

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 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): **March 8, 2023**

Rocky Mountain Chocolate Factory, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-36865
(Commission File Number)

47-1535633
(I.R.S. Employer
Identification No.)

265 Turner Drive
Durango, Colorado
(Address of principal executive offices)

81303
(Zip Code)

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

Not Applicable
(Former name or former address, if changed since last report)

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:

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, par value \$0.001 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 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Appointment of Starlette B. Johnson to the Board

On March 3, 2023, pursuant to Rocky Mountain Chocolate Factory, Inc.'s (the "Company") Amended and Restated Certificate of Incorporation and Second Amended and Restated Bylaws, the Board of Directors of the Company (the "Board") decreased the size of the Board by one to a total of five seats. In connection with a vacancy on the Board therewith, the Board appointed Starlette B. Johnson to serve as a director of the Company effective as of March 8, 2023 (the "Effective Date"). Ms. Johnson has been appointed to the Audit Committee, Nomination & Corporate Governance Committee and the Risk & Security Committee of the Board.

Starlette B. Johnson, 59, has served as a consultant to the hospitality and entertainment industries, through SBJ Advisory Group, LLC, working with both public and private companies since 2012. Ms. Johnson joined the board of ARKO Corp. (NASDAQ: ARKO), the sixth largest convenience store chain in the United States in March 2021 and serves as Chair of the Nominating/Governance Committee and as a member of the Audit and Compensation Committees. In October 2020, she joined the board of Tastemaker Acquisition Corporation (NASDAQ: TMKR), a special purpose acquisition company focusing on the restaurant, hospitality, and related tech and services sectors. Ms. Johnson also has served on the board of Jack's Family Restaurants since October of 2019 after the acquisition of the company by AEA Partners and currently serves on the Audit and Marketing Committees. From September 2012 (post its IPO) through February 2023, she served as a member of the Audit Committee, as Chair of the Nominating/Governance Committee and as Chair of the Compensation Committee for Chuy's Inc. (NASDAQ: CHUY), a full-service casual Mexican chain. Ms. Johnson served as Chair of the Board for privately-held SusieCakes, a classic desserts bakery based in Southern California from December 2014 through December 2020. She also served as a member of the Board and Chair of the Audit Committee of Bojangles' Famous Chicken 'n Biscuits (NASDAQ: BOJA) from March 2016 until the completion of its go-private transaction in January 2019. From January 2019 through October 2020, Ms. Johnson served as a board member and as Interim President of the Lucky Strike Entertainment Group after its acquisition by Wellspring Capital Management, reporting directly to the board. Ms. Johnson received an MBA from Duke University, and a B.S. in Finance from Virginia Tech. She is currently serving a 2-year term as the Chairman of the Virginia Tech Foundation, since October 2021. Prior to her Chair position, Ms. Johnson was a member of the Virginia Tech Foundation Investment Committee from 2017-2021.

The Board has determined that Ms. Johnson is independent under the applicable Nasdaq listing rules. Ms. Johnson's selection to the Board is pursuant to that Settlement Agreement and Release, dated December 14, 2022, by and among the Company, Bradley Radoff, Andrew T. Berger, AB Value Partners, LP, AB Value Management LLC and Mary Bradley, as previously filed on Current Report Form 8-K with the Securities and Exchange Commission on December 16, 2022. There are no related party transactions between the Company and Ms. Johnson (or any of their immediate family members) requiring disclosure under Item 404(a) of Regulation S-K. Ms. Johnson does not have any family relationships with any of the Company's directors or executive officers.

In accordance with the Company's Non-Employee Director Compensation Policy, as set forth in the Company's definitive proxy statement, filed with the Securities and Exchange Commission on July 5, 2022 (the "Director Compensation Policy"), the Company will pay Ms. Johnson an annual cash retainer of \$40,000 for her service on the Board, which will be pro-rated for her first year of service. In addition, as of the Effective Date, pursuant to the Director Compensation Policy, Ms. Johnson was granted 6,338 shares of Company common stock, par value \$0.001 per share (the "Common Stock") under the Company's 2007 Equity Incentive Plan (collectively the "Initial Common Stock Grant"), pursuant to the ten (10) day volume-weighted average price of the Company's Common Stock on the Nasdaq Global Market as of the day prior to each grant date. The Initial Common Stock Grant shall vest in equal quarterly installments over twelve (12) months, subject to continued service to the Company, and shall be prorated according to Ms. Johnson's service to the Company.

Ms. Johnson will also enter into the Company's standard form of directors' indemnification agreement with the Company, pursuant to which the Company agrees to indemnify its directors to the fullest extent permitted by applicable law and subject to certain conditions to advance expenses in connection with proceedings as described in the indemnification agreement.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	<u>Indemnification Agreement between Rocky Mountain Chocolate Factory, Inc. and Starlette B. Johnson dated March 8, 2023.</u>
10.2	<u>Settlement Agreement and Release, dated December 14, 2022 (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K (File No. 001-36865) filed with the Securities and Exchange Commission on December 16, 2022).</u>
99.1	<u>Press Release of the Company dated March 8, 2023.</u>
104	Cover Page Interactive Data File (the cover page XBRL tags are embedded within the inline XBRL document)

SIGNATURES

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 hereunto duly authorized.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

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

Date: March 8, 2023



ROCKY MOUNTAIN CHOCOLATE FACTORY APPOINTS STARLETTE JOHNSON TO ITS BOARD OF DIRECTORS

Durango, Colorado--(Newsfile Corp. – March 8, 2023) - Rocky Mountain Chocolate Factory, Inc. (NASDAQ: RMCF) (the "Company", "we" or "RMCF"), a leading manufacturer and international franchiser of gourmet chocolates and other confectionary products, today announced that Starlette Johnson has been appointed to the Company's Board of Directors.

Ms. Johnson is a results-driven business strategist and operations leader with more than thirty years of success in consumer-facing retail businesses, including extensive experience in the franchise restaurant and hospitality business sectors. Her leadership roles with global brands included serving as President/COO of Dave & Buster's and as EVP/Chief Strategic Officer for Brinker International.

Ms. Johnson currently serves on the boards of ARKO Corp (Nasdaq: ARKO), Tastemaker Acquisition Corporation (Nasdaq:TMKR), and Jack's Family Restaurants (a portfolio company of private equity firm AEA Partners). Previously she served on the boards of fast growing food concepts as Chuy's (Nasdaq:CHUY) and SusieCakes Bakeries.

"We are delighted to welcome Starlette to our Board of Directors," said RMCF Board Chair Jeff Geygan. "Her franchise development and consumer-facing business operational experience will be an important and timely resource for the Company as we enter the next phase of our business plan and continue to execute our strategic transformation process."

Ms. Johnson received an MBA from Duke University, and a B.S. in Finance from Virginia Tech. She currently serves as Chairman of the Virginia Tech Foundation and is a former member of the VTF Investment Committee.

About Rocky Mountain Chocolate Factory, Inc.

Rocky Mountain Chocolate Factory, Inc., (the "Company"), ranked number one on Newsweek's list of "America's Best Retailers 2022" in the chocolate and candy stores category and headquartered in Durango, Colorado, is a leading international franchiser of gourmet chocolate, confection and self-serve frozen yogurt stores and a manufacturer of an extensive line of premium chocolates and other confectionery products. The Company, its subsidiaries, franchisees and licensees currently operate over 315 Rocky Mountain Chocolate Factory and self-serve frozen yogurt stores across the United States, Qatar, the Republic of Panama, and The Republic of the Philippines. The Company's common stock is listed on the Nasdaq Global Market under the symbol "RMCF."

Forward-Looking Statements

This communication includes statements of the Company's expectations, intentions, plans and beliefs that constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and are intended to come within the safe harbor protection provided by those sections. These forward-looking statements involve various risks and uncertainties. The statements, other than statements of historical fact, included in this communication are forward-looking statements and many may be identified by the use of forward-looking words such as "will," "intend," "believe," "expect," "anticipate," "should," "plan," "estimate," "potential," "prospects," "build" or similar expressions. For a detailed discussion of the risks and uncertainties that may cause the Company's actual results to differ from the forward-looking statements, please see the section entitled "Risk Factors" contained in Item 1A. of the RMCF's Annual Report on Form 10-K for the fiscal year ended February 28, 2022, filed with the SEC on May 27, 2022, as amended by Amendment No. 1 on Form 10-K/A filed with the SEC on June 28, 2022. These forward-looking statements apply only as of the date hereof. As such they should not be unduly relied upon for more current circumstances. Except as required by law, the Company undertakes no obligation to release publicly any revisions to these forward-looking statements that might reflect events or circumstances occurring after the date of this communication or those that might reflect the occurrence of unanticipated events.

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INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this “Agreement”), made effective as of the 8th day of March, 2023, by and between ROCKY MOUNTAIN CHOCOLATE FACTORY, INC., a Delaware corporation (the “Corporation”), and Starlette B. Johnson (“Director”).

WITNESSETH:

WHEREAS, it is essential to the Corporation to retain and attract as directors the most capable persons available;

WHEREAS, Director is a director of the Corporation;

WHEREAS, both the Corporation and Director recognize the risk of litigation and other claims being asserted against directors of public companies; and

WHEREAS, in recognition of Director’s need for substantial protection against personal liability in order to maintain continued service to the Corporation in an effective manner and to provide Director with specific contractual assurance that the protection will be available to Director, the Corporation desires to provide in this Agreement for the indemnification of and the advancement of expenses to Director to the full extent permitted by law, as set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and mutual agreements contained herein, including Director’s continued service to the Corporation, the Corporation and Director hereby agree as follows:

Section 1.

DEFINITIONS. The following terms, as used herein, shall have the following respective meanings:

“Change In Control” means a change in control of the Corporation after the date of this Agreement in any one of the following circumstances: (a) there shall have occurred an event that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), whether or not the Corporation is then subject to such reporting requirement; (b) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) (an “Acquiring Person”) shall have become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 20% or more of the combined voting power of the Corporation’s then outstanding voting securities (a “Share Acquisition”); (c) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board of Directors in office immediately prior to such transaction or event constitute less than a majority of the Board of Directors thereafter; or (d) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (including for this purpose any new director whose election or nomination for election by the Corporation’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the Board of Directors;

PROVIDED, HOWEVER, that an event described in clause (a) or (b) shall not be deemed a Change In Control if such event is approved, prior to its occurrence or within 60 days thereafter, by at least two-thirds of the members of the Board of Directors in office immediately prior to such occurrence. In addition to the foregoing, a Change In Control shall be deemed to have occurred if, after the occurrence of a Share Acquisition that has been approved by a two-thirds vote of the Board as contemplated in the proviso to the preceding sentence, the Acquiring Person shall have become the beneficial owner, directly or indirectly, of securities of the Corporation representing an additional 5% or more of the combined voting power of the Corporation’s then outstanding voting securities (a “Subsequent Share Acquisition”) without the approval prior thereto or within 60 days thereafter of at least two-thirds of the members of the Board of Directors who were in office immediately prior to such Subsequent Share Acquisition and were not appointed, nominated or recommended by, and do not otherwise represent the interests of, the Acquiring Person on the Board. Each subsequent acquisition by an Acquiring Person of securities of the Corporation representing an additional 5% or more of the combined voting power of the Corporation’s then outstanding voting securities shall also constitute a Subsequent Share Acquisition (and a Change In Control unless approved as contemplated by the preceding sentence) if the approvals contemplated by this paragraph were given with respect to the initial Share Acquisition and all prior Subsequent Share Acquisitions by such Acquiring Person. The Board approvals contemplated by the two preceding sentences and by the proviso to the first sentence of this paragraph may contain such conditions as the members of the Board granting such approval may deem advisable and appropriate, the subsequent failure or violation of which shall result in the rescission of such approval and cause a Change In Control to be deemed to have occurred as of the date of the Share Acquisition or Subsequent Share Acquisition, as the case may be. Notwithstanding the foregoing, a Change In Control shall not be deemed to have occurred for purposes of clause (b) of the first sentence of this paragraph with respect to any Acquiring Person meeting the requirements of clauses (i) and (ii) of Rule 13d-1(b)(1) promulgated under the Exchange Act.

“Expenses” shall include reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating or being or preparing to be a witness in a Proceeding.

“Independent Counsel” means a law firm, or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the five years previous to his or her selection or appointment has been, retained to represent: (a) the Corporation or Director in any matter material to either such party, (b) any other party to the Proceeding giving rise to a claim for indemnification hereunder or (c) the beneficial owners, directly or indirectly, of securities of the Corporation representing 5% or more of the combined voting power of the Corporation’s then outstanding voting securities.

“Matter” is a claim, a material issue, or a substantial request for relief.

“Proceeding” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, including without limitation one initiated by Director pursuant to Section 10 of this Agreement to enforce his rights under this Agreement.

Section 2.

INDEMNIFICATION. The Corporation shall indemnify, and advance Expenses to, Director to the fullest extent permitted by applicable law in effect on the date of the effectiveness of this Agreement, and to such greater extent as applicable law may thereafter permit. The rights of Director provided under the preceding sentence shall include, but not be limited to, the right to be indemnified to the fullest extent permitted by Delaware law in Proceedings by or in the right of the Corporation and to the fullest extent permitted by Delaware law in all other Proceedings. To the fullest extent permitted by applicable law, such right to be indemnified shall survive and continue following the termination of Director’s service as a director of the Corporation, with respect to conduct and actions taken, and decisions made, by Director in his capacity as a director of the Corporation. The provisions set forth below in this Agreement are provided in furtherance, and not by way of limitation, of the obligations expressed in this Section 2.

Section 3.

EXPENSES RELATED TO PROCEEDINGS. If Director is, by reason of his status as a director of the Corporation, a witness in or a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Director is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to any Matter in such Proceeding, the Corporation shall indemnify Director against all Expenses actually and reasonably incurred by him or on his behalf relating to each Matter. The termination of any Matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Matter.

Section 4.

ADVANCEMENT OF EXPENSES. The Corporation shall pay or reimburse Director for the Expenses incurred by Director in advance of the final disposition of a Proceeding within ten days after Director requests such payment or reimbursement, to the fullest extent permitted by, and subject to compliance with, Delaware law.

Section 5.

REQUEST FOR INDEMNIFICATION. To obtain indemnification Director shall submit to the Corporation a written request with such information as is reasonably available to Director. The Secretary of the Corporation shall promptly advise the Board of Directors of such request.

Section 6.

DETERMINING ENTITLEMENT TO INDEMNIFICATION IF NO CHANGE IN CONTROL. If there has been no Change In Control at the time the request for Indemnification is sent, Director's entitlement to indemnification shall be determined in accordance with Delaware law. If entitlement to indemnification is to be determined by Independent Counsel, the Corporation shall furnish notice to Director within ten days after receipt of the request for indemnification, specifying the identity and address of Independent Counsel. Director may, within 14 days after receipt of such written notice of selection, deliver to the Corporation a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of Independent Counsel and the objection shall set forth with particularity the factual basis of such assertion. If there is an objection to the selection of Independent Counsel, either the Corporation or Director may petition any court of competent jurisdiction for a determination that the objection is without a reasonable basis and/or for the appointment of Independent Counsel selected by the court.

Section 7.

DETERMINING ENTITLEMENT TO INDEMNIFICATION IF CHANGE IN CONTROL. If there has been a Change In Control at the time the request for indemnification is sent, Director's entitlement to indemnification shall be determined in a written opinion by Independent Counsel selected by Director. Director shall give the Corporation written notice advising of the identity and address of the Independent Counsel so selected. The Corporation may, within seven days after receipt of such written notice of selection, deliver to Director a written objection to such selection. Director may, within five days after the receipt of such objection from the Corporation, submit the name of another Independent Counsel and the Corporation may, within seven days after receipt of such written notice of selection, deliver to Director a written objection to such selection. Any objection is subject to the limitations in Section 6 of this Agreement. Director may petition any court of competent jurisdiction for a determination that the Corporation's objection to the first and/or second selection of Independent Counsel is without a reasonable basis and/or for the appointment as Independent Counsel of a person selected by the court.

Section 8.

PROCEDURES OF INDEPENDENT COUNSEL. If there has been a Change In Control before the time the request for indemnification is sent by Director, Director shall be presumed (except as otherwise expressly provided in this Agreement) to be entitled to indemnification upon submission of a request for indemnification in accordance with Section 5 of this Agreement, and thereafter the Corporation shall have the burden of proof to overcome the presumption in reaching a determination contrary to the presumption. The presumption shall be used by Independent Counsel as a basis for a determination of entitlement to indemnification unless the Corporation provides information sufficient to overcome such presumption by clear and convincing evidence or the investigation, review and analysis of Independent Counsel convinces him or her by clear and convincing evidence that the presumption should not apply.

Except in the event that the determination of entitlement to indemnification is to be made by Independent Counsel, if the person or persons empowered under Section 6 or 7 of this Agreement to determine entitlement to indemnification shall not have made and furnished to Director in writing a determination within 60 days after receipt by the Corporation of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Director shall be entitled to such indemnification unless Director knowingly misrepresented a material fact in connection with the request for indemnification or such indemnification is prohibited by law. The termination of any Proceeding or of any Matter therein, by judgment, order, settlement or conviction, or upon a plea of NOLO CONTENDERE or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Director to indemnification or create a presumption that (a) Director did not act in good faith and in a manner that he reasonably believed, in the case of conduct in his official capacity as a director of the Corporation, to be in the best interests of the Corporation or in all other cases that his conduct was at least not opposed to the Corporation's best interests, or (b) with respect to any criminal Proceeding, that Director had reasonable cause to believe that his conduct was unlawful.

Section 9.

EXPENSES OF INDEPENDENT COUNSEL. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred acting pursuant to this Agreement and in any proceeding to which it is a party or witness in respect of its investigation and written report and shall pay all reasonable fees and expenses incident to the procedures in which such Independent Counsel was selected or appointed. No Independent Counsel may serve if a timely objection has been made to his or her selection until a court has determined that such objection is without a reasonable basis.

Section 10.

TRIAL DE NOVO. In the event that (a) a determination is made pursuant to Section 6 or 7 of this Agreement that Director is not entitled to indemnification under this Agreement, (b) advancement of Expenses is not timely made pursuant to Section 4 of this Agreement, (c) Independent Counsel has not made and delivered a written opinion determining the request for indemnification (i) within 90 days after being appointed by a court, (ii) within 90 days after objections to his or her selection have been overruled by a court or (iii) within 90 days after the time for the Corporation or Director to object to his or her selection or (d) payment of indemnification is not made within five days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to Section 6, 7 or 8 of this Agreement, Director shall be entitled to an adjudication in any court of competent jurisdiction of his entitlement to such indemnification or advancement of Expenses. In the event that a determination shall have been made that Director is not entitled to indemnification, any judicial proceeding (including any arbitration) commenced pursuant to this Section 10 shall be conducted in all respects as a DE NOVO trial on the merits, and Director shall not be prejudiced by reasons of that adverse determination. If a Change In Control shall have occurred, in any judicial proceeding commenced pursuant to this Section 10, the Corporation shall have the burden of proving that Director is not entitled to indemnification or advancement of Expenses, as the case may be. If a determination shall have been made or deemed to have been made that Director is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 10, or otherwise, unless Director knowingly misrepresented a material fact in connection with the request for indemnification, or such indemnification is prohibited by law.

The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Corporation is bound by all provisions of this Agreement. In the event that Director, pursuant to this Section 10, seeks a judicial adjudication to enforce his rights under, or to recover damages for breach of, this Agreement, Director shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all Expenses actually and reasonably incurred by him in such judicial adjudication, but only if he prevails therein. If it shall be determined in such judicial adjudication that Director is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by Director in connection with such judicial adjudication shall nevertheless be paid by the Corporation.

Section 11.

NON-EXCLUSIVITY. The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Director may at any time be entitled under applicable law, the Certificate of Incorporation, Bylaws, a vote of stockholders, a resolution of the Board of Directors or otherwise. No amendment or modification of this Agreement or any provision hereof shall be effective as to Director for acts, events and circumstances that occurred, in whole or in part, before such amendment or modification. The provisions of this Agreement shall continue as to Director notwithstanding any termination of his status as a director of the Corporation and shall inure to the benefit of his heirs, executors and administrators.

Section 12.

INSURANCE AND SUBROGATION. To the extent the Corporation maintains an insurance policy or policies providing liability insurance for directors or officers of the Corporation or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Corporation, Director shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of coverage available for any such director or officer under such policy or policies.

In the event of any payment hereunder, the Corporation shall be subrogated to the extent of such payment to all the rights of recovery of Director, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

The Corporation shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if, and to the extent that, Director has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

Section 13.

SEVERABILITY. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Agreement shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 14.

CIRCUMSTANCES WHEN DIRECTOR IS NOT ENTITLED TO INDEMNIFICATION. Director shall not be entitled to indemnification or advancement of Expenses under this Agreement with respect to any Proceeding, or any Matter therein, brought or made by Director against the Corporation, other than a Proceeding, or Matter therein, brought by Director to enforce his rights under this Agreement and in which Director is successful, in whole or in part.

Section 15.

NOTICES. Any communication required or permitted to the Corporation shall be addressed to the Secretary of the Corporation and any such communication to Director shall be given in writing by depositing the same in the United States mail, with postage thereon prepaid, addressed to the person to whom such notice is directed at the address of such person on the records of the Corporation, and such notice shall be deemed given at the time when the same shall be so deposited in the United States mail.

Section 16.

CHOICE OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

Section 17.

CONSENT TO JURISDICTION. THE CORPORATION AND DIRECTOR EACH HEREBY IRREVOCABLY CONSENT TO THE JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE AND THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF DELAWARE (THE "DELAWARE COURTS") FOR ALL PURPOSES IN CONNECTION WITH ANY ACTION OR PROCEEDING WHICH ARISES OUT OF OR RELATES TO THIS AGREEMENT AND AGREE THAT ANY ACTION INSTITUTED UNDER THIS AGREEMENT SHALL BE BROUGHT ONLY IN THE DELAWARE COURTS.

Section 18.

AMENDMENT. No amendment, modification, termination or cancellation of this Agreement shall be effective unless made in a writing signed by each of the parties hereto.

IN WITNESS WHEREOF, the Corporation and Director have executed this Agreement as of the day and year first above written.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

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

/s/ Starlette B. Johnson
Starlette B. Johnson (Director)