b>AGENT FOR SERVICE OF PROCESS</b>
<b>CALIFORNIA</b>	Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013 (213) 576-7505 (866) 275-2677	California Commissioner of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013 (213) 576-7505 (866) 275-2677
<b>HAWAII</b>	Business Registration Division Department of Commerce and Consumer Affairs 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	Commissioner of Securities, Department of Commerce and Consumer Affairs 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722
<b>ILLINOIS</b>	Franchise Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	Franchise Bureau Office of the Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465
<b>INDIANA</b>	Indiana Secretary of State Securities Division 302 West Washington Street, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	Indiana Secretary of State 201 State House 200 West Washington Street Indianapolis, Indiana 46204 (317) 232-6531
<b>MARYLAND</b>	Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2021 (410) 576-6360	Maryland Securities Commissioner Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2021 (410) 576-6360
<b>MICHIGAN</b>	Michigan Department of Attorney General Consumer Protection Division Attn: Franchise Section 525 West Ottawa G. Mennen Williams Building, 1 <sup>st</sup> Floor Lansing, Michigan 48933 (517) 335-7567	Michigan Department of Commerce Corporations and Securities Bureau P.O. Box 30054 6546 Mercantile Way Lansing, Michigan 48909 (517) 241-6345
<b>MINNESOTA</b>	Minnesota Department of Commerce 85 Seventh Place East, Suite 280 St. Paul, Minnesota 55101-2198 (651) 539-1600	Minnesota Commissioner of Commerce Department of Commerce 85 Seventh Place East, Suite 280 St. Paul, Minnesota 55101-2198 (651) 539-1600
<b>NEBRASKA</b>	Nebraska Department of Banking and Finance Bureau of Securities/Financial Institutions Division 1526 K Street, Suite 300 Lincoln, Nebraska 68508-2723 (402) 471-2171	Nebraska Department of Banking and Finance Bureau of Securities/Financial Institutions Division 1526 K Street, Suite 300 Lincoln, Nebraska 68508-2723 (402) 471-2171

<b>STATE</b>	<b>STATE ADMINISTRATOR</b>	<b>AGENT FOR SERVICE OF PROCESS</b>
<b>NEW YORK</b>	NYS Department of Law Investor Protection Bureau Franchise Section 28 Liberty Street, 21st <sup>d</sup> Floor New York, New York 10005-1495 (212) 416-8222 ( Phone) (212) 416-6042 (Fax)	New York Department of State One Commerce Plaza 99 Washington Avenue, 6 <sup>th</sup> Floor Albany, New York 12231-0001 (518) 473-2492
<b>NORTH DAKOTA</b>	North Dakota Securities Department 600 East Boulevard Avenue State Capitol Fifth Floor, Department 414 Bismarck, North Dakota 58505-0510 (701) 328-4712	North Dakota Securities Commissioner 600 East Boulevard Avenue Fifth Floor, Department. 414 Bismarck, North Dakota 58505-0510 (701) 328-4712
<b>OREGON</b>	Department of Insurance and Finance Corporate Securities Section Labor and Industries Building Salem, Oregon 97310 (503) 378-4387	Department of Insurance and Finance Corporate Securities Section Labor and Industries Building Salem, Oregon 97310 (503) 378-4387
<b>RHODE ISLAND</b>	Securities Division State of Rhode Island Department of Business Regulation, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue, Cranston, Rhode Island 02920 (401) 462 9582	Director, Securities Division Department of Business Regulation, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue, Cranston, Rhode Island 02920 (401) 462 9582
<b>SOUTH DAKOTA</b>	Department of Labor and Regulation Division of Insurance Securities Regulation 124 South Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-3563	Department of Labor and Regulation Division of Insurance Securities Regulation 124 South Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-3563
<b>VIRGINIA</b>	State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, Ninth Floor Richmond, Virginia 23219 (804) 371-9051	Clerk of the State Corporation Commission 1300 East Main Street, 1 <sup>st</sup> Floor Richmond, Virginia 23219 (804) 371-9733
<b>WASHINGTON</b>	Department of Financial Institutions Securities Division P.O. Box 9033 Olympia, Washington 98501 (360) 902-8760	Director, Department of Financial Institutions Securities Division 150 Israel Road S.W. Tumwater, Washington 98501 (360) 902-8760
<b>WISCONSIN</b>	Franchise Registration Division of Securities Wisconsin Department of Financial Institutions 201 West Washington Ave, Suite 300 Madison, Wisconsin 53703 (608) 266-1064	Securities and Franchise Registration Wisconsin Securities Commission 201 West Washington Avenue, Suite 300 Madison, Wisconsin 53703 (608) 266-1064



**1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT**

**EFFECTIVE DATES**

## STATE EFFECTIVE DATES

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the states, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration as of the Effective Date stated below:

<u>State</u>	<u>Effective Date</u>
Illinois	_____
Indiana	_____
Michigan	_____
Minnesota	_____
New York	_____
North Dakota	_____
Rhode Island	_____
South Dakota	_____
Virginia	_____
Washington	_____
Wisconsin	_____

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

1-800-FLOWERS.COM FRANCHISE CO., INC.  
FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT S  
RECEIPTS

**RECEIPT**

This Disclosure Document summarizes provisions of the Franchise Agreement and other information in plain language. Read this Disclosure Document and all agreements carefully. If 1-800-Flowers.Com Franchise Co., Inc. offers you a franchise, 1-800-Flowers.Com Franchise Co., Inc. must provide this Disclosure Document to you at least 14 calendar days before you sign a binding agreement or make a payment with the franchisor or an affiliate in connection with the proposed franchise sale, whichever comes first.

If we do not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to The Federal Trade Commission, Washington D.C. 20580 and the appropriate State Agency identified on **Exhibit R**.

Michigan requires that we give you this Disclosure Document at the earlier of 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

New York requires you to receive this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

The franchisor is 1-800-Flowers.Com Franchise Co., Inc., located at Two Jericho Plaza, Suite 200, Jericho, New York 11753.

Issuance Date: October 15, 2021.

The name, principal business address and telephone number of the Franchise Seller offering the Franchise: Vincent J. McVeigh, Brian McGee, Stephen Lenzovich, Nicole Schiau, Cheryl Steckel, Daisy Chin, Michael Cline, Arthur Herrera, Steven Seniow and Elmerinda Phillips, all at Two Jericho Plaza, Suite 200, Jericho, New York 11753, (516) 237-6000; and \_\_\_\_\_.

We authorize the persons and/or entities listed on **Exhibit R** to receive service of process for us.

I have received a Disclosure Document dated October 15, 2021. This Disclosure Document includes the following Exhibits:

<b>A Franchise Agreement</b>	<b>M-1 Premier Order Fulfillment Agreement</b>
<b>B Co-Brand Franchise Addendum to Franchise Agreement</b>	<b>M-2 Fruit Bouquets Order Fulfillment Agreement</b>
<b>C Fruit Bouquets Addendum to Franchise Agreement</b>	<b>N-1 BloomNet Membership Agreement</b>
<b>D Sublease</b>	<b>N-2 BloomNet Technologies Systems Agreement</b>
<b>E Option to Obtain Lease Assignment</b>	<b>N-3 BloomNet Order Referral Program Rate Schedule</b>
<b>F State Specific Addenda</b>	<b>O List of Current Franchisees</b>
<b>G Confidentiality Agreement</b>	<b>P List of Former Franchisees</b>
<b>H General Release</b>	<b>Q Financial Statements</b>
<b>I Promissory Note</b>	<b>R Agents for Service of Process &amp; State Administrators</b>
<b>J Guarantee of Promissory Note</b>	<b>EFFECTIVE DATES</b>
<b>K Security Agreement</b>	<b>S Receipts</b>
<b>L Franchise Compliance Certificate</b>	

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Print Name

KEEP THIS COPY FOR YOUR RECORDS. This Disclosure Document may also be available in several formats including on paper or on a CD.

**RECEIPT**

This Disclosure Document summarizes provisions of the Franchise Agreement and other information in plain language. Read this Disclosure Document and all agreements carefully. If 1-800-Flowers.Com Franchise Co., Inc. offers you a franchise, 1-800-Flowers.Com Franchise Co., Inc. must provide this Disclosure Document to you at least 14 calendar days before you sign a binding agreement or make a payment with the franchisor or an affiliate in connection with the proposed franchise sale, whichever comes first.

If we do not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to The Federal Trade Commission, Washington D.C. 20580 and the appropriate State Agency Identified on **Exhibit R**.

Michigan requires that we give you this Disclosure Document at the earlier of 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

New York requires you to receive this Disclosure Document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

The franchisor is 1-800-Flowers.Com Franchise Co., Inc., located at Two Jericho Plaza, Suite 200, Jericho, New York 11753.

Issuance Date: October 15, 2021.

The name, principal business address and telephone number of the Franchise Seller offering the Franchise: Vincent J. McVeigh , Brian McGee, Stephen Lenzovich, Nicole Schiau, Cheryl Steckel, Daisy Chin, Michael Cline, Arthur Herrera, Steven Seniow and Elmerinda Phillips, all at Two Jericho Plaza, Suite 200, Jericho, New York 11753, (516) 237-6000

We authorize the persons and/or entities listed on **Exhibit R** to receive service of process for us.

I have received a Disclosure Document dated October 15, 2021. This Disclosure Document includes the following Exhibits:

<b>A</b>	<b>Franchise Agreement</b>	<b>M-1</b>	<b>Premier Order Fulfillment Agreement</b>
<b>B</b>	<b>Co-Brand Franchise Addendum to Franchise Agreement</b>	<b>M-2</b>	<b>Fruit Bouquets Order Fulfillment Agreement</b>
<b>C</b>	<b>Fruit Bouquets Addendum to Franchise Agreement</b>	<b>N-1</b>	<b>BloomNet Membership Agreement</b>
<b>D</b>	<b>Sublease</b>	<b>N-2</b>	<b>BloomNet Technologies Systems Agreement</b>
<b>E</b>	<b>Option to Obtain Lease Assignment</b>	<b>N-3</b>	<b>BloomNet Order Referral Program Rate Schedule</b>
<b>F</b>	<b>State Specific Addenda</b>	<b>O</b>	<b>List of Current Franchisees</b>
<b>G</b>	<b>Confidentiality Agreement</b>	<b>P</b>	<b>List of Former Franchisees</b>
<b>H</b>	<b>General Release</b>	<b>Q</b>	<b>Financial Statements</b>
<b>I</b>	<b>Promissory Note</b>	<b>R</b>	<b>Agents for Service of Process &amp; State Administrators</b>
<b>J</b>	<b>Guarantee of Promissory Note</b>		<b>EFFECTIVE DATES</b>
<b>K</b>	<b>Security Agreement</b>	<b>S</b>	<b>Receipts</b>
<b>L</b>	<b>Franchise Compliance Certificate</b>		

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Print Name

THIS COPY FOR CORPORATE RECORDS. Please sign this copy of the receipt, date your signature, and return it via email to [csteckel@1800flowers.com](mailto:csteckel@1800flowers.com), or by mail to Franchise Operations, Conroy's, Inc., Two Jericho Plaza, Suite 200, Jericho, New York 11753. This Disclosure Document may also be available in several formats including on paper or on a CD.