UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 1, 2023

Rocky Mountain Chocolate Factory, Inc.
(Exact name of registrant as specified in is charter)

Delaware	001-36865	47-1535633
(State or other jurisdiction of incorporation)	*(Commission File Number)*	*(IRS Employer Identification No.)*

265 Turner Drive
Durango, Colorado 81303
(Address, including zip code, of principal executive offices)

Registrant's telephone number, including area code: (970) 259-0554

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities Registered Pursuant To Section 12(b) Of The Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.001 par value per share	RMCF	Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01. Entry into a Material Definitive Agreement.

On May 1, 2023 (the “Closing Date”), Rocky Mountain Chocolate Factory, Inc. (the “Company”) completed the sale of substantially all of the assets (the “Sale”) of U-Swirl International, Inc. (“Seller”), which operates and offers franchises for the operation of self-serve frozen yogurt stores (the “Business”). The Sale was completed pursuant to an Asset Purchase Agreement (the “Asset Purchase Agreement”), dated May 1, 2023, by and among the Company, as guarantor, Seller and U Swirl, LLC (“Purchaser”), a related company of Fosters Freeze, Inc., a California corporation. Pursuant to the Asset Purchase Agreement, on the Closing Date, Purchaser paid to Seller $2.75 million, consisting of (i) $1.75 million in cash and (ii) $1.0 million evidenced by a three-year secured promissory note in the aggregate original principal amount of $1.0 million (the “Promissory Note”).

The Promissory Note has a three-year term, bears interest at a rate equal to five percent (5%) per annum for the first year and does not bear interest thereafter unless there is an event of default thereunder (“Event of Default”). Upon the occurrence and during the continuation of an Event of Default, the rate of interest accruing on the Promissory Note will increase to a rate equal to ten percent (10%) per annum.

The Promissory Note is secured by all the assets and equity interests of Purchaser, its subsidiaries and its direct parent pursuant to a Security Agreement (the “Security Agreement”), dated May 1, 2023, by and among Seller, and Purchaser, Bob Partners X, LLC (“Partners”), U-Swirl Franchising (“Franchising”) and U-Swirl Gift Card LLC and a Pledge Agreement (the “Pledge Agreement”), dated May 1, 2023, by and among Purchaser, Seller, Partners and Kishan Patel, Nimesh Dahya, Nealesh Dahya, Sanjay Patel, Ravi Patel and Mina Yu.

In connection with the Sale, Seller agreed to provide certain transition services to Purchaser during the year following Closing, and the Company agreed for a period of four years not to engage or assist others in engaging in a frozen yogurt business similar to the Business.

The foregoing descriptions of the Asset Purchase Agreement, the Promissory Note, the Security Agreement and the Pledge Agreement (collectively, the Agreements”) are not complete and are qualified in their entirety by reference to the full text of the Agreements filed as Exhibits 2.1, 10.1, 10.2 and 10.3 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1*	Asset Purchase Agreement, dated May 1, 2023.
10.1	Secured Promissory Note, dated May 1, 2023.
10.2	Security Agreement, dated May 1, 2023.
10.3	Pledge Agreement, dated May 1, 2023.
104	Cover Page Interactive Data File (embedded within the inline XBRL document).

* Certain exhibits and schedules to this Exhibit have been omitted in accordance with Item 601(a)(5) of Regulation S-K. The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

Date: May 4, 2023

By: /s/ Allen Arroyo
Allen Arroyo, Chief Financial Officer

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of May 1, 2023 (the "Closing Date"), by and among **U-SWIRL INTERNATIONAL, INC.**, a Nevada corporation ("U-Swirl" or "Seller"), **U SWIRL, LLC,** a Delaware limited liability company ("Buyer"), and, solely for the purposes of Article VI and Sections 8.6 and 8.7 herein, **ROCKY MOUNTAIN CHOCOLATE FACTORY, INC**., a Delaware corporation ("RMCF" or "Guarantor"). Seller, Buyer and, as applicable, Guarantor, are sometimes referred to herein interchangeably and collectively, as context requires, as a "Party" or the "Parties."

WHEREAS, Seller, as franchisor, operates and offers franchises for the operation of self-serve frozen yogurt stores (the "Business") at various locations throughout the continental United States as set forth on Annex I (such locations, the "Subject Restaurants"); and

WHEREAS, the Parties desire to enter into this Agreement pursuant to which, among other things, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of the Purchased Assets (as defined below), and Buyer agrees to assume the Assumed Liabilities (as defined below), all on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I DEFINITIONS.

1.1 **Definitions**. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms as set forth on Exhibit A attached hereto.

ARTICLE II THE SALE.

2.1 **The Sale**. Subject to the terms and conditions hereof, at the Closing, (a) Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase from Seller, all right, title and interest of Seller in and to all of the Purchased Assets, free and clear of all Liens, and (b) Buyer shall assume only the Assumed Liabilities, as set forth in Section 2.2 (collectively, the "Sale"). Seller acknowledges and agrees that after Closing, Buyer will assign to Bob Partners X, LLC, a Delaware limited liability company ("Parent"), the U-Swirl Intellectual Property described in Annex II.

2.2 **Assumed Liabilities**. Subject to the terms and conditions hereof, upon the consummation of the transactions contemplated hereby at the Closing, Buyer shall assume only the post-Closing Liabilities of Seller under the Assumed Contracts (the "Assumed Liabilities"). For clarity, the Assumed Liabilities shall not include, and Buyer shall not assume, any Excluded Liability or any Liability arising out of the conduct of the Business prior to the Closing including but not limited to: (x) the failure of Seller to comply with the terms of any Assumed Contract during the period ending on or prior to the Closing, or (y) obligations under any Assumed Contract arising out of events occurring on or prior to the Closing.

2.3 **Excluded Liabilities**. Notwithstanding anything herein to the contrary, other than the Assumed Liabilities, in no event will Buyer assume, agree to pay, discharge or satisfy, or otherwise have any responsibility for, any Liability of any kind of Seller or the Business that existed prior to the Effective Date, or any Liability arising from or related to an Excluded Asset, whether known, unknown, contingent or otherwise, including Transaction Expenses not paid at Closing (each an "Excluded Liability" and collectively, the "Excluded Liabilities"), and Seller shall be solely responsible for and pay any such Excluded Liabilities as such obligations come due in the ordinary course.

ARTICLE III CONSIDERATION.

3.1 **Consideration**.

(a) The consideration to be paid by Buyer to Seller for the Purchased Assets (the "Purchase Price") shall be, subject to adjustment pursuant to Sections 3.2 and 3.3 and allocated pursuant to Section 3.4, as follows: Two Million Seven Hundred Fifty Thousand Dollars ($2,750,000), which shall be paid as follows: (1) One Million Seven Hundred Fifty Thousand Dollars ($1,750,000) paid in cash or via wire transfer in immediately available funds to Seller, minus (2) the Marketing Fund Balance, plus or minus (3) an amount equal to the amount, if any, by which the Net Working Capital exceeds the Target Net Working Capital or is less than the Target Net Working Capital, as applicable (subsections (1), (2) and (3), the "Closing Cash Payment"), plus (4) One Million Dollars ($1,000,000) evidenced by a promissory note in the aggregate original principal amount of One Million Dollars ($1,000,000) in the form attached hereto as Exhibit B (the "Promissory Note"), each executed and delivered by Buyer, minus (5) any Transaction Expenses to be paid at Closing from the immediately available funds paid to Seller at the Closing.

(b) Prior to the Closing, Seller has delivered to Buyer its good faith estimate of the Closing Cash Payment (the "Estimated Closing Cash Payment") prepared in a manner consistent with the definitions of the terms Net Working Capital, GAAP and Agreed Accounting Principles, along with reasonable documentation and schedules to support the calculations contained therein. Such estimate was prepared in consultation with, and reasonably acceptable to, Buyer.

3.2 **Purchase Price Adjustment**.

(a) Within sixty (60) days after the Closing Date, Buyer will deliver to Seller a written statement of Buyer's calculation of the Closing Cash Payment (the "Closing Statement"). The Closing Statement will be prepared in a manner consistent with the definitions of the terms Net Working Capital, GAAP and Agreed Accounting Principles.

(b) Buyer shall assist Seller and its agents in the review of the Closing Statement and provide Seller and its agents with reasonable access during normal business hours to the books, records and employees of the Seller for purposes of their review of the Closing Statement. If Seller has any objections to the Closing Statement, Seller will deliver to Buyer a statement setting forth its objections thereto (an "Objections Statement"), which statement will identify in reasonable detail those items and amounts to which Seller objects (the "Disputed Matters"). If an Objections Statement is not delivered to Buyer within thirty (30) days after delivery of the Closing Statement, the Closing Statement, as prepared by Buyer, will be final, binding and non-appealable by the Parties. Seller and Buyer shall negotiate in good faith for a period of thirty (30) days after delivery of the Objections Statement to resolve the Disputed Matters, but if they do not reach a final resolution within thirty (30) days after delivery of the Objections Statement to Buyer, Seller and Buyer shall submit any unresolved Disputed Matters to a nationally recognized certified public accounting firm mutually selected in writing by Buyer and Seller; provided, that such accounting firm has not been engaged to provide services by either Buyer or Seller or any principal of Buyer or Seller or any Affiliate of Buyer or Seller in the two (2) years prior to the engagement to make a determination hereunder (the "Accountant"). Buyer and Seller agree that any communications between Buyer (or its advisors), on the one hand, and Seller (and its advisors), on the other hand, relating to the Objections Statement during the above-referenced thirty (30) day period shall constitute confidential settlement discussions pursuant to Federal Rule of Evidence 408 and similar state rules and shall not be disclosed to or considered by the Accountant. If the Parties submit Disputed Matters to the Accountant, each Party shall submit written presentations, together with such supporting documentation as it deems appropriate, to the Accountant within ten (10) days after the date on which the unresolved Disputed Matters were submitted to the Accountant for resolution. Seller and Buyer shall use their respective commercially reasonable efforts to cause the Accountant to resolve the dispute as soon as practicable, but in any event within thirty (30) days after the submission of the Disputed Matters to the Accountant. The Accountant's review shall be limited to the Disputed Matters (or so many as remain unresolved at the time of submission to the Accountant), and the resolution of the Disputed Matters and determination of the amounts required to be provided in the Closing Statement by the Accountant shall be: (A) in writing; (B) made in accordance with GAAP (as in effect on the Closing), applied consistent with the Agreed Accounting Principles; (C) based solely on written submissions by Buyer and Seller and the terms of this Agreement, and not by independent review; (D) made as promptly as practical after the submission of the Disputed Matters to the Accountant (and in no event later than thirty (30) days after the date of submission); and (E) final, binding and conclusive for all purposes upon, and not appealable by, the Parties or their respective successors and assigns, absent manifest error by the Accountant or fraud or any intentional misrepresentation. The Accountant shall act as arbitrators with regard to the Disputed Matters, and any disputes regarding whether the Parties have satisfied their respective obligations under this Section 3.2(b), the interpretation of this Section 3.2(b) and/or the defined terms used herein shall be resolved in accordance with Section 10.5. The Accountant may not assign a value greater than the greatest value for such dispute claimed by either Party or smaller than the smallest value for such dispute claimed by either Party (in the Closing Statement or the Objections Statement, as applicable). Each Party will bear its own costs and expenses in connection with the resolution of the Disputed Matters by the Accountant. The fees, costs and expenses of the Accountant shall be allocated between Buyer and Seller, based upon the percentage which the portion of the Disputed Matters not awarded to each Party bears to the amount actually contested by the Party. For example, if Seller claims that the appropriate adjustments for the Disputed Matters are $1,000 greater than the amount determined by Buyer and if the Accountant ultimately resolve the Disputed Matters by awarding to Seller $300 of the $1,000 contested, then the fees, costs and expenses of the Accountant will be allocated thirty percent (30%) (i.e., 300 ÷ 1,000) to Buyer and seventy percent (70%) (i.e., 700 ÷ 1,000) to Seller; provided that, Buyer and Seller shall each be responsible for fifty percent (50%) of any retainers or other upfront costs or expenses of the Accountant, subject to re-allocation as set forth immediately above. The Parties agree that the written determination of the Accountant may be enforced as an arbitral award.

(c) If the Closing Cash Payment as finally determined pursuant to this Section 3.2 (the "Final Closing Consideration") is (A) greater than the Estimated Closing Cash Payment, then Buyer shall pay the amount of the excess to Seller by wire transfer of immediately available funds within five (5) Business Days, or (B) less than the Estimated Closing Cash Payment, then Seller shall pay the amount of the shortfall to Buyer by wire transfer of immediately available funds within five (5) Business Days. If the Final Closing Consideration is equal to the Estimated Closing Cash Payment, then no further payment shall be made by Buyer or Seller pursuant to this Section 3.2.

(d) All payments required pursuant to Section 3.2 will be treated as adjustments to the Purchase Price for Tax purposes, to the extent permissible under applicable Tax law.

3.3 **Prorations**. The following prorations will be made as of the Effective Time, with Seller benefiting or liable (as applicable) to the extent that such items relate to any time period prior to the Effective Time and Buyer benefiting or liable (as applicable) to the extent that such items relate to periods subsequent to the Effective Time, by appropriate cash payments or credits of the applicable amounts from Buyer to Seller and/or from Seller to Buyer, as the case may be, each of which shall be made reasonably promptly after a written request therefor, accompanied by reasonable supporting documentation, is submitted to Seller by Buyer, or vice-versa as the case may be: charges or fees under licenses transferred to or assumed by Buyer, other rebates, advertising expenses of the Subject Restaurants and other matters customarily subject to pro rations. If, after the Closing Date, the actual cost of any item prorated pursuant to this Section differs from the prorated amount, Buyer and Seller agree that they shall adjust such prorations accordingly and promptly make any cash payments required by such adjustment pursuant to this Section 3.3.

3.4 **Purchase Price Allocations**. The Purchase Price will be allocated among the Purchased Assets for Tax purposes in accordance with Schedule 3.4 (the "Purchase Price Allocation"). The Parties agree to make consistent use of the Purchase Price Allocation for all Tax purposes and in all filings with, and declarations and reports to, all Government Entities (including but not limited to IRS Form 8594). In any Action relating to the determination of any Tax, no Party shall contest the Purchase Price Allocation or assert that the Purchase Price Allocation is not correct.

3.5 **Tax Withholding**. Buyer shall be entitled to deduct and withhold from the Purchase Price, and other amounts payable pursuant to this Agreement, the amounts (if any) that it is required to deduct and withhold under any applicable Law relating to Taxes, and after consultation with Seller, shall timely pay to the appropriate Government Entity such amounts (if any) that it is required to deduct and withhold. Any such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller. The Parties shall cooperate with each other and take any action reasonably requested by the other in order to minimize or eliminate the withholding of any amounts from the Purchase Price or other amounts payable pursuant to this Agreement (including through timely filing of appropriate documentation with the relevant Government Entity).

ARTICLE IV THE CLOSING.

4.1 **Closing**. The consummation of the Sale (the "Closing") is occurring concurrently with the execution and delivery of this Agreement on the Closing Date. For accounting purposes and as otherwise provided in this Agreement, the Closing shall be deemed to be effective at 11:59 p.m. (New York, New York time) on the Closing Date (the "Effective Time").

4.2 **Deliveries of Seller**. At the Closing, Seller shall deliver (executed or counter-executed as applicable) to Buyer: (a) possession of the tangible Purchased Assets; (b) such documents as Buyer may reasonably request (including a bill of sale and assignments of Intangible Property) to transfer all of Seller's right, title and interest in and to the Purchased Assets to Buyer, each as agreed upon by the Parties (collectively, the " Conveyance Documents"); (c) that certain Pledge Agreement, by and among Seller, Buyer, Parent and the individual equityholders of Parent (the "Equityholders"), in the form attached hereto as Exhibit C (the "Pledge Agreement"), executed by Seller, (d) that certain transition services agreement, by and between Buyer and Seller in the form attached hereto as Exhibit D (the "Transition Services Agreement"), executed by Seller; (e) that certain security agreement, by and among Buyer, Seller, Parent, U Swirl Franchising LLC, a Delaware limited liability company ("Franchising"), and U Swirl Gift Card LLC, an Arizona limited liability company (together with Franchising, the "Subsidiaries"), in the form attached hereto as Exhibit E (the "Security Agreement"), executed by Seller; (f) copies of all Approvals; (g) appropriate written pay-off and termination letters as to, and evidence of the discharge of all Liabilities to, the lenders and other creditors of Seller necessary for Buyer to obtain good and valid title to the Purchased Assets, free and clear of all Liens; and (h) any and all other affidavits (including customary owner's affidavits), certificates (including customary secretary's and closing certificates), documents and agreements as Buyer may reasonably request.

4.3 **Deliveries of Buyer**. At the Closing, Buyer shall deliver (executed or counter-executed as applicable) to Seller: (a) the Closing Cash Payment, by wire transfer of immediately available funds to an account designed in writing by Seller; (b) the Promissory Note, executed by Buyer; (c) the Pledge Agreement, executed by Buyer, Parent and the Equityholders; (d) the Transition Services Agreement, executed by Buyer; (e) the Security Agreement, executed by Buyer, Parent and Subsidiaries and (f) as applicable, the Conveyance Documents.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER.

As a material inducement to Buyer to enter into and perform its obligations under this Agreement, Seller represents and warrants to Buyer as follows:

5.1 **Organization**. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada. Seller is not required to be qualified or licensed to do business in any jurisdiction other than its State of incorporation or formation. Seller has no subsidiaries or any direct or indirect ownership interest in any other Person. The record ownership of the issued and outstanding shares of capital stock of or other equity interests in Seller is set forth on Schedule 5.1.

5.2 **Authority; No Conflicts**. Seller has the right, power and authority to execute this Agreement and any other agreement or instrument entered into in connection with this Agreement (the "Transaction Documents") to which it is a party, and to perform its obligations thereunder. Seller's execution of, and performance of its obligations under, the Transaction Documents has been duly authorized and approved by all necessary corporate action with respect to Seller. The Transaction Documents to which Seller is a party are binding upon and enforceable against Seller, subject to bankruptcy, insolvency, reorganization, moratorium, and similar Laws affecting creditors' rights generally, and general principles of equity. Neither the execution nor the performance of the Transaction Documents violates, constitutes a breach or default under, or gives rise to any adverse third party rights under, any Law applicable to Seller or any Contract to which Seller is a party or any of its assets are bound.

5.3 **Approvals**. Schedule 5.3 sets forth a complete and accurate list of all approvals, authorizations, consents, licenses, franchises, orders, registrations or permits of, filing with, or notice to (each, an "Approval") any Person that is necessary for the consummation of the Sale.

5.4 **Financial Condition; Books and Records**. The consolidated financial statements filed by Rocky Mountain Chocolate Factory, Inc., a Delaware corporation ("RMCF"), in (i) its Annual Reports on Form 10-K filed May 27, 2022 and June 1, 2021 for the fiscal years ended February 28, 2022 and 2021, respectively, and (ii) its Quarterly Report on Form 10-Q filed January 13, 2023 for the nine (9)-month period ended November 30, 2022 (the "Financial Statements") fairly present the financial position and results of operations of RMCF, Seller and the Business for the time periods set forth therein in all material respects. Seller has no Liability except for Liabilities reflected or reserved in such Financial Statements. The books of account and other financial and other Records of Seller are complete and correct in all material respects and represent actual, bona fide transactions and have been maintained in accordance with sound business practices. Since May 27, 2022, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to Seller, the Purchased Assets and/or the Business, any event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect.

5.5 **Taxes**. Seller has timely filed with the appropriate Government Entities all Tax Returns required to be filed by it, all of which are complete and accurate in all material respects. Seller has timely paid all Taxes due in connection with the Business and the Purchased Assets. No audit, review, or other Action exists with regard to any Taxes or Tax Returns of Seller, and Seller has not received any notice of any such audit, review or Action. There are no Liens for Taxes upon any of the assets of the Purchased Assets.

5.6 **No Litigation**. There are no Actions pending or threatened which involve Seller, any Purchased Asset or the Business. There are no judgments, orders, injunctions, decrees, stipulations or awards which involve Seller, any Purchased Asset or the Business, and U-Swirl has not received written notice of a claim or dispute that is reasonably likely to result in any such complaint, charge, proceeding, order, investigation or other process or procedure for settling disputes or disagreements with respect to U-Swirl, any Purchased Asset, the Business or the transactions contemplated by this Agreement. As of the Effective Date, all vendors or creditors of the Business shall have been paid in full, excepting good faith disputes between Seller and such vendor(s) or creditor(s) described in the attached Schedule 5.6.

5 . 7 **Compliance with Laws; Permits**. Seller is in material compliance with all Laws applicable to the conduct of the Business and the ownership and use of the Purchased Assets. Seller has obtained and materially complied with the terms and conditions of all Permits required for the lawful operation of the Business, and all such Permits are valid and in full force and effect. Seller has not received any notification from any Government Entity (a) regarding an investigation with respect to, or asserting, a violation by Seller or the Business of any Law, (b) threatening to revoke any Permit applicable to Seller, any of the Purchased Assets or the Business, or (c) restricting or limiting the operations of the Business.

5 . 8 **Purchased Assets – Title, Sufficiency and Condition**. Seller is the owner of all right, title and interest in, and has good and marketable title to, or has a valid licensehold or leasehold interest in, all of the Purchased Assets, free and clear of all Liens. The Purchased Assets are (i) all of the assets necessary to conduct the Business in the Ordinary Course; and (ii) in good condition, normal wear and tear excepted. At Closing, the Marketing Fund Balance transferred to Buyer will be free from claims of any third parties except those set forth on Schedule 5.8, and U-Swirl has operated and used the Marketing Fund Balance in material compliance with all obligations related thereto.

5 . 9 **Material Contracts**. Schedule 5.9(a) sets forth a complete and accurate list of Contracts (the 'Material Contracts"): (i) under which Seller has incurred, assumed or guaranteed any debt; (ii) with any Employee or any Independent Contractor; (iii) to which any owner, officer or director of Seller or any immediate family member or Affiliate of any such owner, officer or director is a party; (iv) any franchise agreements, (v) each agreement with any Material Supplier; (vi) each lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other contract affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any real or personal property related to the conduct of the Business; and (vii) that are otherwise material to the Business. Seller has provided Buyer with a complete and accurate copy of each written Material Contract. Each Material Contract is in full force and effect and is legal, valid, binding and enforceable against Seller and all other parties thereto in accordance with its terms. There does not exist under any Material Contract any default or condition or event that, after notice or lapse of time or both, would constitute a default on the part of Seller or on the part of any other party to such Material Contract. Seller has not billed or collected any amounts or royalties from customers, franchisees or any third parties for any periods occurring after the Closing Date.

5.10 **Intangible Property**. None of the Purchased Assets, the conduct of the Business, or any product, service or technology sold, licensed, offered or under development by the Business infringes, violates, dilutes, or interferes with, any intellectual property rights of any Person. Seller is the sole and exclusive legal and beneficial owner of any intellectual property being transferred to Buyer as part of the Purchased Assets, and with respect to any such intellectual property, has the valid and enforceable right to use such intellectual property or held for use in or necessary for the conduct of the Business as currently conducted, free and clear of Liens or ownership claims of any Person.

5.11 **Labor and Benefits Matters**. Schedule 5.11 sets forth a true and complete list of all current employees and independent contractors, with a complete description of all compensation and benefits to which each of them is entitled, and in the case of employees, whether they are exempt or non-exempt, and their leave or visa status if applicable. Except as otherwise disclosed on Schedule 5.11, Seller is not a party to any employment, consulting or similar agreement, written or oral, with any Person, or any collective bargaining or similar union agreement covering any of its employees. A copy of each employment, consulting or similar agreement has been made available to Buyer. No workers' compensation claim has been filed by any employee or independent contractor since May 27, 2022. No labor union or similar organization or group of employees has made a demand, filed a petition or given notice of an election for such recognition. No labor strike, work stoppage, or other labor disturbance involving any employees of Seller currently exists or is threatened to Seller's knowledge. Schedule 5.11 sets forth a true and complete list of all Plans. None of the Plans or any employee benefit plan of any ERISA Affiliate is a "multiemployer plan," as such term is defined in section 3(37) of ERISA, or is subject to section 302 or Title IV of ERISA or section 412, 430, 431 or 432 of the Internal Revenue Code of 1986, as amended (the "Code"). Except as required by Section 4980B of the Code or applicable state Laws, Seller has no obligation to provide any former employee or other individual not employed by Seller with medical, life insurance or other welfare benefit coverage. Each Plan intended to be qualified under Section 401(a) of the Code, and the trust (if any) forming a part thereof, has received a current favorable determination letter or is the subject of an opinion or preapproval letter from the Internal Revenue Service as to its qualification under the Code, and no event has occurred since the date of such letter which could reasonably be expected to result in a loss of such qualified status. During the past six years, each of the Plans has been set up, operated and administered in all material respects in accordance with all applicable Laws. During the past six years, there have been no prohibited transactions within the meaning of Section 406 or 407 of ERISA or 4975 of the Code with respect to any Plan by the Seller. There are no pending, or, to Seller's knowledge, threatened or anticipated claims by or on behalf of any Plan, by any Employee or beneficiary thereof covered under any such Plan (other than routine claims for benefits). To Seller's knowledge, no Plan is under audit or investigation by any governmental agency. Neither Seller nor any ERISA Affiliate of Seller has any liability (contingent or otherwise) for delinquent contributions to or payment of any premiums under any Plan that has not been satisfied in full. The Sale will not, either alone or in combination with another event, entitle any employee to any severance benefit, unemployment compensation or any other payment, or accelerate the time of payment or vesting of, or increase the amount of, compensation due any employee.

5.12 **No Brokers**. Other than North Point Mergers and Acquisitions, Inc., there is no investment banker, broker, finder or other intermediary who is or might be entitled to any fee or commission from Seller or any Affiliate of Seller in connection with the Sale. Seller is responsible for the payment of any fee or commission to North Point Mergers and Acquisitions, Inc.

5.13 **Solvency**. Seller is, and will be after giving effect to the Sale, solvent and able to pay its debts as they become due in the Ordinary Course. Seller will not be rendered insolvent by the execution, delivery or performance of this Agreement or by the Sale.

5.14 **Intentionally Omitted**.

5.15 **Material Suppliers**. Schedule 5.15 sets forth with respect to the Business (i) each supplier to whom Seller has paid consideration for goods or services rendered in an amount greater than or equal to Thirty-Five Thousand Dollars ($35,000) in any of the two most recent fiscal years (collectively, the "Material Suppliers"); and (ii) the amount of purchases from each Material Supplier during such periods. Seller has not received any notice, and has no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

5.16 **Related Party Transactions**. Except as described on Schedule 5.16, neither Seller nor any Related Person of Seller has any interest in any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to the Business. Neither Seller nor any Related Person of Seller owns of record or as a beneficial owner, an equity interest or any other financial or profit interest in any Person that has: (a) had business dealings or a material financial interest in any transaction with Seller other than business dealings or transactions disclosed on Schedule 5.16, each of which has been conducted in the Ordinary Course at substantially prevailing market prices and on substantially prevailing market terms; or (b) engaged in competition with Seller with respect to any line of the products or services of Seller (a "Competing Business") in any market presently served by Seller, except for ownership of less than one percent (1%) of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth on Schedule 5.16, none of Seller or any Related Person of Seller is a party to or has an interest (pecuniary or otherwise) in any Contract with, or has any claim or right against, Seller or related to the Purchased Assets or the Business.

5.17 **Absence of Changes**. Since May 27, 2022, Seller has operated the Business in the Ordinary Course in all material respects and there has not been any change, event, condition or development that is materially adverse to: (a) the business, results of operations, financial condition or assets of the Business, or (b) the ability of Seller to consummate the transactions contemplated hereby.

5.18 **Environmental**. Seller is, and since January 1, 2019 has been, in compliance in all material respects with environmental Laws applicable to the Business and its respective activities and operations. Seller has received no notification that any government entity or other person has determined or alleged that there are any violations of or unresolved liabilities (a) under any environmental Law or other legally binding requirements at, related to, or otherwise associated with the operations conducted at or related to the Business relating to Hazardous Substances, natural resources, or health and safety; or (b) in connection with any release or remediation of any Hazardous Substances, and there is no reasonable basis for any of the foregoing. As used herein, "Hazardous Substances" means all hazardous or toxic materials, chemicals, substances, wastes, pollutants, contaminants, petroleum products, petroleum-contaminated materials or wastes, polychlorinated biphenyls, asbestos, or any other material regulated by or the presence of which could lead to investigation obligations, remediation duties, or other liabilities under any environmental law, including, without limitation, any material currently identified as a hazardous substance, extremely hazardous substance, hazardous waste, or hazardous chemical pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (commonly known as "CERCLA"), the Superfund Amendments and Reauthorization Act (commonly known as "SARA"), the Emergency Planning and Community Right-To-Know Act, the Resource Conservation and Recovery Act (commonly known as "RCRA"), the Occupational Safety and Health Act, or any other material Laws applicable to the Business.

5.19 **Data Privacy and Security**. Seller has complied with all applicable Laws and all applicable policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Business. Seller has not (i) experienced any actual or alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Government Entity or other Person concerning Seller's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, in each case in connection with the conduct of the Business and to Seller's knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

5.20 **No Other Representations and Warranties**. Except for the representations and warranties contained in this Article V (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Purchased Assets furnished or made available to Buyer and its representatives (including any information, documents or material delivered to Buyer, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in law.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF GUARANTOR.

6.1 **Organization**. Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

6.2 **Authority; No Conflicts**. Guarantor has the right, power and authority to execute the Transaction Documents to which it is a party, and to perform its obligations thereunder. Guarantor's execution of, and performance of its obligations under, the Transaction Documents to which it is a party has been duly authorized and approved by all necessary corporate action with respect to Guarantor. The Transaction Documents to which Guarantor is a party are binding upon and enforceable against Guarantor, subject to bankruptcy, insolvency, reorganization, moratorium, and similar Laws affecting creditors' rights generally, and general principles of equity. Neither the execution nor the performance of the Transaction Documents to which Guarantor is a party violates, constitutes a breach or default under, or gives rise to any adverse third party rights under, any Law applicable to Guarantor or any Contract to which Guarantor is a party or any of its assets are bound.

6.3 **No Brokers**. There is no investment banker, broker, finder or other intermediary who is or might be entitled to any fee or commission from Guarantor in connection with the Sale.

6.4 **SEC Filings**. Guarantor has filed all reports required to be filed by it with the Securities and Exchange Commission (the "SEC") during the last twelve months (the "SEC Filings"). The SEC Filings were (i) prepared in accordance of the requirements of the Securities Exchange Act of 1934, as amended, and (ii) did not, at the time they were filed, contain any untrue statements of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Since the date of Guarantor's last periodic report filed with the SEC, there has been no event that has resulted in, or development that would reasonably be expected to result in, a material adverse effect. The financial statements (including the related notes) of Guarantor included in the SEC Filings complied, when filed, as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly presented in all material respects the consolidated financial position of Guarantor and its consolidated subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments and the absence of footnotes).

6.5 **No Litigation**. Except as disclosed in Guarantor's SEC Filings filed prior to the date hereof, there are no Actions pending or, to Guarantor's knowledge, threatened which involve Guarantor, which if determined adversely to Guarantor would result in a material adverse effect. Except as disclosed in Guarantor's SEC Filings filed prior to the date hereof, there are no judgments, orders, injunctions, decrees, stipulations or awards which involve Guarantor.

6.6 **Absence of Certain Changes or Events**. Since May 27, 2022, except as described in public announcements by Guarantor or in its SEC Filings, there has not been: (i) any material adverse effect, (ii) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of any of Guarantor's capital stock, or any purchase, redemption or other acquisition by Guarantor of any of Guarantor's capital stock or any other securities of Guarantor or any options, warrants, calls or rights to acquire any such shares or other securities except for repurchases from employees following their termination pursuant to the terms of their pre-existing stock option or purchase agreements, (iii) any split, combination or reclassification of any of Guarantor's capital stock, or (iv) any material change by Guarantor in its accounting methods, principles or practices, except as required by concurrent changes in GAAP, SEC rules and regulations and related interpretations.

6.7 **Insurance**. Each fire, liability and other forms of insurance policies maintained by or for the benefit of Seller by Guarantor with respect to the Business or the Purchased Assets are in full force and effect as of the date hereof. Guarantor has timely paid all premiums that are due or have become due with respect thereto as of the Closing Date. Guarantor has not received any written notification by any insurer to revoke or rescind any policy of insurance in any respect material to the Business or the Purchased Assets. There are no pending claims by Guarantor against any insurance policy (a) that have not been properly and timely submitted by Guarantor pursuant to the terms and conditions of such insurance policy, or (b) as to which the applicable insurer has denied liability. Over the past five (5) years, there have been no claims covered by the insurance policies described in this Section 6.7, and no events that would be subject to coverage of insurance policies described in this Section 6.7.

ARTICLE VII REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer represents and warrants to Seller as follows:

7.1 **Organization**. Buyer is a Delaware limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware.

7.2 **Authority; No Conflicts**. Buyer has the right, power and capacity to execute, and to perform its obligations under, the Transaction Documents to which it is a party. Buyer's execution of, and performance of its obligations under, the Transaction Documents to which it is a party have been duly authorized and approved by all necessary limited liability company action with respect to Buyer. The Transaction Documents to which Buyer is a party are binding upon and enforceable against Buyer, subject to bankruptcy and similar laws and general principles of equity. Neither the execution nor the performance of the Transaction Documents by Buyer violates, constitutes a breach or default under, or gives rise to any adverse third party rights under, any Law applicable to Buyer or any Contract to which Buyer is a party or any of its assets are bound.

7.3 **No Brokers**. There is no investment banker, broker, finder or other intermediary who is or might be entitled to any fee or commission from Buyer or any Affiliate of Buyer in connection with the Sale.

7.4 **Financing; Solvency**. As of the date hereof, Buyer has available unrestricted funds necessary to close the transactions contemplated by this Agreement and the Transaction Documents as of the date hereof. Immediately after giving effect to the transactions contemplated by this Agreement and the Transaction Documents, Buyer shall (a) be able to pay its debts and liabilities (including Assumed Liabilities) as they become due, (b) own property which has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities) and (c) have adequate capital to carry on its business. No transfer of property or assets (including the Purchased Assets) is being made by Buyer, and no obligation is being incurred by Buyer in connection with the transactions contemplated by this Agreement and the Transaction Documents with the intent to hinder, delay or defraud either present or future creditors of Buyer.

7.5 **Exculpation; Buyer-Exclusivity**. Buyer acknowledges that it is not relying upon any person other than its respective officers and directors in consummating the transactions contemplated by this Agreement and the Transaction Documents. But for the terms of this Agreement and the summary term sheet entered into in connection therewith, neither Buyer nor its Affiliates have within the last thirty (30) days been active participants in or exploring any joint venture, partnership, acquisition or similar arrangement with the Seller or its Affiliates.

7.6 **Independent Investigation**. Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in Article V of this Agreement (including related portions of the Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets or this Agreement, except as expressly set forth in Article V of this Agreement (including the related portions of the Disclosure Schedules). No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement.

ARTICLE VIII ADDITIONAL COVENANTS.

8.1 **Access to Information; Cooperation**. Following the Closing, unless otherwise prohibited by Law, each Party will afford each other Party, its counsel and its accountants, reasonable access to the books, records and other data relating to the Business and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party in connection with any legitimate business purpose; *provided*, that the requesting Party shall pay the reasonable costs incurred by the providing Party in providing copies of any such books, records or data. Without limiting the generality of the foregoing, each Party shall provide the other Parties with such information or assistance as may be reasonably requested of such Party in connection with the preparation and filing of any return or report, any audit or examination by any taxing authority, any judicial or administrative proceeding, or any other reasonable business purpose relating to liability for Taxes with respect to the Business or the Purchased Assets.

8.2 **Expenses; Transfer Taxes**. Except as otherwise set forth in this Agreement, the Parties shall pay all of their own expenses relating to this Agreement and the Sale, including, the fees and expenses of their own agents, representatives, financial advisors, accountants, appraisers and counsel. All Taxes that may be imposed or assessed on the transfer of the Purchased Assets as a result of the Sale shall be paid by Seller.

8.3 **Confidentiality; Publicity**. Seller and Buyer shall keep confidential the Confidential Information delivered, disclosed or otherwise generated in connection with this Agreement (provided that Buyer may disclose the Confidential Information associated with the Business following the Closing), nor shall Seller or Buyer issue any press release or other information to the public regarding the transaction contemplated herein, except as may be expressly approved in advance by the Parties; provided, that, notwithstanding the foregoing, Seller and Buyer shall be permitted to make such disclosures as are necessary to effectuate the transaction, including disclosures and deliveries to their respective attorneys, accountants, consultants, partners, clients, investors, lenders or other similar parties involved in the transaction, as well as to the extent required by applicable law.

8.4 [Intentionally Left Blank].

8.5 **Tax Matters**. Seller shall prepare and file or cause to be prepared and filed when due (taking into account valid extensions): (i) all Tax Returns of or with respect to the Purchased Assets that are required to be filed on or after the Closing Date; and (ii) all Tax Returns of Seller for any taxable period or portion thereof, regardless of when required to be filed, and shall remit (or cause to be remitted) any Taxes due in respect of such Tax Returns. Except as otherwise provided in the preceding sentence, Buyer shall file or cause to be filed when due (taking into account valid extensions) all Tax Returns that are required to be filed by or with respect to the Purchased Assets for any Tax period ending after the Closing Date, and Buyer shall remit (or cause to be remitted) any Taxes due in respect of such Tax Returns. Any Tax Return required to be filed with respect to the Purchased Assets for any taxable period which includes, but does not end, on the Closing Date shall be prepared in all material respects in accordance with applicable Law and the past practices of Seller (provided there is a reasonable basis for such past practices), and shall be submitted (with copies of any relevant schedules, work papers and other documentation then available) by the Party responsible pursuant to this Agreement for preparing and filing such Tax Return to the other Parties for such other Parties' approval not less than thirty (30) days prior to the due date for the filing of such Tax Return (taking into account valid extensions), which approval shall not be unreasonably withheld, conditioned or delayed. Except for those Taxes which Buyer is obligated to pay pursuant to this Section 8.5, Seller shall defend, indemnify and hold Buyer harmless from and against any and all Taxes attributable to the ownership or sale of the Purchased Assets and the operation of such Purchased Assets and the Business for any taxable period (or portion thereof) ending on or before the Closing Date. In case of a period that includes, but does not end on the Closing Date, Taxes which are in the nature of real property or personal property Taxes shall be allocated to Seller for the portion of the period ending on or before the Closing Date, pro rata based on the ratio of the number of days in the portion of the period ending on or before the Closing Date to the total number of days in the period. All other Taxes shall be allocated based on the date they actually accrue.

8.6 **Non-Competition**. RMCF and U-Swirl (each, a "Restricted Person") acknowledge the competitive nature of the Business of operating the Subject Restaurants and accordingly agrees, in connection with the transactions contemplated by this Agreement, and in exchange for good and valuable consideration, that for a period of four (4) years commencing on the Closing Date (the "Restricted Period"), Restricted Person shall not, directly or indirectly, for, with or through any other Person (and shall not permit any of their respective immediate family members to), engage in or assist others in engaging or attempting to engage in, or have an interest in, in any capacity, a frozen yogurt business similar to the Business. Restricted Person acknowledges and agrees that: (w) the restrictions contained in this Section 8.6 are reasonable and necessary to protect the legitimate interests of Buyer; (x) constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement; (y) a breach or threatened breach of this Section 8.6 would give rise to irreparable harm to Buyer for which monetary damages would not be an adequate remedy; and (z) in the event of a breach or a threatened breach by Restricted Person of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to seek equitable relief and any other relief that may be available from a court of competent jurisdiction. In the event of litigation involving this Section 8.6, the non-prevailing party shall reimburse the prevailing party for all costs and expenses, including reasonable attorneys' fees and expenses, incurred in connection with any such litigation, including any appeal therefrom. The existence of any claim or cause of action by RMCF and/or U-Swirl against Buyer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by Buyer of the provisions of this Section 8.6, which Section will be enforceable notwithstanding the existence of any breach by Buyer.

8.7 **Guarantee**. Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Buyer the full and complete payment by Seller of the payment when due of all amounts payable by Seller pursuant to this Agreement including but not limited to Section 3.2(c), if any; and the payments when due of all amounts payable by Seller in respect of its indemnification obligations set forth in Article IX (collectively, the "Seller Guaranteed Obligations"). Buyer may exercise directly against Guarantor any rights and remedies it has under or in connection with this Agreement; provided that, to the extent such rights and remedies are related to the Seller Guaranteed Obligations (and solely in such case), such exercise shall be subject only to prior written demand made upon Seller by Buyer for payment and failure by Seller to make such payment within thirty (30) days following such written demand. Buyer shall not be obligated or required, before enforcing its rights against Guarantor, to: (i) pursue any right or remedy Buyer may have against Seller or any other Person, or commence any Action against Seller or any other Person, in any court or other tribunal; or (ii) make any claim in a liquidation or bankruptcy of Seller or any other Person. Buyer acknowledges and agrees that Guarantor and its successors and assigns may exercise any and all defenses, counterclaims and other rights and remedies of Seller under this Agreement in the event that Buyer makes a demand upon Guarantor pursuant to the terms hereof. The parties hereto acknowledge that the guarantee of the Seller Guaranteed Obligations provided herein by Guarantor is a material inducement for Buyer to enter into this Agreement, and Buyer would not have entered into this Agreement without the guarantee provided herein. Guarantor hereby unconditionally and irrevocably waives any right to revoke this guaranty. In the event of litigation involving this Section 8.7, the non-prevailing party shall reimburse the prevailing party for all costs and expenses, including reasonable attorneys' fees and expenses, incurred in connection with any such litigation, including any appeal therefrom.

ARTICLE IX **INDEMNIFICATION.**

9 . 1 **Indemnification Obligations of Seller**. From and after the Closing Date, Seller shall, in accordance with this Article IX, indemnify, defend and hold harmless Buyer and its assigns, successors and Affiliates, and all of their respective stockholders, members, employees, officers, directors, managers, advisors, attorneys, agents and representatives (collectively, the "Buyer Parties"), from, against and in respect of all Actions asserted against, and all Damages asserted against or suffered, sustained, incurred or paid by, any Buyer Party (collectively, "Buyer Losses") resulting from or arising out of: (a) the inaccuracy of any representation or the breach of any warranty of Seller set forth in this Agreement or any Conveyance Document; (b) the nonfulfillment of any covenant or agreement on the part of Seller set forth in this Agreement or any Conveyance Document; and/or (c) any Excluded Liability.

9 . 2 **Indemnification Obligations of Buyer**. From and after the Closing Date, Buyer shall, in accordance with this Article IX, indemnify, defend and hold harmless Seller and its assigns, successors and Affiliates, and all of their respective stockholders, members, employees, officers, directors, managers, advisors, attorneys, agents and representatives (collectively, the "Seller Parties"), from, against and in respect of all Actions asserted against, and all Damages asserted against or suffered, sustained, incurred or paid by, any Seller Party resulting from or arising out of: (a) the inaccuracy of any representation or the breach of any warranty of Buyer set forth in this Agreement or any Conveyance Document; (b) the nonfulfillment of any covenant or agreement on the part of Buyer set forth in this Agreement or any Conveyance Document; and/or (c) any Assumed Liability.

9 . 3 **Notice of Claims**. The Indemnified Party shall notify the Indemnifying Party in writing promptly after becoming aware of any Damages which the Indemnified Party shall have determined has given rise to a claim for indemnification under Article IX (provided that no delay on the part of any Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from its obligations hereunder, except to the extent said Indemnifying Party is materially prejudiced by such delay). Such written notice (a "Claim Notice") shall include an estimate of the Damages, if known, the method of computation thereof and a reference to the specific provisions hereof in respect of which indemnification is sought. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim or the estimated amount of Damages described in such Claim Notice, or fails to notify the Indemnified Party within thirty (30) days after delivery of such Claim Notice whether the Indemnifying Party disputes the claim or the estimated amount of Damages described in such Claim Notice, the estimated Damages in the amount specified in the Claim Notice will be conclusively deemed a Liability of the Indemnifying Party and the Indemnifying Party shall pay the amount of such Damages to the Indemnified Party. If the Indemnifying Party has timely disputed its liability with respect to such claim or the estimated amount of Damages, the dispute shall be resolved, and the amount, if any, of Damages payable by the Indemnifying Party to the Indemnified Party shall be determined, in accordance with Article IX and Section 10.5. This Section 9.3 does not apply to Third Party Actions.

9.4 **Third Party Actions**. If any third Person shall commence an Action against any Indemnified Party with respect to any matter (a "Third Party Action") which may give rise to a claim for indemnification under Article IX, then the Indemnified Party shall notify the Indemnifying Party, in writing promptly after becoming aware of such Third Party Action, describing in reasonable detail the Third Party Action (such notice is called a "Action Notice"), and including a reference to the specific provisions hereof in respect of which indemnification is sought. It is agreed that no delay on the part of any Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from its obligations hereunder, except to the extent that the Indemnifying Party or its right to conduct defense of such claim is actually and materially prejudiced thereby. The Indemnifying Party may elect to defend against such Third Party Action; *provided, however*, that if, by 5:00 p.m., New York, New York time on the tenth (10th) Business Day after delivery of the Action Notice, the Indemnifying Party does not respond to the Action Notice, or responds to the Action Notice but elects not to assume the defense, the Indemnified Party shall have the right to defend against and settle such Third Party Action as the Indemnified Party deems appropriate, and the Indemnifying Party shall pay all Damages resulting from such Third Party Action in accordance herewith; *provided, further*, that if the Indemnifying Party affirmatively denies any indemnification obligation in its response to the Action Notice, any right of the Indemnified Party to recover from the Indemnifying Party shall depend on the resolution of the dispute regarding the right of indemnity in accordance with Section 10.5. Notwithstanding anything herein to the contrary, if the Indemnifying Party notifies the Indemnified Party that it will defend against any Third Party Action: (i) such defense or settlement shall be at the sole cost of the Indemnifying Party; (ii) the Indemnifying Party and its counsel shall (A) conduct such defense or settlement at all times in good faith, (B) at the request of the Indemnified Party provide periodic updates as to the status of such defense, and (C) not compromise or settle such Third Party Action without the prior written consent of the Indemnified Party; (iii) the Indemnified Party (A) shall reasonably cooperate with the Indemnifying Party, including making available to the Indemnifying Party, relevant witnesses and pertinent documents, (B) may elect to employ its own counsel and participate in such defense at the Indemnified Party's cost and expense, and (C) notwithstanding the Indemnifying Party's election to defend against the Third Party Action, upon written notice to the Indemnifying Party, elect to employ its own counsel and assume control of the defense of the Third Party Action if (1) the Indemnifying Party is also a Person against whom the Third Party Action is asserted and the Indemnified Party has been advised by counsel that representation of both parties by the same counsel could present a conflict of interest; or (2) the Indemnifying Party shall not have employed counsel satisfactory to the Indemnified Party; *provided*, that the assumption of control of the defense of a Third Party Action by the Indemnified Party pursuant to this clause (C) shall not relieve the Indemnifying Party of its obligation to indemnify and hold harmless the Indemnified Party.

9.5 **Limitations**. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Section 9.5, (a) the maximum aggregate amount of Buyer Losses for which Seller shall be obligated to indemnify Buyer Parties pursuant to Section 9.1(a) shall be Two Hundred Seventy-Five Thousand Dollars ($275,000), and (b) the Buyer Parties shall not be entitled to recover for any Buyer Losses pursuant to Section 9.1(a) until the aggregate amount of all Buyer Losses exceed Twenty Thousand Dollars ($20,000) (the "Deductible"), in which case, the Buyer Parties shall be entitled to recover solely for all such Buyer Losses in excess of the Deductible. The limitations set forth in the foregoing clauses (a) and (b) shall not apply to the extent that any Buyer Losses are based upon, arise out of, are with respect to or by reason of (i) any inaccuracy in or breach of any Fundamental Representation, or (ii) an action or inaction that constitutes fraud, intentional misrepresentation, willful misconduct, or intentional breach of any of the terms of this Agreement.

9.6 **Claims Period; Survival**. The period during which a claim for indemnification under Section 9.1(a) may be asserted under this Agreement by Buyer (the "Claims Period") shall begin on the Closing Date and shall terminate on the date that is fourteen (14) months thereafter; provided, however, that notwithstanding the foregoing, the Claims Period during which a claim for indemnification may be asserted under Section 9.1(a): (a) with respect to Sections 5.1 (Organization), 5.2 (Authority; No Conflicts), 5.3 (Approvals), 5.8 (Purchased Assets – Title, Sufficiency and Condition) and 5.12 (No Brokers) (collectively, the "Fundamental Representations") shall begin on the Closing Date and shall survive indefinitely; (b) with respect to Section 5.18 (Environmental) shall survive for thirty-six (36) months and (c) by any Party, with respect to fraud, intentional misrepresentation, willful misconduct, or intentional breach of any of the terms of this Agreement shall survive indefinitely. The covenants or other agreements under Section 9.1(b) shall survive the Closing Date for the period contemplated by its terms or the applicable statute of limitations. For the avoidance of doubt, the period during which a claim for indemnification under Section 9.1(c) may be asserted by Buyer shall begin on the Closing Date and shall survive indefinitely. Notwithstanding the foregoing, if, prior to the close of business on the last day of the Claims Period, an Indemnifying Party shall have been properly notified of a claim for indemnity hereunder and such claim shall not have been Finally Resolved or disposed of at such date, such claim shall continue to survive and shall remain a basis for indemnity hereunder until such claim is Finally Resolved or disposed of in accordance with the terms hereof. All representations and warranties herein shall survive the Closing until the last day of the Claims Period applicable thereto.

9.7 **Duty to Mitigate**. Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Damages upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Damage.

9.8 **Other Indemnification Matters**.

(a) In the event that Seller becomes obligated to Buyer pursuant to an indemnification claim made by Buyer against Seller under this Article IX and such claim is the subject of: (i) a final and binding judicial determination, (ii) an arbitral determination (not subject to appeal) or (iii) by signed written agreement between Buyer and Seller (such event, a "Final Decision"), subject to the limitations set forth in Sections 9.5 and 9.6, Buyer shall have the right but not the obligation to offset any amount that Buyer owes under the Promissory Note against any amounts due Buyer by Seller. Upon the occurrence of a Final Decision, Buyer shall deliver Seller prompt written notice, but no later than five (5) Business Days of such Final Decision, of its decision to offset the Promissory Note by the amount set forth in the Final Decision.

(b) All indemnification payments under this Article IX will be deemed adjustments to the Purchase Price, including for applicable Tax purposes. For purposes of determining whether there has been any misrepresentation or breach of a representation or warranty, and for purposes of determining the amount of Damages resulting therefrom, all qualifications or exceptions in any representation or warranty relating to or referring to the terms "material", "materiality", "in all material respects", "material adverse effect" or any similar term or phrase shall be disregarded, it being the understanding of the Parties that for purposes of determining liability under this Article IX, the representations and warranties of the Parties contained in this Agreement shall be read as if such terms and phrases were not included in them.

ARTICLE X MISCELLANEOUS.

10.1 **Entire Agreement; Headings**. This Agreement, together with the other Transaction Documents, constitutes the entire agreement and understanding of the Parties with respect to the Sale and supersedes all prior arrangements or understandings, both oral and written, among any of the Parties. The headings herein are for convenience only, do not constitute a part of this Agreement, and shall not be deemed to limit or affect any of the provisions hereof.

10.2 **Interpretation**. Unless the context of this Agreement otherwise clearly requires, (a) references to the plural include the singular and vice-versa, (b) references to any gender include the other genders, (c) the words “include,” “includes” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”, (d) the terms “hereof”, “herein”, “hereunder”, “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision hereof, (e) the terms “day” and “days,” if not capitalized, mean and refer to calendar day(s), and (f) the terms “year” and “years” mean and refer to calendar year(s). Unless otherwise set forth herein, references in this Agreement to any document, instrument or agreement (including this Agreement) (i) includes and incorporates all schedules and other attachments thereto, (ii) includes all documents, instruments or agreements issued or executed in replacement thereof and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time. Unless otherwise specified, (A) all Article, Section and Schedule references herein are to Articles, Sections and Schedules of this Agreement; and (B) all accounting terms not defined herein shall be construed in accordance with GAAP.

10.3 **Severability; Joint Drafting**. The provisions hereof are intended to be interpreted and construed in a manner so as to make such provisions valid, binding and enforceable. If any provision hereof is determined to be partially or wholly invalid, illegal or unenforceable, then such provision shall be deemed to be modified or restricted to the extent necessary to make such provision valid, binding and enforceable, or, if such provision cannot be modified or restricted in a manner so as to make such provision valid, binding and enforceable, then such provision shall be deemed to be excised from this Agreement and the validity, binding effect and enforceability of the remaining provisions hereof shall not be affected or impaired in any manner. To the extent any provision of this Agreement is judicially determined to be unenforceable, a court of competent jurisdiction shall reform any such provision to make it enforceable. The provisions of this Agreement will, where possible, be interpreted so as to sustain its legality and enforceability. The Parties have participated jointly in the drafting of this Agreement, and this Agreement shall be construed as such, with no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any part hereof.

10.4 **Waiver and Amendment**. No waiver, amendment, modification or change of any provision hereof shall be effective unless and until made in writing and signed by the Parties. No waiver, forbearance or failure by any Party of its rights to enforce any provision hereof shall constitute a waiver or estoppel of such Party’s right to enforce any other provision hereof or a continuing waiver by such Party of compliance with any provision hereof.

10.5 **Governing Law; Disputes; Jury Trial Waiver**. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regarding to choice of law principles. The state or federal courts located in Wilmington, Delaware shall have exclusive jurisdiction over any and all disputes between any Parties arising out of or relating to this Agreement, the other Transaction Documents and the Sale, and the Parties consent to and agree to submit to the jurisdiction of such courts. EACH PARTY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SALE.

10.6 **Notices**. Any notices or other communications required or permitted under any Transaction Document shall be in writing and sent to the appropriate addresses designated below (or to such other address or addresses as may hereafter be furnished by one Party to the other Party in compliance herewith), by hand delivery or by UPS or FedEx next-day service with written evidence of delivery and postage prepaid.

If to Seller:	*with a copy (which shall not constitute notice) to:*
U-Swirl International, Inc. 265 Turner Drive Durango, Colorado 81303 Attn: Robert Sarlls Email: RobSarlls@rmcf.net	Venable LLP 750 East Pratt Street, 9th Floor Baltimore, MD 21202 Fax: (410) 244-7742 Attn: W. Bryan Rakes Email: wrakes@venable.com
If to Buyer:	*with a copy (which shall not constitute notice) to:*
U Swirl, LLC Attention: Kishan Patel 14071 Peyton Drive #2697 Chino Hills, CA 91709	Lowndes Attention: Jacqueline Buzzuto 215 N. Eola Drive Orlando, FL 32801 Fax: (407) 843-4444 Email: jacqueline.bozzuto@lowndes-law.com and Email: kp@kishanpatel.com

10.7 **Assignment; No Third Party Beneficiaries** This Agreement may not be assigned (whether by operation of law or otherwise) by any Party without the prior written consent of the other Parties; *provided*, that Buyer may assign this Agreement, without the prior written consent of any other Party, to any of Buyer's Affiliates. Unless otherwise stated herein, this Agreement shall not benefit or create any right of action in or on behalf of any Person other than the Parties hereto; *provided*, *however*, that this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties' respective successors, heirs, next-of-kin, personal representatives, administrators, executors, trustees and permitted assigns.

10.8 **Counterparts**. This Agreement and the Transaction Documents may be executed in counterparts (including by facsimile or optically-scanned electronic mail attachment), each of which shall be deemed to be original, but all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and the Transaction Documents and of signature pages by facsimile or email transmission will constitute effective delivery of this Agreement and the Transaction Documents and may be used in lieu of the original Agreement and Transaction Documents for all purposes.

10.9 **Schedules**. Nothing in the schedules hereto shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the schedule identifies the exception with reasonable particularity and describes the relevant facts in reasonable detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself). The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance and shall be deemed to be material and to have been relied upon by Buyer. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

10.10 **Enforcement of Agreement**. The Parties acknowledge and agree that each other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms, and that any breach of this Agreement by a Party could not be adequately compensated by monetary damages. Accordingly, each Party agrees that, in addition to any other right or remedy to which a Party may be entitled, at law or in equity, such Party will be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent any breach or threatened breach of the provisions of this Agreement, without posting any bond or other undertaking. Each Party hereby agrees to not take any position in any such Action contrary to this Section 10.10.

The remainder of this page is left blank intentionally. Signatures follow.

IN WITNESS WHEREOF, the Parties have each executed and delivered this Asset Purchase Agreement as of the date hereof.

U SWIRL, LLC

By: Bob Partners X, LLC
Its: Sole Member

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

U-SWIRL INTERNATIONAL, INC.

By: /s/ Robert J. Sarlls
Name: Robert J. Sarlls
Title: President and Chief Executive Officer

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Robert J. Sarlls
Name: Robert J. Sarlls
Title: Chief Executive Officer

Signature page to Asset Purchase Agreement

ANNEX I

SUBJECT RESTAURANTS

See attached.

ANNEX II

PURCHASED ASSETS

"Purchased Assets" means:

(i) All of the registered trademarks listed on Schedule A of that certain Assignment of Trademarks, dated as of the date hereof, by and between Buyer and Seller;

(ii) all of Seller's rights under and pursuant to (x) all Contracts listed under Schedule 5.9 of the Disclosure Schedules and (y) all other Contracts of the Business, in each case to the extent transferable to Buyer (subclauses (x) and (y) collectively, the "Assumed Contracts");

(iii) all other Intangible Property of Seller relating to the Business or the operation thereof, to the extent transferable to Buyer (together with subclause (i), the "U-Swirl Intellectual Property");

(iv) all prepaid expenses, advances to third parties and deposits with third parties, and claims for refunds and rights to offset in respect thereof, in each case, of Seller in connection with the Business;

(v) all Records (to the extent permitted by Law) of the Business;

(vi) all rights and interests of Seller as of the Closing in and to indemnity claims, judgments, rights of recovery, rights of set-off and causes of action against third parties, whether choate or inchoate, known or unknown, contingent or noncontingent, in each case to the extent relating to the Purchased Assets or the Business (excluding, for the avoidance of doubt, all such rights of Seller to the extent relating to the Excluded Liabilities);

(vii) all rights of Seller under any past or current insurance policy or contract (including all insurance, warranty and condemnation benefits, rights and proceeds) with respect to damage, nonconformance of or loss to the Purchased Assets or the Assumed Liabilities;

(viii) all goodwill and going concern value of the Seller relating to the Business; and

(ix) all other assets, properties and rights of Seller relating to the Subject Restaurants or the Business (other than the Excluded Assets).

ANNEX III

SAMPLE NET WORKING CAPITAL SCHEDULE

See attached.

EXHIBIT A

DEFINITIONS

The following capitalized terms shall, for all purposes of the Agreement, have the following meanings:

(a) "Action" means any action, claim, proceeding, arbitration, suit, investigation or regulatory inquiry (whether civil, criminal, administrative or judicial), or any appeal therefrom.

(b) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person.

(c) "Business Day" means any day except Saturday, Sunday or any day on which banks are authorized or required by Law to close in New York, New York.

(d) "Confidential Information" means any information regarding the terms of and transactions contemplated under this Agreement and the other Conveyance Documents, and any information which a Party has treated as proprietary and that it does not in the ordinary course disclose to any Person outside of its business, in each case, excluding any information that (i) is in the public domain at the time of disclosure, (ii) is published or otherwise comes into the public domain after its disclosure through no violation of this Agreement, (iii) is disclosed to the recipient by a third party not under an obligation of confidence, or (iv) is already known by the recipient at the time of its disclosure as evidenced by written documentation of the recipient existing prior to such disclosure.

(e) "Contract" means any written or oral agreement, arrangement, lease, mortgage, contract, note, power of attorney, insurance policy covenant, understanding, commitment or instrument.

(f) "Damages" means any loss, Liability, fine, penalty, judgment, award, cost or expense (including, without limitation, reasonable attorneys' fees or any other reasonable out-of-pocket expenses incurred in connection with any Action) or damage. Notwithstanding anything to the contrary herein, "Damages" shall not include, and neither Buyer nor Seller shall be able to recover, any indirect, consequential, exemplary, special or punitive damages (including any damages on account of lost profits or opportunities or business interruption or diminution in value).

(g) "Disclosure Schedule" means the disclosure schedule delivered by Seller to Buyer and attached to this Agreement as the Schedules referenced in Article V.

(h) "Employees" means individuals employed in connection with the Business (including those who are on leave or any absence from employment, and including officers and directors).

(i) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(j) "ERISA Affiliate" means, with respect to Seller, any trade or business treated as a single employer with Seller under Code Sections 414(b), (c), (m) or (o).

(k) "Excluded Assets" means the following assets, properties and rights of Seller: (i) the Organizational Documents of Seller and any personnel and payroll records that Seller is required by Law to retain in its possession; (ii) all guarantees, warranties, indemnities and rights, claims and causes of action against any Person in favor of Seller that would entitle Seller to recompense in respect of any Excluded Liability, except to the extent such guarantees, warranties, indemnities, rights, claims and causes of action would entitle Buyer to recompense, whether in whole or in part, for any Assumed Liability or any other liability relating to the conduct of the Business after the Closing and are transferable to Buyer; (iii) insurance policies and proceeds therefrom; (iv) Plans and all rights in connection with, and assets of, all Plans; (v) Permits that Seller is prohibited by applicable Law from transferring to Buyer; (vi) Tax losses and carry forwards and rights to receive tax refunds, credits and credit carry forwards, if any; (vii) cash and cash equivalents, stocks, mutual funds, marketable securities, investment accounts and other securities and equity investments on hand as of Closing; (viii) all rights of Seller under this Agreement and the Conveyance Documents; (ix) the shares of capital stock or other equity interests of Seller or any of its subsidiaries, whether held in treasury or otherwise; (x) all leases with third parties, (xi) all prepaid expenses, advances to third parties and claims for refunds and rights to offset in respect thereof, in each case, of Seller in connection with the operations of the Business pre-Closing, (xii) any accounts payable not used in the calculation of Net Working Capital; (xiii) all Subject Restaurants, including any leases, contracts and other assets of Seller used in its capacity as a franchisee of the Business; (xiv) any intercompany payments, including but not limited to any receivables owed to Seller by RMCF, (xv) all accounts receivable of Seller relating to the Business and (xvi) any other assets, rights, or properties not related to or associated with the Business.

(l) "Existing Franchise Agreements" means Seller's franchise agreements relating to the Subject Restaurants.

(m) "Final Resolution" or "Finally Resolved" means, with respect to any claim, controversy or dispute, either (i) a final, non-appealable judgment with respect thereto, or (ii) a written settlement agreement with respect thereto.

(n) "GAAP" means U.S. generally accepted accounting principles as applied on a consistent basis.

(o) "Government Entity" means any federal, state, local or foreign government, court, agency (administrative, arbitrative, regulatory or otherwise), commission, department or other authority or instrumentality.

(p) "Indemnified Party" means any Person entitled to indemnification pursuant to Article IX.

(q) "Indemnifying Party" means any Person required to indemnify an Indemnified Party pursuant to Article IX.

(r) "Independent Contractors" means individuals engaged as independent contractors in connection with the Business.

(s) "Intangible Property" means, interchangeably and collectively as context requires, the following: (i) patents, including continuations, divisionals, continuations-in-part, renewals and reissues; (ii) trademarks, service marks, trade names, trade dress, designs, logos, and other similar designations of source or origin, together with all goodwill symbolized thereby; (iii) copyrights and copyrightable material; (iv) trade secrets and other confidential information, know-how, customer lists, prospect lists, business plans, inventions, proprietary processes, formulae, food and beverage formula and recipes, algorithms, models and methodologies; (v) rights of publicity and privacy relating to the use of the names, likenesses, voices, signatures and biographical information of natural Persons; (vi) all rights with respect to computer programs, computer program code, the algorithms underlying any computer program, data, databases, domain names, and telephone numbers and directory listings; (vii) any social or digital media, (viii) registrations, applications, all passwords and other account information for any of the foregoing; and (ix) the right to sue for past infringement of any of the foregoing.

(t) "Laws" means all federal, state, local or foreign laws (including common law), codes, statutes, ordinances, orders, judgments, arbitration awards, decrees, administrative or judicial promulgations, determinations, rules, regulations, Permits of, and agreements with, all Government Entities.

(u) "Liability" means any debt, liability, commitment or obligation of any kind, character or nature whatsoever, secured or unsecured, known or unknown, accrued, absolute, contingent or otherwise, whether or not due.

(v) "Liens" means all mortgages, liens, pledges, security interests, charges, claims, construction or mechanics' liens, judgments, restrictions, leases, possessory rights, options, rights of first refusal, covenants, easements, title and survey matters and any other encumbrance, right or interest of any kind or character, whether vested or contingent, including any (i) interest of joint tenants, tenants in common and tenants by the entirety; (ii) community or other marital property interest; or (iii) interests arising from any divorce decree, separation agreement, or other similar domestic relations order or agreement.

(w) "Marketing Fund Balance" means an amount equal to $51,500.

(x) "Net Working Capital" means (a) accrued but unbilled royalties as of the Effective Time and (b) accrued but unbilled vendor rebates as of the Effective Time listed on the sample Net Working Capital Schedule attached hereto as Annex III. For the avoidance of doubt, any amounts contained in the sample Net Working Capital Schedule attached hereto as Annex III are for illustrative purposes only and not for purposes of determining the Net Working Capital.

(y) "Ordinary Course" means the ordinary course of the Business, consistent with past practice in nature, scope and magnitude; *provided*, the definition of "Ordinary Course" excludes all matters requiring any approval of the manager(s), board of directors, or owner(s) of Seller or any Affiliate of Seller.

(z) "Organizational Documents" means: (i) with respect to a corporation, the corporation's articles or certificate of incorporation and by-laws; or (ii) with respect to a limited liability company, the limited liability company's articles or certificate of organization or formation and limited liability company or operating agreement; (iii) with respect to a partnership, the partnership's certificate of partnership and partnership agreement; (iv) with respect to a trust, the trust's certificate or declaration of trust and other governing instruments; (v) with respect to any other form of entity, the documents that are reasonably similar to the documents described in the preceding clauses (i) through (iv); and (vi) all amendments and supplements to any of the foregoing.

(aa) "Permits" means all approvals, permits, certificates, exemptions, classifications, registrations and other similar documents, rights and authorizations issued by any Government Entity.

(bb) "Person" means a natural person, sole proprietorship, partnership, corporation, association, limited liability company, trust, Government Entity or any other legal entity.

(cc) "Plans" means, interchangeably and collectively as context requires, all deferred compensation and incentive compensation, stock purchase, stock option and other equity compensation plans, programs or Contracts; all severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare" plans, funds or programs (within the meaning of section 3(1) of ERISA); all profit-sharing, stock bonus or other "pension" plans, funds or programs (within the meaning of section 3(2) of ERISA); all employment, termination or severance Contracts; and all other employee benefit plans, funds, programs or Contracts, in each case that is sponsored, maintained or contributed to or required to be contributed to by Seller for the benefit of any current or former Employees or their dependents or under which Seller has or may have any Liability.

(dd) "Purchased Assets" means all the franchisor assets, properties and rights of Seller used, or held for use, in the Business, as more specifically described in the attached Annex II. Notwithstanding anything contained herein to the contrary, the Purchased Assets shall not include, nor shall any value be assigned to, any Excluded Assets.

(ee) "Records" means all existing documents, handbooks, training materials, manuals, books, registers, records and files (whether in machine or human-readable format) relating to the Business or the Purchased Assets.

(ff) "Related Person" each other member of such individual's Family;

(i) any Person that is directly or indirectly controlled by any one or more members of such individual's Family;

(ii) any Person in which members of such individual's Family hold (individually or in the aggregate) a Material Interest; and

(iii) any Person with respect to which one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

(iv) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(v) any Person that holds a Material Interest in such specified Person;

(vi) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);

(vii) any Person in which such specified Person holds a Material Interest; and

(viii) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition: (a) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the "Family" of an individual includes (1) the individual, (2) the individual's spouse, (3) any other natural person who is related to the individual or the individual's spouse within the second degree and (4) any other natural person who resides with such individual; and (c) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 promulgated under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

(gg) "Target Net Working Capital" means $49,000.

(hh) "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges (including interest, penalties or additions associated therewith), whether disputed or not, and any charges, interest or penalties imposed or that may be imposed thereon by any Government Entity.

(ii) "Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, any schedule or attachment thereto, and any amendment thereof.

(jj) "Transaction Expenses" means the amounts set forth in the Flow of Funds document mutually agreed upon by the Parties in writing and paid from Seller's distribution of the Purchase Price.

EXHIBIT B

Promissory Note

See attached.

EXHIBIT C

Pledge Agreement

See attached.

EXHIBIT D

Transition Services Agreement

See attached.

EXHIBIT E

Security Agreement

See attached.

Exhibit 10.1

SECURED PROMISSORY NOTE

$1,000,000 May 1, 2023

THIS SECURED PROMISSORY NOTE IS SUBJECT TO A RIGHT OF OFFSET DESCRIBED WITHIN THAT CERTAIN ASSET PURCHASE AGREEMENT OF EVEN DATE HEREWITH BETWEEN MAKER AND HOLDER AND THE AMOUNT(S) PAYABLE HEREUNDER IS SUBJECT TO SUCH OFFSET RIGHT.

FOR VALUE RECEIVED, U Swirl, LLC, a Delaware limited liability company ("Maker") promises to pay to the order of U-Swirl International, Inc., a Nevada corporation ("Holder"), at such place as Holder may from time to time designate to Maker in writing, the principal sum of One Million Dollars ($1,000,000) (the "Loan"), together with interest from the date hereof on the unpaid principal balance of this Secured Promissory Note (this "Note") from time to time outstanding at the rate equal to five percent (5%) per annum, compounding annually and accruing daily for the first year of the Loan, after which interest shall not accrue unless a Default (as defined below) occurs.

Maker acknowledges that this Note is being delivered to Holder as partial consideration for the sale of all or substantially all of the assets of Holder pursuant to that certain Asset Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), among Holder and Maker and the other parties thereto. Words capitalized herein but not defined have the same meaning as assigned to them in the Purchase Agreement.

Maker shall repay the principal amount and accrued but unpaid interest on this Note as follows:

(a) For the first twelve calendar months following the execution and delivery of this Note, (i) Maker shall not be required to make any monthly payments of principal or accrued but unpaid interest and (ii) interest shall accrue on the principal amount of this Note outstanding from time to time as stated above.

(b) Beginning on June 1, 2024, (i) Maker shall make (i) twenty-three (23) monthly equal payments and (ii) one last final monthly payment, in each case of the principal amount outstanding of this Note (each such payment, a "Monthly Payment") and (ii) unless a Default occurs, interest shall no longer accrue on the principal amount of the Note outstanding from time to time. The amount of the first twenty-three (23) Monthly Payments shall be $41,666.67, and the last final Monthly Payment shall be $41,666.59. The first Monthly Payment shall be due and payable on or before June 1, 2024, with each subsequent Monthly Payment to be due and payable on or before the first of every month following such initial Monthly Payment.

(c) The maturity date of this Note (the "Maturity Date") shall be, and the entire outstanding principal balance of this Note together with all accrued and unpaid interest hereunder shall become immediately due and payable on, the earlier to occur of (i) the date on which Holder declares the unpaid balance of the Note due and payable, or the date on which the unpaid balance of the Note becomes automatically due and payable, in each case, upon Maker's Default or (ii) May 1, 2026.

Principal or interest under this Note may be prepaid in whole or in part by Maker at any time without premium or penalty and without the prior written consent of Holder.

As collateral security for the full and prompt payment and performance in full of all obligations under this Note (the "Obligations"), (i) Bob Partners X, LLC, a Delaware limited liability company and the sole member of Maker ("Partners"), the individual owners of all of the issued and outstanding equity interests in Partners ("Owners"), and Maker, in its capacity as the sole member of each of U Swirl Gift Card LLC, an Arizona limited liability company ("Gift Card"), and U Swirl Franchising LLC, a Delaware limited liability company (together with Gift Card, the "Subsidiaries"; the Subsidiaries, together with partners and Owners, are referred to herein as the "Guarantors"), have entered into that certain Pledge Agreement, dated as of the date hereof (the "Pledge Agreement"), pledging and, in the case of Partners, Owners and Maker, guaranteeing, all of Partners', Owners' and Maker's respective rights, title and interest in and to all of the equity interests of Partners, Maker and the Subsidiaries, as applicable (collectively, the "Equity Interests") and (ii) Partners, Maker and the Subsidiaries have entered into that certain Security Agreement, dated as of the date hereof (the "Security Agreement"), granting a first priority lien and security interest in favor of Holder to the Collateral (as defined therein) and, in the case of the Subsidiaries, guaranteeing, Maker's Obligations hereunder.

Each of the following shall constitute an event of default (a "Default") by Maker under this Note:

(a) failure to (i) make a timely Monthly Payment and such failure is not cured within ten (10) days after receipt by Maker of written notice of such non-payment, or (ii) pay the outstanding principal balance of this Note, and all accrued interest under this Note, on or prior to the Maturity Date;

(b) any other default by Maker in the due and punctual performance under, or breach of, any term, covenant, representation, warranty or agreement of any obligation of any nature whatsoever of Maker to Holder, whether now existing or hereafter incurred, under or in connection with this Note, the Purchase Agreement, the Pledge Agreement or the Security Agreement where such default is not cured within ten (10) days after receipt of by Maker written notice describing the default;

(c) the creation, incurrence or assumption by Maker of any indebtedness for borrowed money other than the indebtedness issued pursuant to this Note and indebtedness that exists on the Closing Date and that was previously disclosed to Holder;

(d) the creation, incurrence or assumption by Maker or any Guarantor of any pledge, encumbrance, security interest, lien or charge of any kind upon any of the assets of Maker or on the Equity Interests other than those that exist on the Closing Date and that were previously disclosed to Holder;

(e) the bankruptcy or insolvency of Maker or the making by Maker of an assignment for the benefit of creditors or the admission by Maker in writing of its inability to pay its debts generally as they become due, or the taking of action by Maker in furtherance of any such action;

(f) the appointment of a receiver with respect to all or any part of Maker's property. At the option of Holder exercised by written notice to Maker, all outstanding principal and all accrued and unpaid interest under this Note shall be accelerated and become immediately due and payable from and after the occurrence of a Default during the term of this Note;

(g) any provision of this Note, the Pledge Agreement or the Security Agreement shall for any reason cease to be valid and binding on, or enforceable against, Maker or any Guarantor, as applicable, or Maker or a Guarantor shall so state in writing, or Maker or a Guarantor shall seek to terminate its or their obligations under this Note or under the Pledge Agreement or Security Agreement;

(h) the sale of all or substantially all of the assets of Maker or a Guarantor or of equity representing over fifty percent (50%) of the voting power of Maker or a Guarantor (whether by merger, consolidation, recapitalization, issuance, transfer of equity securities or otherwise, in a single sale or series of related transactions to a common purchaser, or Affiliates of a common purchaser); or

(i) any judgment or order (whether monetary or non-monetary) shall be rendered against any of Maker or Guarantors that could reasonably be expected, either individually or in the aggregate, to have a material adverse effect on Maker, and there shall be a period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

Upon the occurrence and during the continuation of a Default, (i) the rate of interest accruing from time to time hereunder on the outstanding principal balance hereof shall automatically increase to a rate per annum equal to ten percent (10.0%) (such rate, the "Default Rate"), and (ii) if such Default occurred because of a missed Monthly Payment, interest shall accrue at the Default Rate on the then-outstanding principal balance of the Note together with all accrued and unpaid interest.

The remedies of Holder under or by virtue of this Note, the Pledge Agreement or the Security Agreement shall be cumulative and non-exclusive, and may be exercised concurrently or consecutively at the option of Holder. No single or partial exercise of any power granted to Holder under this Note, the Pledge Agreement or the Security Agreement shall preclude any other or further exercise thereof or the exercise of any other power. Any delay or failure by Holder to exercise any right hereunder or the Pledge Agreement or Security Agreement shall not be construed as a waiver of the right to exercise the same or any other right at any time. No amendment to or modification of this Note shall be binding upon Maker or Holder unless in writing and signed by both Maker and Holder. Any provision of this Note found to be illegal, invalid or unenforceable for any reason whatsoever shall not affect the validity, legality or enforceability of the remainder hereof. All payments made by Maker under this Note shall be made without set-off, counterclaim or other defense. Time is hereby declared to be of the essence of this Note and every part hereof.

Holder may sell, transfer, pledge, encumber or assign this Note without the consent of Maker. This Note shall apply to and bind the successors and assigns of Maker and shall inure to the benefit of Holder, its successors and assigns; provided, however, that Maker may not assign or transfer any of its obligations under this Note without the prior written consent of Holder (which consent may be granted or withheld in Holder's sole and absolute discretion).

If any party hereto brings an action against any other party by reason of any alleged breach of any covenant, provision or condition hereof, or otherwise arising out of this Note, the Pledge Agreement or the Security Agreement, the unsuccessful party shall pay to the prevailing party all reasonable attorneys' and expert witnesses' fees and costs incurred by the prevailing party.

All notices, requests and other communications hereunder shall be in writing and shall be delivered by courier or other means of personal service (including by means of a nationally recognized courier service or professional messenger service), or mailed first class, postage prepaid, by certified mail, return receipt requested, in all cases addressed to the addresses set forth below. All notices, requests and other communications shall be deemed given on the date of actual receipt or delivery as evidenced by written receipt, acknowledgement or other evidence of actual receipt or delivery to the address specified above. Any party hereto may from time to time by notice in writing served as set forth above designate a different address or a different or additional person to which all such notices or communications thereafter are to be given.

Maker:

U Swirl, LLC

Attention: Kishan Patel
14071 Peyton Drive #2697
Chino Hills, CA 91709

With a copy to (which shall not constitute notice):

Lowndes
Attention: Jacqueline Bozzuto
215 N. Eola Drive
Orlando, FL 32801

Holder:

U-Swirl International, Inc.
265 Turner Drive
Durango, Colorado 81303
Attn: Robert Sarlls

With a copy to (which shall not constitute notice):

Venable LLP
750 E. Pratt St., Suite 900
Baltimore, MD 21202
Attention: W. Bryan Rakes

No provision of this Note shall be deemed to establish or require the payment of interest at a rate in excess of the maximum rate permitted by applicable law. If the rate of interest required to be paid under this Note exceeds the maximum rate permitted by applicable law, any amounts paid in excess of such maximum shall be applied to reduce the unpaid principal balance hereunder and the rate of interest required hereunder shall be automatically reduced to the maximum rate permitted by applicable law.

Maker waives all redemption rights of any nature, valuation and appraisement, presentment, protest and demand, notice of protest, demand and dishonor, and non-payment of the Note, and all other notices or demands in connection with the delivery, acceptance, performance or enforcement of this Note.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regarding to choice of law principles. The state or federal courts located in Wilmington, Delaware shall have exclusive jurisdiction over any and all disputes between any Parties arising out of or relating to this Agreement, the other Transaction Documents and the Sale, and the Parties consent to and agree to submit to the jurisdiction of such courts. EACH PARTY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SALE. This Note represents the entire understanding of the parties relative to the subject matters set forth herein. This Note may be executed in multiple counterparts and by facsimile, DocuSign or email; all of which shall be deemed an original and one document.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Maker has duly executed this Note as of the date first written above.

MAKER:

U SWIRL, LLC

By: Bob Partners X, LLC
Its: Sole Member

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

Agreed and accepted by the Holder
as of the date first written above:

HOLDER:

U-SWIRL INTERNATIONAL, INC.

By: /s/ Allen Arroyo
Name: Allen Arroyo
Title: Chief Financial Officer and Treasurer

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "**Agreement**"), dated as of May 1, 2023 (the "**Effective Date**"), is made by and among **U-SWIRL INTERNATIONAL, INC.**, a Nevada corporation ("**Creditor**"), **BOB PARTNERS X, LLC**, a Delaware limited liability company ("**Partners**"), **U SWIRL, LLC**, a Delaware limited liability company ("**U-Swirl**"), **U SWIRL FRANCHISING LLC**, a Delaware limited liability company ("**Franchising**"), and **U SWIRL GIFT CARD LLC**, an Arizona limited liability company ("**Gift Card**" and, together with Franchising, U-Swirl and Partners, "**Debtors**"). Creditor and Debtors are referred to herein individually as a '**Party**" and collectively, "**Parties**".

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of the date hereof, by and between Creditor and U-Swirl and, solely for the purposes of Article VI and Sections 8.6 and 8.7 therein, Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (the "**Purchase Agreement**"), Creditor has agreed to provide a loan to U-Swirl, in exchange for U-Swirl issuing to Creditor that certain Secured Promissory Note, dated as of the date hereof, made by U-Swirl to Creditor (the "**Note**");

WHEREAS, pursuant to that certain Pledge Agreement, dated as of the date hereof, by and among Creditor, U-Swirl, Partners and the individual owners ("**Owners**") of Partners (the "**Pledge Agreement**"), (i) Owners pledged all of its membership interests in Partners, (ii) Partners pledged all of its membership interests in U-Swirl, and (iii) U-Swirl pledged all of its membership interests in each of Franchising and Gift Card, in each case, to Creditor to secure all of U-Swirl's obligations under the Note;

WHEREAS, the Parties have agreed to secure the prompt and complete payment and performance of U-Swirl's obligations under the Note by each Debtor granting to Creditor a first-priority security interest in all of each Debtor's right, title and interest in and to the Collateral.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Unless otherwise specified herein, all references to Sections herein are to Sections of this Agreement.

(b) Unless otherwise defined herein, terms used herein that are defined in the UCC have the meanings assigned to them in the UCC. However, if a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term has the meaning specified in Article 9.

(c) For purposes of this Agreement, the following terms have the following meanings:

"**Collateral**" has the meaning set forth in Section 2.

"**Event of Default**" means any Debtor's default in any of the covenants, duties and obligations of such Debtor under or in respect of the Purchase Agreement, the Pledge Agreement or the Note, as applicable, which is not cured within any applicable cure period.

"**Proceeds**" means "proceeds" as such term is defined in Section 9-102 of the UCC and, in any event, includes, without limitation, all dividends or other income from the Collateral, collections thereon or distributions with respect thereto.

"**Secured Obligations**" has the meaning set forth in Section 4.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of Delaware or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code as in effect from time to time in such state.

2 . **Grant of Security Interest**. Each Debtor hereby grants to and creates in favor of Creditor a continuing first priority lien and security interest in favor of Creditor in and to all of each Debtor's right, title and interest in and to the following, wherever located, whether now existing or hereafter from time to time arising or acquired (collectively, the "**Collateral**"):

(a) all fixtures and personal property of every kind and nature including all accounts (including health-care-insurance receivables), goods (including inventory and equipment), documents (including, if applicable, electronic documents), instruments, promissory notes, chattel paper (whether tangible or electronic), letters of credit, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), securities and all other investment property, commercial tort claims described on **Schedule A** hereof, general intangibles (including all payment intangibles), money, deposit accounts, and any other contract rights or rights to the payment of money; and

(b) all Proceeds and products of each of the foregoing, all books and records relating to the foregoing, all supporting obligations related thereto, and all accessions of and to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance, indemnity, warranty or guaranty payable to Creditor from time to time with respect to any of the foregoing.

3 . **Delivery by Debtors**. The security interest granted hereunder shall be effective on the Effective Date. Each of the Debtors and the Creditor is hereby authorized and directed to record such security interest in its books and records as of such date.

4 . Secured Obligations. The Collateral secures the due and prompt payment and performance of (i) all covenants, duties and obligations of each Debtor under or in respect of the Note, the Purchase Agreement, the Pledge Agreement and this Agreement, as applicable, whether allowed in any bankruptcy, insolvency, receivership or other similar proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether primary, secondary, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, fixed or otherwise, and (ii) all other monetary obligations, including fees, costs, attorneys' fees and disbursements, reimbursement obligations, contract causes of action, expenses and indemnities, whether primary, secondary, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of each Debtor under or in respect of the Note, the Purchase Agreement, the Pledge Agreement and this Agreement, as applicable (all such obligations, covenants, duties, debts, liabilities, sums and expenses set forth in Section 4 being herein collectively called the "**Secured Obligations**").

5. Guaranty.

(a) For purposes of this Section 5, "Guarantors" means Franchising and Gift Card and "Guaranteed Obligations" has the meaning of "Secured Obligations" set forth herein.

(b) Each Guarantor hereby, jointly and severally, irrevocably and unconditionally guarantees to Creditor, as and for Guarantor's own debt, until final and indefeasible payment thereof has been made, (a) payment of the Guaranteed Obligations, in each case when and as the same shall become due and payable, whether at maturity, pursuant to a mandatory prepayment requirement, by acceleration, or otherwise; it being the intent of each Guarantor that the guaranty set forth herein shall be a guaranty of payment and not a guaranty of collection, and (b) the punctual and faithful performance, keeping, observance, and fulfillment by U-Swirl of all of the agreements, conditions, covenants, and obligations of U-Swirl contained in the Purchase Agreement. For the avoidance of doubt, and notwithstanding any other provision of this Security Agreement, the Pledge Agreement, the Purchase Agreement or the Note, it is acknowledged and agreed that the Guaranteed Obligations are limited recourse to Franchising and Gift Card with respect to the exercise of rights and remedies in respect of the Collateral pursuant to this Security Agreement, and that Guarantors shall not otherwise have any obligation or liability for or in respect of the Guaranteed Obligations and the Creditor shall not make any demand or claim upon Franchising and Gift Card in respect of the Guaranteed Obligations other than with respect to its exercise of rights and remedies in respect of the Collateral pursuant to this Security Agreement.

6 . Perfection of Security Interest. Each Debtor hereby irrevocably authorizes Creditor at any time and from time to time to file in any relevant jurisdiction any financing statements and amendments and continuations thereto relating to the Collateral, without the signature of each Debtor where permitted by law. Upon the occurrence and during the continuance of an Event of Default, under or in respect of the Note, the Purchase Agreement, the Pledge Agreement and this Agreement, each Debtor shall, from time to time, as may be required by Creditor with respect to all Collateral, promptly take (i) all actions as may be reasonably requested by Creditor to perfect the security interest of Creditor in the Collateral, and (ii) all actions as may be reasonably requested from time to time by Creditor so that control of such Collateral is retained and at all times held by Creditor for such Collateral that can only be perfected by control.

7. **Representations and Warranties**. Each Debtor represents and warrants as follows on behalf of such Debtor:

(a) With respect to Collateral owned by Debtor, Debtor is the sole, direct, legal and beneficial owner of such Collateral, free and clear of any lien, security interest, encumbrance, claim, option or right of others except for the security interest created by this Agreement and the Pledge Agreement, as applicable.

(b) The pledge of the Collateral pursuant to this Agreement creates a valid and, following Creditor's filing of any financing statement or taking of any other step necessary to perfect Creditor's security interest in the Collateral pursuant to Section 6, perfected first priority security interest in the Collateral, securing the payment and performance when due of the Secured Obligations.

(c) Debtor has full power, authority and legal right to pledge the Collateral pursuant to this Agreement.

(d) This Agreement has been duly authorized, executed and delivered by Debtor and constitutes a legal, valid and binding obligation of Debtor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

(e) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other entity is required for the pledge by Debtor of the Collateral pursuant to this Agreement or for the execution and delivery of this Agreement by Debtor or the performance by Debtor of its obligations hereunder, other than those that have been obtained or made.

(f) The execution and delivery of this Agreement by Debtor and the performance by Debtor of its obligations hereunder will not violate any provision of any applicable law or regulation or any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, domestic or foreign, applicable to Debtor or any of its property, or any agreement or instrument to which Debtor is party or by which its property is bound.

(g) No person other than Debtor or Creditor, as applicable, has control or possession of all or any part of the Collateral.

8. **Distributions and Receivables**. Subject to the terms of the Note, Creditor agrees that each Debtor may, unless an Event of Default shall have occurred and be continuing, exercise all rights of ownership in such Collateral in the ordinary course of its business and shall be entitled to receive, retain, spend and exercise all rights over all dividends and other distributions with respect to the Collateral consisting of securities or indebtedness owed by any obligor.

9. Covenants.

(a) Upon the occurrence and during the continuance of an Event of Default, each Debtor shall, upon request of Creditor, take all action reasonably required on its part for control to be obtained by Creditor over all Collateral with respect to which such control may be obtained pursuant to the UCC.

(b) Each Debtor shall, at its own cost and expense, defend title to the Collateral and the first priority lien and security interest of Creditor therein against the claim of any person claiming against or through such Debtor and shall maintain and preserve such perfected first priority security interest for so long as this Agreement shall remain in effect.

(c) Each Debtor agrees that at any time and from time to time, at the expense of such Debtor, such Debtor will promptly execute and deliver all further instruments and documents, obtain such agreements from third parties, and take all further action, that may be reasonably necessary or desirable, or that Creditor may reasonably request, in order to perfect and protect any security interest granted hereby or upon the occurrence and during the continuance of an Event of Default, to enable Creditor to exercise and enforce its rights and remedies hereunder or under any other agreement with respect to any Collateral.

(d) Each Debtor will not, without providing at least thirty (30) days' prior written notice to Creditor, change its legal name, identity, type of organization, jurisdiction of organization, corporate structure, location of its chief executive office or its principal place of business or its organizational identification number. Each Debtor will, prior to any change described in the preceding sentence, take all actions reasonably requested by Creditor to maintain the perfection and priority of Creditor's security interest in the Collateral.

10. Transfers and Other Liens. Except as permitted by this Agreement or the Pledge Agreement, each Debtor agrees that it will not sell, offer to sell, dispose of, convey, assign or otherwise transfer, grant any option with respect to, restrict, or grant, create, permit or suffer to exist any mortgage, pledge, lien, security interest, option, right of first offer, encumbrance or other restriction or limitation of any nature whatsoever on, any of the Collateral or any interest therein except as expressly provided for herein or otherwise with the prior written consent of Creditor.

11. Creditor Appointed Attorney-in-Fact. Upon the occurrence and during the continuance of an Event of Default, each Debtor hereby appoints Creditor as such Debtor's attorney-in-fact, with full authority in the place and stead of such Debtor and in the name of such Debtor or otherwise, from time to time in Creditor's discretion to take any action and to execute any instrument which Creditor may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, endorse and collect all instruments made payable to such Debtor representing any dividend, interest payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same (but Creditor shall not be obligated to and shall have no liability to such Debtor or any third party for failure to do so or take action). Such appointment, being coupled with an interest, shall be irrevocable.

12. **Creditor May Perform**. If any Debtor fails to perform any obligation contained in this Agreement, Creditor may itself perform, or cause performance of, such obligation, and the expenses of Creditor incurred in connection therewith shall be payable by such Debtor; provided, however, that Creditor shall not be required to perform or discharge any obligation of such Debtor.

13. **Reasonable Care**. Creditor shall have no duty with respect to the care and preservation of the Collateral beyond the exercise of reasonable care. Creditor shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which Creditor accords its own property, it being understood that Creditor shall not have any responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not Creditor has or is deemed to have knowledge of such matters, or (b) taking any necessary steps to preserve rights against any parties with respect to any Collateral. Nothing set forth in this Agreement, nor the exercise by Creditor of any of its rights and remedies hereunder, shall relieve any Debtor from the performance of any obligation on such Debtor's part to be performed or observed in respect of any of the Collateral.

14. **Remedies Upon Default**. If any Event of Default shall have occurred and be continuing, the Parties agree as follows:

(a) Creditor may, without any other notice to or demand upon Debtors, assert its right to take possession of, hold, sell or otherwise retain, liquidate or dispose of all or any portion of the Collateral.

(b) If notice prior to disposition of the Collateral or any portion thereof is necessary under applicable law, written notice mailed to U-Swirl at its notice address as provided in the Purchase Agreement ten (10) days prior to the date of such disposition shall constitute reasonable notice. So long as the sale of the Collateral is made in a commercially reasonable manner, Creditor may sell such Collateral on such terms and to such purchaser(s) as Creditor in its absolute discretion may choose, without assuming any credit risk and without any obligation to advertise or give notice of any kind other than that necessary under applicable law. Without precluding any other methods of sale, the sale of the Collateral or any portion thereof shall be made in a commercially reasonable manner if conducted in conformity with reasonable commercial practices of creditors disposing of similar property. At any sale of the Collateral, if permitted by applicable law, Creditor may be the purchaser, licensee, assignee or recipient of the Collateral or any part thereof. To the extent permitted by applicable law, each Debtor waives all claims, damages and demands it may acquire against Creditor arising out of the exercise by it of any rights hereunder. Each Debtor hereby waives and releases to the fullest extent permitted by law any right or equity of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling the Collateral and any other security for the Secured Obligations or otherwise. At any such sale, unless prohibited by applicable law, Creditor or any custodian may bid for and purchase all or any part of the Collateral so sold free from any such right or equity of redemption. Neither Creditor nor any custodian shall be liable for failure to collect or realize upon any or all of the Collateral or for any delay in so doing, nor shall it be under any obligation to take any action whatsoever with regard thereto. Creditor shall not be obligated to clean-up or otherwise prepare the Collateral for sale.

(c) All rights of each Debtor to receive the dividends and other distributions which it would otherwise be entitled to receive and retain pursuant to Section 8 shall immediately cease, and all such rights shall thereupon become vested in Creditor, which shall have the sole right to exercise such voting and other consensual rights and receive and hold such dividends and other distributions as Collateral.

(d) Any cash held by Creditor as Collateral and all cash Proceeds received by Creditor in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in whole or in part by Creditor to the payment of expenses incurred by Creditor in connection with the foregoing or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of Creditor hereunder, including reasonable attorneys' fees, and the balance of such proceeds shall be applied or set off against all or any part of the Secured Obligations in such order as Creditor shall elect. Any surplus of such cash or cash Proceeds held by Creditor and remaining after payment in full of all the Secured Obligations shall be paid over to such Debtor or to whomsoever may be lawfully entitled to receive such surplus. Each Debtor shall remain liable for any deficiency if such cash and the cash Proceeds of any sale or other realization of the Collateral are insufficient to pay the Secured Obligations and the fees and other charges of any attorneys employed by Creditor to collect such deficiency.

(e) If Creditor shall determine to exercise its rights to sell all or any of the Collateral pursuant to this Section, each Debtor agrees that, upon request of Creditor, each Debtor will, at its own expense, do or cause to be done all such acts and things as may be reasonably necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

15. **No Waiver and Cumulative Remedies**. Creditor shall not by any act (except by a written instrument pursuant to Section 17), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or Event of Default. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law.

16. **Security Interest Absolute**. Except for such notice as is required under this Agreement, the Pledge Agreement, the Note or the Purchase Agreement, each Debtor hereby waives demand, notice, protest, notice of acceptance of this Agreement, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. All rights of Creditor and liens and security interests hereunder, and all Secured Obligations of each Debtor hereunder, shall be absolute and unconditional irrespective of:

(a) any illegality or lack of validity or enforceability of any Secured Obligation or any related agreement or instrument;

(b) any taking, exchange, substitution, release, impairment or non-perfection of any Collateral or any other collateral, or any taking, release, impairment, amendment, waiver or other modification of any guaranty, for all or any of the Secured Obligations;

(c) any manner of sale, disposition or application of proceeds of any Collateral or any other collateral or other assets to all or part of the Secured Obligations;

(d) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations; or

(e) any defense, set-off or counterclaim (other than a defense of payment or performance) that may at any time be available to, or be asserted by, any Debtor against Creditor.

17. **Amendments**. None of the terms or provisions of this Agreement may be amended, modified, supplemented, terminated or waived, and no consent to any departure by any Debtor therefrom shall be effective unless the same shall be in writing and signed by Creditor and such Debtor, and then such amendment, modification, supplement, waiver or consent shall be effective only in the specific instance and for the specific purpose for which made or given.

18. **Addresses For Notices**. All notices and other communications provided for in this Agreement shall be in writing and shall be addressed to the respective Parties at their addresses as specified in, given in the manner as described and become effective as set forth in Section 10.6 of the Purchase Agreement.

19. **Continuing Security Interest; Further Actions**. This Agreement creates a continuing first priority lien and security interest in the Collateral and shall (a) subject to Section 20, remain in full force and effect until payment and performance in full of the Secured Obligations, (b) be binding upon each Debtor, its successors and assigns, and (c) inure to the benefit of Creditor and its successors, transferees and assigns; provided, however, that each Debtor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Creditor. Without limiting the generality of the foregoing clause (c), any assignee of Creditor's interest in any agreement or document which includes all or any of the Secured Obligations shall, upon assignment, become vested with all the benefits granted to Creditor herein with respect to such Secured Obligations.

20. **Termination; Release**. Upon the termination of the obligations of Debtors under the Note, Creditor will, at the request and sole expense of Debtors, (a) duly assign, transfer and deliver to or at the direction of Debtors (without recourse and without any representation or warranty) such of the Collateral, if any, as may then remain in the possession of Creditor, together with any monies at the time held by Creditor hereunder, and (b) execute and deliver to Debtors a proper instrument or instruments acknowledging the satisfaction and termination of this Agreement and authorization for Debtors or their designee to file a UCC-3 financing statement to terminate any UCC-1 financing statement filed by Creditor.

21. Governing Law; Jury Trial Waiver; Jurisdiction; Service of Process. Sections 22 and 23 of the Pledge Agreement shall apply to this Agreement, *mutatis mutandis*, as if each had been fully set forth herein.

22. Severability. In the event that any court of competent jurisdiction shall determine that any provision, or any portion thereof, contained in this Agreement shall be unenforceable in any respect, then such provision shall be deemed limited to the extent that such court deems it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall deem any such provision, or portion thereof, wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

23. Headings and Captions. The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

24. Counterparts. This Agreement may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of facsimile or .pdf, or other electronic copies (complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com)) of signature pages for this Agreement, other documents required by the Agreement, and all certificates and other documents required to be delivered for Closing shall be valid and treated for all purposes as delivery of the originals.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the Effective Date.

DEBTORS:

BOB PARTNERS X, LLC

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

U SWIRL, LLC

By: Bob Partners X, LLC
Its: Sole Member

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

U SWIRL FRANCHISING LLC

By: U Swirl, LLC
Its: Sole Member

By: Bob Partners X, LLC
Its: Sole Member

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

U SWIRL GIFT CARD LLC

By: U Swirl, LLC
Its: Sole Member

By: Bob Partners X, LLC
Its: Sole Member

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

[*Signature Page to Security Agreement*]

CREDITOR:

U-SWIRL INTERNATIONAL, INC.

By: /s/ Robert J. Sarlls
Name: Robert J. Sarlls
Title: Chief Executive Officer

[*Signature Page to Security Agreement*]

SCHEDULE A

Commercial Tort Claims

None.

Exhibit 10.3

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this "Pledge Agreement"), dated as of May 1, 2023, is made and entered into by and between U-Swirl International, Inc., a Nevada corporation (the "Pledgee"), Bob Partners X, LLC, a Delaware limited liability company (the "Pledgor 1"), and Kishan Patel, Nimesh Dahya, Nealesh Dahya, Sanjay Patel, Ravi Patel and Mina Yu (collectively "Pledgor 2"), and U Swirl, LLC, a Delaware limited liability company ("Buyer" and, together with Pledgor 1 and Pledgor 2, collectively, the "Pledgors"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement (as defined below).

RECITALS

1. Pledgor 1 owns all membership interests (the "Pledgor 1 Equity Interests") in of Buyer; Pledgor 2 owns collectively all of the membership interests (the "Pledgor 2 Equity Interests") in Pledgor 1; and Buyer owns all the membership interests (collectively, the "Buyer Equity Interests") in each of U Swirl Franchising LLC, a Delaware limited liability company ("Franchising"), and U Swirl Gift Card LLC, an Arizona limited liability company (together with Franchising, the "Subsidiaries").

2. The Pledgee and Buyer are parties to that certain Asset Purchase Agreement dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms, the "Purchase Agreement"), whereby the Pledgee is selling all or substantially all of its assets to Buyer. The Purchase Price is being paid partially in the form of a Promissory Note delivered by Buyer to Pledgee, and guaranteed by the Pledgors pursuant to Section 3 herein, with an aggregate principal amount equal to $1,000,000 (the "Promissory Note").

3. The Pledgee, Buyer, Pledgor 1 and the Subsidiaries are parties to that certain Security Agreement, dated as of the date hereof (the "Security Agreement"), whereby each of Buyer, Pledgor 1 and the Subsidiaries granted to Pledgee a first-priority security interest in all of each of Buyer's and Pledgor 1's and each Subsidiaries' right, title and interest in and to the Collateral (as defined in the Security Agreement).

4. Each Pledgor wishes to grant further security and assurance to the Pledgee in order to secure all of Buyer's obligations under the Promissory Note, including, without limitation, the prompt payment when due of the principal of and interest on the Promissory Note (including interest accruing on or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to Buyer, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) (collectively, the "Obligations"), by pledging to the Pledgee, simultaneously with Buyer's delivery of the Promissory Note, all of the Pledgor 1 Equity Interests, Pledgor 2 Equity Interests, Buyer Equity Interests and any other equity interests held by each Pledgor from time to time in Buyer (collectively, the "Pledged Equity Interests") on and subject to the terms and conditions herein.

4. The Pledged Equity Interests constitute all of the issued and outstanding equity interests of Buyer.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 Grant of Security Interest. Each Pledgor hereby pledges, assigns and transfers to the Pledgee, and grants the Pledgee, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations, now existing or hereafter arising, a continuing first priority security interest in any and all of the following property, whether now owned or at any time hereafter acquired by such Pledgor or in which such Pledgor may hold or may hereafter acquire any, direct or indirect (whether through an Affiliate or otherwise), right, title or interest (the "Pledged Collateral"):

(a) all estate, right, title and interest now held or hereafter acquired by such Pledgor in and to any Pledged Equity Interests, including, without limitation, all of its rights to properties, assets, dividends or any other payments, in respect of the Pledged Equity Interests;

(b) all certificates and other instruments evidencing the Pledged Equity Interests;

(c) any, direct or indirect, right of such Pledgor to receive distributions of money or property, or both, for any reason whatsoever from Buyer with respect to the Pledged Equity Interests;

(d) all other property of every kind and description, real, personal or mixed, and interests therein now held or hereafter acquired by such Pledgor with respect to the Pledged Equity Interests, wherever located or however acquired; and

(e) the Proceeds (as such term is defined in the Uniform Commercial Code as in effect from time to time in the State of Delaware (the "Code")) of all such Pledged Equity Interests and of any of the foregoing.

SECTION 2 Delivery of Pledged Equity and Covenants.

(a) Each Pledgor shall, in the event that the Pledged Collateral is evidenced by any certificate(s), promptly deliver any certificate(s) evidencing the Pledged Collateral, together with duly executed transfer powers or other instruments of transfer (each in form and substance reasonably satisfactory to the Pledgee) duly executed in blank by such Pledgor (the "Held Certificates") until the Obligations are indefeasibly paid in full in cash or performed, as the case may be.

(b) Each Pledgor wills execute, acknowledge, if necessary, deliver and cause to be recorded or filed, from time to time, such financing statements, continuation statements, documents or instruments, or take any other action requested by the Pledgee, deemed necessary or appropriate by the Pledgee to create, preserve, perfect and continue perfected the first priority perfected security interest for the benefit of the Pledgee granted hereby or to enable the Pledgee to exercise and enforce its rights hereunder, and will cause to be promptly and duly taken, executed, acknowledged or delivered all such further acts, conveyances, documents and assurances as the Pledgee may from time to time reasonably request in order to more effectively carry out the intent and purposes of this Pledge Agreement. The Pledgors also hereby irrevocably authorize the Pledgee to file any such financing or continuation statement at any time and from time to time in any filing office without the signature of the Pledgors to the extent permitted by applicable law. The Pledgors and the Pledgee agree that a carbon, photographic or other reproduction of this Pledge Agreement or a financing statement is sufficient as a financing statement. If any amount payable under or in connection with any of the Pledged Collateral shall be or become evidenced by any promissory note, other instrument or chattel paper, such note, instrument or chattel paper shall be immediately delivered to the Pledgee, duly endorsed in a manner satisfactory to the Pledgee, to be held as Pledged Collateral pursuant to this Pledge Agreement.

(c) The Pledgors will not create, incur or permit to exist, will defend the Pledged Collateral against, and will take such other action as is necessary to remove, any mortgages, indentures, liens, security interests, licenses or other encumbrances or restrictions (collectively, "Liens") or claim on or to the Pledged Collateral, other than the Liens created hereby, and will defend the right, title and interest of the Pledgee in and to any of the Pledged Collateral against the claims and demands of all Persons.

(d) The Pledgors hereby agree, immediately upon receipt or acquisition thereof, to transfer to the Pledgee any and all additional Pledged Equity Interests hereafter acquired by such Pledgor, directly or indirectly, and that such additional Pledged Equity Interests (and the proceeds therefrom) shall thereafter be included in the definition of Pledged Collateral for all purposes hereunder and shall be subject to the security interest granted herein, and to deliver to the Pledgee immediately upon receipt thereof any certificates or instruments evidencing the ownership of such additional Pledged Equity Interests received by him or it, duly endorsed in blank or accompanied by proper instruments of assignment duly endorsed in blank.

(e) Each Pledgor hereby acknowledges and agrees that the Pledgee will rely on the representations, warranties, covenants and agreements made by the Pledgors in this Pledge Agreement, and Pledgors hereby affirm such representations, warranties, covenants and agreements to the Pledgee.

(f) The Pledgors hereby covenant and agree to pay or perform, as the case may be, each of the Obligations as and when due, in accordance with and subject to their terms.

(g) Within ten (10) Business Days after each Pledgor obtains knowledge of any Event of Default, such Pledgor will provide notice to the Pledgee in the manner provided in Section 11.

SECTION 3 Guaranty.

(a) For purposes of this Section 3, "Guarantors" means Pledgor 1 and Pledgor 2 and "Guaranteed Obligations" has the meaning of "Obligations" set forth herein.

(b) Each Guarantor hereby, jointly and severally, irrevocably and unconditionally guarantees to Pledgee, as and for Guarantor's own debt, until final and indefeasible payment thereof has been made, (a) payment of the Guaranteed Obligations, in each case when and as the same shall become due and payable, whether at maturity, pursuant to a mandatory prepayment requirement, by acceleration, or otherwise; it being the intent of each Guarantor that the guaranty set forth herein shall be a guaranty of payment and not a guaranty of collection, and (b) the punctual and faithful performance, keeping, observance, and fulfillment by the Buyer of all of the agreements, conditions, covenants, and obligations of the Buyer contained in the Purchase Agreement. For the avoidance of doubt, and notwithstanding any other provision of this Pledge Agreement, the Security Agreement, Purchase Agreement or the Promissory Note, it is acknowledged and agreed that the Guaranteed Obligations are limited recourse to the Guarantors with respect to the exercise of rights and remedies in respect of the Pledged Equity Interests pursuant to this Pledge Agreement, and that Guarantors shall not otherwise have any obligation or liability for or in respect of the Guaranteed Obligations and the Pledgee shall not make any demand or claim upon Guarantors in respect of the Guaranteed Obligations other than with respect to its exercise of rights and remedies in respect of the Pledged Equity Interests pursuant to this Pledge Agreement.

SECTION 4 Administration of Security. The following provisions shall govern the administration of the Pledged Collateral:

(a) So long as no Event of Default has occurred and is continuing (as used herein, 'Event of Default" shall mean the occurrence of any Event of Default under the Promissory Note), the Pledgors shall be entitled to act with respect to the Pledged Collateral in any manner not inconsistent with this Pledge Agreement, the Security Agreement, the Purchase Agreement and the Promissory Note.

(b) If while this Pledge Agreement is in effect, the Pledgors shall become entitled to receive or shall receive any debt or equity security certificate (including, without limitation, any portion of the membership interests comprising the Pledge Collateral in connection with any reclassification, increase or reduction of capital, or issued in connection with any reorganization), option or right, or any other property, whether as a dividend or distribution or other issuance in respect of, in substitution of, or in exchange for any Pledged Collateral, or any non-cash proceeds from any sale, transfer or other disposition (collectively, a "Sale") of any Pledged Collateral or any non-cash proceeds from any Sale of any such non-cash proceeds or other Pledged Collateral, each Pledgor shall agree to accept the same as the Pledgee's agent and to hold the same in trust on behalf of and for the benefit of the Pledgee and to deliver the same forthwith to the Pledgee in the exact form received, with the endorsement of the Pledgor when necessary and/or appropriate undated security transfer powers duly executed in blank, to be held by the Pledgee, subject to the terms of this Pledge Agreement, as additional collateral security for the Obligations. Notwithstanding the foregoing, it is agreed that each Pledgor may exercise any option or right received as contemplated in the preceding sentence, and the Pledgee will exercise any such option or right upon receipt of written instructions to that effect and any required payments or documents from each Pledgor, and the securities received upon such exercise of any such option or right shall thereafter be held by the Pledgee as contemplated by the preceding sentence.

(c) Subject to any Sale by the Pledgee of the Pledged Collateral pursuant to this Pledge Agreement, the Held Certificates (if any) shall be returned to each Pledgor upon payment in full of all Obligations.

(d) The Pledgee's sole duty with respect to the custody, safekeeping and physical preservation of any of the Pledged Collateral in its possession shall be to deal with them in the same manner as the Pledgee deals with similar securities and property for its own account. Neither the Pledgee nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon any of the Pledged Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any of the Pledged Collateral upon the request of each Pledgor or otherwise.

SECTION 5 Representations and Warranties of the Pledgors. The Pledgors jointly and severally represent and warrant to the Pledgee that:

(a) the Pledgors, as applicable, own the Pledged Collateral and have the right to grant the security interest provided for herein, and the Pledged Collateral is not and will not be subject to any Liens or right or option on the part of any other Person to purchase or otherwise acquire the Pledged Collateral or any part thereof (other than the security interest established hereunder in favor of the Pledgee);

(b) to each Pledgor's knowledge, no security agreement, financing statement or other public notice with respect to all or any part of the Pledged Collateral is on file or of record in any public office, except such as may have been filed in favor of the Pledgee pursuant to this Pledge Agreement;

(c) this Pledge Agreement has been duly executed by the Pledgors and constitutes the valid and legally binding agreement of Pledgors, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies;

(d) the execution and delivery by the Pledgors of this Pledge Agreement and the fulfillment of and compliance with the terms hereof by the Pledgors do not and will not (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in a violation of, or (iv) require any authorization, consent, approval, exemption or other action by or notice to any court or administrative or governmental body pursuant to any law, statute, rule or regulation to which a Pledgor is subject, or any agreement, instrument, order, judgment or decree to which a Pledgor is a party or by which a Pledgor is bound;

(e) no authorization, approval or consent is required to be obtained from, nor is any registration, declaration or filing required to be made with, any governmental authority or regulatory body or any other person in order to permit the Pledgors to execute, deliver and perform his or its obligations under this Pledge Agreement; and

(f) the security interests granted pursuant to Section 1 of this Pledge Agreement will constitute valid perfected first priority security interests in all of the Pledged Collateral in favor of the Pledgee, as collateral security for the Obligations.

SECTION 6 Remedies in Case of an Event of Default In the case an Event of Default shall have occurred and be continuing, the Parties agree as follows:

(a) The Pledgee shall have all of the remedies of a secured party under the Code and, without limiting the generality of the foregoing, shall have the right, in its sole discretion, to effectuate a Sale of all or any part of the Pledged Collateral, or any interest in or option or right to purchase any part thereof, on any securities exchange on which the Pledged Equity Interests or any of them may be listed (in the case of Pledged Equity Interests) or, in any private sale or at public or private auction (in the case of all Pledged Collateral (including the Pledged Equity Interests)), with or without demand of performance or other demand, advertisement or notice of the time or place of any Sale or adjournment thereof or otherwise (except that the Pledgee shall give twenty (20) days' notice to the Pledgors of the time and place of any Sale pursuant to this Section 6), for cash, on credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Pledgee shall, in its sole discretion, determine, the Pledgors hereby waiving and releasing any and all right or equity of redemption whether before or after any Sale, hereunder. At any Sale, the Pledgee may bid for and purchase the whole or any part of the Pledged Collateral so sold free from any such right or equity of redemption. The Pledgee shall apply the proceeds of any such Sale first to the payment of all costs and expenses, including, without limitation, reasonable and actual attorneys' or other advisors' fees, incurred by the Pledgee or any of its affiliates in enforcing its rights under this Pledge Agreement and second to the payment of accrued and unpaid interest on the Promissory Note and then the unpaid principal of the Promissory Note, and thereafter to the payment of any other Obligations, and the Pledgors shall continue to be liable for any deficiency in any such amount. To the extent permitted by applicable law, the Pledgors waive all claims, damages, and demands against the Pledgee and its Affiliates arising out of the repossession, retention or transfer of the Pledged Collateral.

(b) The Pledgors recognize that the Pledgee may be unable to effect a public sale of all or a part of any Pledged Equity Interests constituting part of the Pledged Collateral by reason of certain prohibitions contained in the Securities Act of 1933, or in the rules and regulations promulgated thereunder or in applicable United States state securities or "blue sky" laws, but may be compelled to resort to one or more private sales to a restricted group of purchasers who will be obliged to agree, among other things, to acquire the Pledged Equity Interests for their own account, for investment and not with a view to the distribution or resale thereof. The Pledgors agree that private sales so made may be at prices and on other terms less favorable to the seller than if the Pledged Equity Interests were sold at public sale, and that the Pledgee has no obligation to (i) delay the sale of the Pledged Equity Interests for the period of time necessary to permit the registration of the Pledged Equity Interests for public sale under the Securities Act, and under applicable United States state securities or "blue sky" laws or (ii) make, or take any action in furtherance of, a public sale. The Pledgors agree that a private sale or sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner.

(c) If any consent, approval or authorization of any state, municipal or other governmental department, agency or authority should be necessary to effectuate any Sale by the Pledgee of the Pledged Collateral pursuant to this Section 6, the Pledgors will execute all such applications and other instruments as may be required in connection with securing any such consent, approval or authorization and will otherwise use the Pledgors' best efforts to secure the same.

(d) All rights of each Pledgor to receive the dividends and other distributions which it would otherwise be entitled to receive and retain pursuant to Section 13 shall immediately cease, and all such rights shall thereupon become vested in Pledgee, which shall have the sole right to exercise such voting and other consensual rights and receive and hold such dividends and other distributions as Pledged Collateral.

SECTION 7 The Pledgors' Obligations Not Affected. The obligations of the Pledgors under this Pledge Agreement shall remain in full force and effect without regard to, and shall not be impaired by: (a) any subordination, amendment or modification of or addition or supplement to the Purchase Agreement or the Promissory Note, or any transfer of any thereof; (b) any exercise or non-exercise by the Pledgee or any affiliate of the Pledgee of any right, remedy, power or privilege under or in respect of this Pledge Agreement, the Purchase Agreement or the Promissory Note, or any waiver of any such right, remedy, power or privilege; (c) any waiver, consent, extension, indulgence or other action or inaction in respect of this Pledge Agreement, the Promissory Note or the Purchase Agreement, or any assignment or transfer of any thereof; or (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation, or the like, of the Pledgee or any of its affiliates, whether or not the Pledgors shall have notice of any of the foregoing.

SECTION 8 Transfer by the Pledgors. Neither Pledgor will transfer any of the Pledged Collateral or any interest therein. If any part of the Pledged Collateral is transferred in violation of this Pledge Agreement, the security interest granted to the Pledgee pursuant to Section 1 shall continue in the Pledged Collateral notwithstanding such transfer, and the Pledgors will deliver any proceeds thereof to the Pledgee to be held as Pledged Collateral hereunder (it being acknowledged and agreed that the delivery of any such proceeds shall not be deemed a waiver of any Event of Default arising as a result of the transfer of the Pledged Collateral in violation of this Section 8). The Pledgors hereby agree not to enter into any voting agreement or other agreement purporting to transfer or otherwise limit any of the rights that are pledged as Pledged Collateral without the prior written consent of the Pledgee (which may be given or withheld in its sole discretion).

SECTION 9 Attorney-in-Fact. The Pledgee is hereby appointed the attorney-in-fact of the Pledgors, with full power of substitution, for the purpose of carrying out the provisions of this Pledge Agreement and taking any action and executing any instrument which the Pledgee may deem necessary or advisable to accomplish the purposes hereof, including, without limitation, the execution of the agreements, financing statements and other instruments and documents described herein, which appointment as attorney-in-fact is irrevocable as one coupled with an interest, and shall survive the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of the Pledgors and the transfer of all or any portion of the Pledged Collateral and shall extend to the Pledgors' heirs, successors, assigns and personal representatives.

SECTION 10 Termination. Upon payment in full of all Obligations and upon the due performance of and compliance with and subject to all the provisions of the Promissory Note and this Pledge Agreement, this Pledge Agreement shall automatically terminate and the Pledgors shall be entitled to the return of such of the Pledged Collateral as has not theretofore been sold, released or otherwise applied pursuant to the provisions of this Pledge Agreement, and the Pledgee shall within three (3) Business Days of written request by a Pledgor deliver to the Pledgors the Promissory Note marked "Paid In Full", the Pledged Collateral and UCC-3 termination statements executed by Pledgee (for filing/recording by Pledgor) terminating its security interest in any Pledged Collateral with respect to which any financing statement had been filed by the Pledgee.

SECTION 11 Notices. All notices or other communications required or permitted to be given hereunder shall be delivered as provided in the Purchase Agreement.

SECTION 12 Other Agreements. The Pledgors agree to execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or reasonably appropriate to achieve the purposes of this Pledgor Agreement.

SECTION 13 Dividends and Distribution. Unless and until there shall have occurred and be continuing an Event of Default, all cash dividends, cash distributions, cash proceeds and other cash amounts payable in respect of the Pledged Collateral shall be paid to, and retained by, the Pledgors; provided, that, upon the occurrence and during the continuation of an Event of Default, any and all cash dividends, cash distributions, cash proceeds and other cash amounts payable in respect of the Pledged Collateral, including but not limited to tax distributions made pursuant to and in accordance with each Pledgor's operating agreement or equivalent governing document, set aside for payment shall first be applied by the Pledgors to repay the Promissory Note in accordance with the Promissory Note. The Pledgee shall be entitled to receive directly, and to retain as part of the Pledged Collateral all other or additional stock, notes, instruments or other securities or property (other than cash dividends) paid or distributed by way of dividend or otherwise in respect of the Pledged Collateral or by reason of any consolidation, merger, exchange of stock, conveyance of assets, liquidation or similar corporate reorganization. All dividends, distributions or other payments which are received by the Pledgors contrary to this Section 13 shall be received in trust for the benefit of the Pledgee, shall be segregated from other property of the Pledgors and shall be forthwith paid over to the Pledgee as Pledged Collateral in the same form received (with any necessary endorsement).

SECTION 14 Further Assurances. The Pledgors hereby agree to do such further acts and things and to execute and deliver to the Pledgee such additional conveyances, assignments, agreements and instruments as the Pledgee may reasonably require or deem advisable to carry into effect the purposes of this Pledge Agreement or to further assure and confirm unto the Pledgee its rights, powers and remedies hereunder. Each Pledgor agrees that it will not, without providing at least thirty (30) days' prior written notice to Pledgee, change its legal name, identity, type of organization, jurisdiction of organization, corporate structure, location of its chief executive office or its principal place of business or its organizational identification number or amend its organizational documents in any manner adverse to the Pledgee. Each Pledgor will, prior to any change described in the preceding sentence, take all actions requested by Pledgee to maintain the perfection and priority of Lender's security interest in the Pledged Collateral.

SECTION 15 Pledgee Liability. The Pledgee shall not be liable under this Pledge Agreement for any action taken or not taken except as provided by law or as a result of gross negligence, willful misconduct or fraud by the Pledgee.

SECTION 16 Security Interests Absolute. The Liens under this Pledge Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever (except as provided in Section 10 herein), including, without limitation: (a) any renewal, extension, amendment or modification of or addition or supplement to or deletion from the Promissory Note or any other instrument or agreement referred to therein, or any assignment or transfer thereof; (b) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument or this Pledge Agreement; (c) any furnishing of any additional security or other Lien to the Pledgee or its assignee or any acceptance thereof or any release of any security by the Pledgee or its assignee; (d) any limitation on any party's liability or obligations under any such instrument or agreement or any invalidity or unenforceability, in whole or in part, of any such instrument or agreement or any term thereof; or (e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Pledgors, or any action taken with respect to this Pledge Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not the Pledgors shall have notice or knowledge of any of the foregoing.

SECTION 17 Reinstatement. If any payment by the Pledgors to the Pledgee of the Obligations is rescinded or must otherwise be returned by the Pledgee or any other Person to the Pledgors or any other Person making such payment upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Pledgors, such other Person making such payment or otherwise, and is rescinded or returned, as though such payment had not been made, or if the proceeds of Pledged Collateral are required to be returned by the Pledgee to the Pledgors or any other Person, any security interest or Pledged Collateral securing such liability hereunder shall be and remain in full force and effect, as fully as if such payment had never been made or, if prior thereto the security interest or Pledged Collateral securing such liability hereunder shall have been released or terminated by virtue of such cancellation or surrender, such security interest or Pledged Collateral shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the security interest or Pledged Collateral securing the obligations of the Pledgors in respect of the amount of such payment.

SECTION 18 No Waiver; Cumulative Remedies. The failure of any Person to insist in one or more instances on performance by another Person of any obligation, condition or other term of this Pledge Agreement in strict accordance with the provisions hereof shall not be construed as a waiver of any right granted hereunder or of the future performance of any obligation, condition or other term of this Pledge Agreement in strict accordance with the provisions hereof, and no waiver with respect thereto shall be effective unless contained in a writing signed by or on behalf of the waiving party. The remedies in this Pledge Agreement shall be cumulative and are not exclusive of any other remedies provided by law, any other agreement or otherwise.

SECTION 19 Amendments; Waivers and Consents. The Pledgors and the Pledgee may amend or modify this Pledge Agreement by mutual written agreement. No waiver of any provision of this Pledge Agreement will be effective against any party hereto unless such waiver is in writing and is signed by the party against whom such waiver is to be effective. Any waiver shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 20 Severability. Whenever possible, each provision of this Pledge Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Pledge Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Pledge Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

SECTION 21 Binding Effect, Assignment. This Pledge Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, representatives, successors and permitted assigns; provided, that, (i) each Pledgor may not assign any of its rights or obligations (whether by operation of law or otherwise) under this Pledge Agreement without the prior written consent of the Pledgee, and (ii) the Pledgee may assign all or any portion of its rights and obligations under this Pledge Agreement to any of its Affiliates without the prior written consent of each Pledgor.

SECTION 22 Applicable Law; Jurisdiction & Service of Process. This Pledge Agreement, and all claims, actions, causes of actions and proceedings based upon, related to or in connection with this Pledge Agreement, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Each of the parties hereto or bound hereby submits to the exclusive jurisdiction of the Delaware Court of Chancery (or any United States District Court or the Superior Court in New Castle County Delaware only if the Delaware Court of Chancery lacks subject matter jurisdiction) (the "Chosen Courts") in any claims, actions, causes of actions or proceedings based upon, related to or in connection with this Pledge Agreement or the negotiation, execution or performance hereunder, and agrees that all claims, actions, causes of actions or proceedings in respect thereof shall be heard and determined in the Chosen Courts. Each party hereto or bound hereby also agrees not to bring any claims, actions, causes of actions or proceedings based upon, related to or in connection with this Pledge Agreement or the negotiation, execution or performance hereunder, in any court or venue (other than the Chosen Courts). Each of the parties hereto or bound hereby waives any defense of inconvenient forum to the maintenance of any claims, actions, causes of actions or proceedings so brought and waives any bond, surety or other security that might be required of any other party hereto or bound hereby with respect thereto.

SECTION 23 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS PLEDGE AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS PLEDGE AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES HERETO EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES HERE MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS PLEDGE AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 24 Entire Agreement. This Pledge Agreement and the other agreements referred to in or contemplated by this Pledge Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations or representations with respect to the subject matter hereof. The parties to this Pledge Agreement have participated jointly in the negotiation and drafting of this Pledge Agreement. In the event an ambiguity or question of intent or interpretation arises, this Pledge Agreement will be construed as if drafted jointly by the parties to this Pledge Agreement, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Pledge Agreement.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to be executed and delivered on the date first above written.

PLEDGEE:

U-SWIRL INTERNATIONAL, INC.

By: /s/ Robert J. Sarlls
Name: Robert J. Sarlls
Title: Chief Executive Officer

[Signature Page to Pledge Agreement]

PLEDGORS:

BOB PARTNERS X, LLC

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

/s/ Kishan Patel
Kishan Patel

/s/ Nimesh Dahya
Nimesh Dahya

/s/ Nealesh Dahya
Nealesh Dahya

/s/ Sanjay Patel
Sanjay Patel

/s/ Ravi Patel
Ravi Patel

/s/ Mina Yu
Mina Yu

U SWIRL, LLC

By: Bob Partners X, LLC
Its: Sole Member

By: /s/ Kishan Patel
Name: Kishan Patel
Title: Manager

[Signature Page to Pledge Agreement]