

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	MERGER
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CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Flower Farm Direct, Inc.		12/17/1999	CORPORATION: FLORIDA

RECEIVING PARTY DATA	
Name:	Proflowers, Inc.
Street Address:	5005 Wateridge Vista Dr.
Internal Address:	Suite 200
City:	San Diego
State/Country:	CALIFORNIA
Postal Code:	92121
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 3		
Property Type	Number	Word Mark
Registration Number:	2297692	FLOWER FARM DIRECT
Registration Number:	2294197	FLOWERFARM.COM
Registration Number:	2295440	ENJOY FLOWERS!

CORRESPONDENCE DATA	
Fax Number:	(858)678-5090
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	(858) 678-5070
Email:	tmdocsd@fr.com
Correspondent Name:	Fish & Richardson P.C.
Address Line 1:	12390 El Camino Real
Address Line 4:	San Diego, CALIFORNIA 92130

ATTORNEY DOCKET NUMBER:	18080-001001
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NAME OF SUBMITTER:	Lisa M. Martens
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Total Attachments: 9

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**TRADEMARK
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AGREEMENT AND PLAN OF REORGANIZATION

BY AND AMONG

PROFLOWERS, INC.,

FLORAL ACQUISITION CORP.,

FLOWER FARM DIRECT, INC.,

ABE WYNPERLE

AND

YUVAL MOED

DATED AS OF DECEMBER 17, 1999

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AGREEMENT AND PLAN OF REORGANIZATION

This AGREEMENT AND PLAN OF REORGANIZATION (this "Agreement") dated as of December 17, 1999 is by and among ProFlowers, Inc., a Delaware corporation ("Parent"), and Floral Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub"), on the one hand, and Flower Farm Direct, Inc., a Florida corporation (the "Company"), and Abe Wynperle and Yuval Moed (as to Sections 1.7(c)(ii), 8.1, 8.2 and Article 9 only), each in his individual capacity (collectively, the "Principals"), on the other hand.

RECITALS

A. The respective Boards of Directors of Parent, Merger Sub and the Company have each determined that it is advisable, on the terms and subject to the conditions of this Agreement, to merge Merger Sub with and into the Company pursuant to the terms of this Agreement, applicable Delaware General Corporation Law ("DGCL") and the Florida Business Corporation Act ("FBCA"), and such Boards of Directors have voted to approve this Agreement and the transactions contemplated hereby.

B. It is intended that the merger contemplated in this Agreement will qualify as a reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), for federal income tax purposes.

C. Parent, the Company, Merger Sub and the Principals desire to make certain representations and warranties and/or other agreements in connection with the merger contemplated in this Agreement.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. At the Effective Time (as defined in Section 1.2) and subject to and upon the terms and conditions of this Agreement, DGCL and FBCA, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation (the "Merger"). The Company as the surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

1.2 Effective Time: Closing. Subject to the provisions of this Agreement, the parties hereto shall cause the Merger to be consummated by filing a Certificate of Merger in substantially the form of Exhibit A attached hereto (the "Certificate of Merger") with the Delaware Secretary of State in accordance with the relevant provisions of DGCL, and Articles of Merger (and the accompanying Plan of Merger) in substantially the form of Exhibit B attached

hereof and supersede all prior agreements and understandings, both written and oral (including any binding provisions of the LOI that conflict with the terms of this Agreement), among the parties with respect to the subject matter hereof.

9.5 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

9.6 Other Remedies: Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.


9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof, except that the DGCL and the FBCA shall, to the extent applicable, govern the procedures to be taken hereunder to effect the Merger.

9.8 Arbitration. The parties agree that any and all disputes that arise under the terms of this Agreement, shall be resolved through final and binding arbitration. Binding arbitration will be conducted in San Diego, California, in accordance with the rules and regulations of the American Arbitration Association. Each party will bear its own attorneys' fees and expenses in connection therewith and one half of the cost of the arbitration filing and hearing fees and the cost of the arbitrator (collectively, the "Arbitration Costs"); provided, however, that the arbitrator shall have the power to order a different allocation of the Arbitration Costs if the arbitrator deems such different allocation to be warranted. The parties understand and agree that the arbitration shall be instead of any civil litigation and that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof.

9.9 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be signed by themselves or their duly authorized respective officers, all as of the date first written above.

PROFLOWERS, INC.,
a Delaware corporation

By: 

Name: William Strauss

Title: President & Chief Executive Officer

FLORAL ACQUISITION CORP.
a Delaware corporation

By: 

Name: William Strauss

Title: President

FLOWER FARM DIRECT, INC.,
a Florida corporation

By: _____

Name: _____

Title: _____

THE PRINCIPALS
(as to Sections 1.7(c)(ii), 8.1, 8.2 and Article 9 only)

Abe Wynperle

Yuval Moed

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF REORGANIZATION]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be signed by themselves or their duly authorized respective officers, all as of the date first written above.

PROFLOWERS, INC.,
a Delaware corporation

By: _____

Name: _____

Title: _____

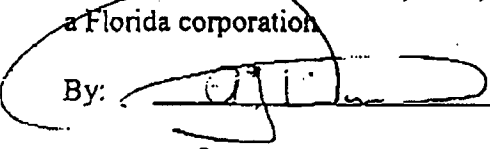
FLORAL ACQUISITION CORP.
a Delaware corporation

By: _____

Name: _____

Title: _____

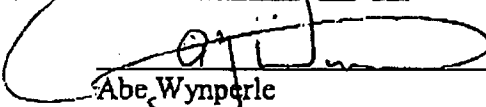
FLOWER FARM DIRECT, INC.,
a Florida corporation

By:  _____

Name: ABE J. WYNPERLE

Title: PRESIDENT & CEO

THE PRINCIPALS
(as to Sections 1.7(c)(ii), 8.1, 8.2 and Article 9 only)

 _____
Abe Wynperle

Yuval Moed

[SIGNATURE PAGE TO AGREEMENT AND PLAN OR REORGANIZATION]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be signed by themselves or their duly authorized respective officers, all as of the date first written above.

PROFLOWERS, INC.,
a Delaware corporation

By: _____

Name: _____

Title: _____

FLORAL ACQUISITION CORP.
a Delaware corporation

By: _____

Name: _____

Title: _____


FLOWER FARM DIRECT, INC.,
a Florida corporation

By: _____

Name: _____

Title: _____

THE PRINCIPALS
(as to Sections 1.7(c)(ii), 8.1, 8.2 and Article 9 only)

Abe Wyrperle


Yuval Moed

[SIGNATURE PAGE TO AGREEMENT AND PLAN OR REORGANIZATION]

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2.12 Intellectual Property

- (a) The Company has not registered the mark "Flower Farm."
- (b) The Company has applications pending for registration of the following trademarks with the U.S. Patent and Trademark Office:

Flower Farm Direct and Flower Farm Direct Design (application pending; Serial No. 75/496072)

Enjoy Flowers! (application pending; Serial No. 75/496070)

flowerfarm.com (application pending; Serial No. 75/496071)

Flower Farm International and rose design (rejected on the grounds of being descriptive; the mark was abandoned by the Company)

On January 14, 1999, the Company received a letter from Flowers Direct, Inc. charging that the Company's use of the mark "Flower Farm Direct" was infringing its trademark and requesting response by January 27, 1999. On advice of trademark counsel, the Company responded by letter dated January 25, 1999, the text of which was drafted by trademark counsel to the Company. The Company has received no further notice from Flowers Direct, Inc.

Arrangements relating to intellectual property rights exist under the following contracts:

Inktomi Merchant Agreement, dated February 2, 1999, by and between Inktomi Corporation and the Company.

Merchant Agreement, dated March, 1999, by and between LinkShare Corporation and the Company and website affiliation agreements entered into thereunder.

Vendor Service Agreement, dated June 9, 1999, by and between Concierge Club, LLC and the Company.

Multimedia Services Engagement Agreement, dated September 10, 1998, by and between the Company and The Screen House Corporation.

FlowerFarm/mySimon, Inc. Merchant Partner Program Agreement, dated August 1, 1999, by and between mySimon Inc. and the Company.

Ad Sales Agreement, dated July 1, 1999, by and between the Company and Snap! LLC.