

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): **September 30, 2024**

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

(Exact name of registrant as specified in its charter)



Delaware
*(State or other jurisdiction
of incorporation)*

001-36865
*(Commission
File Number)*

47-1535633
*(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:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
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 September 30, 2024, Rocky Mountain Chocolate Factory, Inc., a Colorado corporation (the “Company”), entered into a credit agreement (the “Credit Agreement”) with RMC Credit Facility, LLC (“RMC”). The Company is a wholly owned subsidiary of Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (“Parent”). RMC is a special purpose investment entity affiliated with Steven L. Craig, one of the members of Parent’s board of directors.

Pursuant to the Credit Agreement, among other things, RMC agreed to make an advance to the Company in the principal amount of \$6,000,000.00, which advance is evidenced by a promissory note (the “Note”). The Note will mature on September 30, 2027 (the “Maturity Date”), and interest will accrue at a rate of 12% per annum and is payable monthly in arrears. All outstanding principal and interest will be due on the Maturity Date. In connection with the Credit Agreement and Note, the Company also entered into a Deed of Trust with RMC and the Public Trustee of La Plata County, Colorado (the “Deed of Trust”) with respect to the Company’s property in Durango, Colorado.

The proceeds of the Credit Agreement will be used as follows: (i) \$3,450,000.00 was used to repay all then-existing indebtedness to Wells Fargo Bank, National Association (“Wells Fargo”) under the Wells Fargo Credit Agreement (as defined below), and (ii) the remaining balance will be used for continued capital investment and working capital needs. The Credit Agreement contains customary events of default as well as customary affirmative and negative covenants, including, without limitation, certain reporting obligations and certain limitations on liens, encumbrances, and indebtedness. The Credit Agreement also contains two financial covenants measured quarterly: a maximum ratio of total liabilities to total net worth and a minimum current ratio.

The preceding summaries of the Credit Agreement, Note, and Deed of Trust do not purport to be complete and are qualified in their entirety by reference to the Credit Agreement, Note, and Deed of Trust, which are filed as Exhibits 10.1, 10.2, and 10.3, respectively, to this Current Report on Form 8-K and are incorporated by reference.

Item 1.02 Termination of a Material Definitive Agreement.

On September 30, 2024, the Company paid in full all outstanding amounts and terminated the Credit Agreement, dated October 13, 2021, by and between the Company and Wells Fargo, as amended on September 26, 2022 and September 28, 2023 (as amended, the “Wells Fargo Credit Agreement”).

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

Reference is made to the information set forth in Item 1.01 of this Current Report on Form 8-K, which is incorporated by reference.

Item 7.01 Regulation FD Disclosure

On October 4, 2024, the Company issued a press release announcing the Credit Agreement. A copy of the press release is attached as Exhibit 99.1 and incorporated by reference.

The information in this Item 7.01 (including Exhibit 99.1) is being furnished solely to satisfy the requirements of Regulation FD and shall not be deemed to be “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be deemed to be incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
10.1	<u>Credit Agreement, dated September 30, 2024, by and between Rocky Mountain Chocolate Factory, Inc., a Colorado corporation, and RMC Credit Facility, LLC, a Colorado limited liability company.</u>
10.2	<u>Promissory Note, dated September 30, 2024, made by Rocky Mountain Chocolate Factory, Inc., a Colorado corporation, to RMC Credit Facility, LLC, a Colorado limited liability company.</u>
10.3	<u>Deed of Trust, dated September 30, 2024, by and among Rocky Mountain Chocolate Factory, Inc., a Colorado corporation, RMC Credit Facility, LLC, a Colorado limited liability company, and the Public Trustee of La Plata County, Colorado.</u>
99.1	<u>Press release, dated October 4, 2024.</u>
104	Cover Page Interactive Data File (embedded withing the Inline XBRL document).

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: October 4, 2024

By: /s/ Jeffrey R. Geygan
Name: Jeffrey R. Geygan
Title: Interim Chief Executive Officer

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "Agreement") dated September 30, 2024, is by and between ROCKY MOUNTAIN CHOCOLATE FACTORY, INC., a Colorado corporation ("Borrower"), and RMC Credit Facility, LLC, a Colorado limited liability company ("Lender").

RECITALS

Borrower has requested that Lender extend credit to Borrower as described below, and Lender has agreed to provide such credit to Borrower on the terms and conditions contained herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrower hereby agree as follows:

ARTICLE I
CREDIT TERMS

SECTION 1.1 Borrowing.

(a) Loan. Subject to the terms and conditions of this Agreement, Lender hereby agrees on the Effective Date (as defined below) to make a single advance to Borrower (the "Loan") in the principal amount of Six Million Dollars (\$6,000,000.00) (the "Principal Amount"), the proceeds of which shall be used as follows: (i) \$3,450,000.00 to repay all then-existing indebtedness to Wells Fargo Bank, and (ii) the remaining balance of the Principal Amount for working capital requirements, including to build inventory for the Christmas and Valentine's Day holidays and the purchase of capital equipment. Borrower's obligation to repay the Loan shall be evidenced by a promissory note dated as of the date hereof, as modified from time to time (the "Note").

(b) Prepayment. Borrower may during the term of the Loan partially or wholly repay the Principal Amount, subject to all of the limitations, terms and conditions contained herein or in the Note.

SECTION 1.2 INTEREST/FEES.

(a) Interest. The outstanding principal balance of the Loan shall bear interest at the rate of interest set forth in the Note or other instrument or document executed in connection therewith.

(b) Computation and Payment. Interest shall be computed on the basis set forth in the Note or other instrument or document required hereby. Interest shall be payable at the times and place set forth in the Note or other instrument or document required hereby.

SECTION 1.3 COLLECTION OF PAYMENTS. Except to the extent expressly specified otherwise in any Loan Document other than this Agreement, Borrower authorizes Lender to collect all amounts due to Lender from Borrower under this Agreement or any other Loan Document (whether for principal, interest or fees, or as reimbursement of drafts paid or other payments made by Lender under any credit subject to this Agreement) through ACH payments from a deposit account maintained by Borrower with a financial institution satisfactory to the Lender for the full amount thereof. Should there be insufficient funds in Borrower's deposit account with the financial institution to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by Borrower.

SECTION 1.4 COLLATERAL. As security for all indebtedness and other obligations of Borrower to Lender under this Agreement, the Note, the Deed of Trust (as defined below) and the other Loan Documents, Borrower (i) pursuant to that certain Deed of Trust (the "Deed of Trust") dated as of the date hereof among Borrower, Lender, and the Trustee (as defined therein) party thereto, grants, transfers and assigns to Trustee for the benefit of Lender all of Borrower's right, title and interest in and to the Real Property (as defined therein), including all books and records exclusively related to the Real Property; and (ii) grants to Lender security interests of first priority in all of Borrower's right, title and interests in and to (a) property, plant and equipment used in Borrower's factory located at the Real Property, including all books and records exclusively related to such property, plant and equipment; (b) inventory and raw and finished products located at the Real Property; (c) accounts receivable; (d) Parent or Borrower's deposit or money market accounts; and (e) all proceeds of the foregoing, in each case whether now existing or hereafter acquired (all of clause (a), clause (b), clause (c) clause (d), and clause (e), the "Collateral"). All of the foregoing shall be evidenced by and subject to the terms of such security agreements, financing statements, deeds or mortgages, and other documents as Lender shall reasonably require, all in form and substance reasonably satisfactory to Lender. Borrower shall pay to Lender immediately upon demand the full amount of all charges, costs and expenses (to include fees paid to third parties and all allocated costs of Lender personnel) expended or incurred by Lender in connection with any of the foregoing security, including without limitation, filing and recording fees and costs of appraisals, audits and title insurance.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Borrower makes the following representations and warranties to Lender, on the date hereof.

SECTION 2.1 LEGAL STATUS. (a) Borrower is a corporation, duly organized and existing and in good standing under the laws of Colorado, and is qualified or licensed to do business (and is in good standing as a foreign corporation, if applicable) in all jurisdictions in which such qualification or licensing is required or in which the failure to so qualify or to be so licensed could have a material adverse effect on Borrower; and (b) no member of the Borrowing Group (as defined below) is a Sanctioned Target (as defined below) of economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes or restrictions and anti- terrorism laws imposed, administered or enforced from time to time by the United States of America, the United Nations Security Council, the European Union, the United Kingdom, any other governmental authority with jurisdiction over Borrower or any member of the Borrowing Group (collectively, "Sanctions"). As used herein, "Borrowing Group" means: (i) Borrower, (ii) any direct or indirect parent of Borrower, (iii) any affiliate or subsidiary of Borrower, (iv) any Third Party Obligor (as defined below), and (v) any officer, director or agent acting on behalf of any of the parties referred to in items (i) through and including (iv) with respect to the obligations hereunder, this Agreement or any of the other Loan Documents. "Sanctioned Target" means any target of Sanctions, including (i) persons on any list of targets identified or designated pursuant to any Sanctions, (ii) persons, countries, or territories that are the target of any territorial or country-based Sanctions program, (iii) persons that are a target of Sanctions due to their ownership or control by any Sanctioned Target(s), or (iv) persons otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

SECTION 2.2 AUTHORIZATION AND VALIDITY. This Agreement, the Note, the Deed of Trust, and each other promissory note, contract, instrument and other document required hereby or at any time hereafter delivered to Lender in connection herewith (collectively, the "Loan Documents") have been duly authorized, and upon their execution and delivery in accordance with the provisions hereof will constitute legal, valid and binding agreements and obligations of Borrower or the party which executes the same, enforceable in accordance with their respective terms.

SECTION 2.3 NO VIOLATION. The execution, delivery and performance by Borrower of each of the Loan Documents do not violate any provision of any law or regulation, or contravene any provision of the organizational and governing documents of Borrower, or result in any breach of or default under any contract, obligation, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

SECTION 2.4 LITIGATION. There are no pending, or to the best of Borrower's knowledge threatened, actions, claims, investigations, suits or proceedings by or before any governmental authority, arbitrator, court or administrative agency which could have a material adverse effect on the financial condition or operation of Borrower other than those disclosed by Borrower to Lender in writing prior to the date hereof.

SECTION 2.5 CORRECTNESS OF FINANCIAL STATEMENT AND OTHER INFORMATION. The annual consolidated financial statements of Rocky Mountain Chocolate Factory, Inc., a Delaware corporation ("Parent"), dated February 28, 2024, and all interim financial statements of Parent delivered to Lender since said date, true copies of which have been delivered by Borrower to Lender prior to the date hereof, (a) present fairly in all material respects the consolidated financial condition of Parent and its subsidiaries as at their dates and their consolidated results of operations for the periods covered thereby (subject to the absence of notes and to normal year-end audit adjustments in the case of interim financial statements), (b) disclose all liabilities of Parent and its subsidiaries that are required to be reflected or reserved against under generally accepted accounting principles, whether liquidated or unliquidated, fixed or contingent, and (c) have been prepared in accordance with generally accepted accounting principles consistently applied. Since the dates of such financial statements there has been no material adverse change in the financial condition of Parent and its subsidiaries, nor has Borrower mortgaged, pledged, granted a security interest in or otherwise encumbered any of its assets or properties except in favor of Lender or as otherwise permitted by Lender in writing or as otherwise permitted under this Agreement. All written information provided from time to time by Borrower or any Third Party Obligor to Lender for the purpose of enabling Lender to fulfill its regulatory and compliance requirements, standards and processes was complete and correct at the time such information was provided and, except as specifically identified to Lender in a subsequent writing, remains complete and correct as of the date of this Agreement.

SECTION 2.6 INCOME TAX RETURNS. Borrower has no knowledge of any pending assessments or adjustments of its income tax payable with respect to any year.

SECTION 2.7 NO SUBORDINATION. There is no agreement, indenture, contract or instrument to which Borrower is a party or by which Borrower may be bound that requires the subordination in right of payment of any of Borrower's obligations subject to this Agreement to any other obligation of Borrower.

SECTION 2.8 PERMITS, FRANCHISES. Borrower possesses, and will hereafter possess, all permits, consents, approvals, franchises and licenses required and rights to all trademarks, trade names, patents, and fictitious names, if any, necessary to enable it to conduct the business in which it is now engaged in compliance with applicable law.

SECTION 2.9 ERISA. Borrower is in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended or recodified from time to time (“ERISA”); Borrower has not violated any provision of any defined employee pension benefit plan (as defined in ERISA) maintained or contributed to by Borrower (each, a “Plan”); no Reportable Event as defined in ERISA has occurred and is continuing with respect to any Plan initiated by Borrower; Borrower has met its minimum funding requirements under ERISA with respect to each Plan; and each Plan will be able to fulfill its benefit obligations as they come due in accordance with the Plan documents and under generally accepted accounting principles.

SECTION 2.10 OTHER OBLIGATIONS. Borrower is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation.

SECTION 2.11 ENVIRONMENTAL MATTERS. Except as disclosed by Borrower to Lender in writing prior to the date hereof, Borrower is in compliance in all material respects with all applicable federal or state environmental, hazardous waste, health and safety statutes, and any rules or regulations adopted pursuant thereto, which govern or affect any of Borrower’s operations and/or properties, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976, and the Federal Toxic Substances Control Act, as any of the same may be amended, modified or supplemented from time to time. None of the operations of Borrower is the subject of any federal or state investigation evaluating whether any remedial action involving a material expenditure is needed to respond to a release of any toxic or hazardous waste or substance into the environment. Borrower has no material contingent liability in connection with any release of any toxic or hazardous waste or substance into the environment.

SECTION 2.12 SANCTIONS, ANTI-MONEY LAUNDERING AND ANTI-CORRUPTION LAWS. (a) Each member of the Borrowing Group has instituted, maintains and complies with policies, procedures and controls reasonably designed to assure compliance with Anti-Money Laundering Laws and Anti-Corruption Laws (each as defined below), and Sanctions; and (b) to the best of Borrower’s knowledge, after due care and inquiry, no member of the Borrowing Group is under investigation for an alleged violation of any Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws by a governmental authority that enforces such laws. As used herein: “Anti-Corruption Laws” means: (i) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (ii) the U.K. Bribery Act 2010, as amended; and (iii) any other anti-bribery or anti- corruption laws, regulations or ordinances in any jurisdiction in which the Borrower or any member of the Borrowing Group is located or doing business. “Anti-Money Laundering Laws” means applicable laws or regulations in any jurisdiction in which the Borrower or any member of the Borrowing Group is located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

ARTICLE III
CONDITIONS

SECTION 3.1 CONDITIONS TO THE EFFECTIVENESS OF THIS AGREEMENT. The effective date of this Agreement (the “Effective Date”) shall be (a) the date that each of the following conditions set forth in this Section 3.1 have been satisfied or waived, as determined by Lender, or (b) such alternative date to which Lender and Borrower may mutually agree.

- (a) Approval of Lender Counsel. All legal matters incidental to the effectiveness of this Agreement shall be satisfactory to Lender's counsel.
- (b) Documentation. Lender shall have received, in form and substance satisfactory to Lender, each of the following, duly executed by all parties:
 - (i) This Agreement.
 - (ii) The Note.
 - (iii) The Deed of Trust.
 - (iv) Such other documents as Lender may reasonably require under any other Section of this Agreement.
- (c) Satisfaction of Regulatory and Compliance Requirements. In addition to any requirements set forth above, and notwithstanding execution or delivery of this Agreement or any other Loan Document, all regulatory and compliance requirements, standards and processes shall be completed to the reasonable satisfaction of Lender.

ARTICLE IV
AFFIRMATIVE COVENANTS

Borrower covenants that so long as any liabilities (whether direct or contingent, liquidated or unliquidated) of Borrower to Lender under any of the Loan Documents remain outstanding, and until payment in full of all obligations of Borrower subject hereto, Borrower shall, unless Lender otherwise consents in writing:

SECTION 4.1 PUNCTUAL PAYMENTS. Punctually pay all principal, interest, fees or other liabilities due under any of the Loan Documents at the times and place and in the manner specified therein.

SECTION 4.2 ACCOUNTING RECORDS. Maintain adequate books and records in accordance with generally accepted accounting principles consistently applied, and permit any representative of Lender, at any reasonable time, to inspect, audit and examine such books and records, to make copies of the same, and to inspect the properties of Borrower. If at any time any change in generally accepted accounting principles would affect the computation of any covenant (including the computation of any financial covenant) and/or pricing grid set forth in this Agreement or any other Loan Document, Borrower and Lender shall negotiate in good faith to amend such covenant and/or pricing grid to preserve the original intent in light of such change; provided, that, until so amended (i) such covenant and/or pricing grid shall continue to be computed in accordance with the application of generally accepted accounting principles prior to such change and (ii) Borrower shall provide to Lender a written reconciliation in form and substance reasonably satisfactory to Lender, between calculations of such covenant and/or pricing grid before and after giving effect to such change in generally accepted accounting principles.

SECTION 4.3 FINANCIAL STATEMENTS AND OTHER INFORMATION. Provide to Lender all of the following, in form and detail reasonably satisfactory to Lender:

(a) not later than 90 days after and as of the end of each fiscal year, a consolidated balance sheet of Parent and its subsidiaries as at the end of such fiscal year and the related consolidated statements of income or operations and cash flows for such fiscal year, audited and accompanied by a report and opinion of independent public accountants reasonably acceptable to Lender (it being agreed that CohnReznick LLP is acceptable to Lender), which report and opinion shall be prepared in accordance with generally accepted auditing standards (and shall not be subject to any "going concern" or like qualification) to the effect that such consolidated financial statements present fairly in all material respects the financial condition, results of operations and cash flows of Parent and its subsidiaries on a consolidated basis in accordance with generally accepted accounting principles; and

(b) not later than 45 days after and as of the end of each fiscal quarter, a Quarterly Report on Form 10-Q (under the Securities Exchange Act of 1934 (the "Exchange Act")) of Parent, prepared by Parent in conjunction with its auditor and submitted to the Securities and Exchange Commission, to include consolidated balance sheet, income statement and statement of cash flows of Parent and its subsidiaries; and

(c) not later than 90 days after and as of the end of each fiscal year, an annual budget projection report of Parent, prepared by Parent; and

(d) contemporaneously with each quarterly financial statement of Parent required hereby, a certificate of the chief executive officer or chief financial officer of Parent that said financial statements present fairly in all material respects the consolidated financial condition of Parent and its subsidiaries as at their dates and their consolidated results of operations for the periods covered thereby (subject to the absence of notes and to normal year-end audit adjustments in the case of interim financial statements), that Parent is in compliance with all financial covenants in this Agreement (as evidenced by detailed calculations attached to such certificate), and that there exists no Event of Default nor any condition, act or event which with the giving of notice or the passage of time or both would constitute an Event of Default; and

(e) from time to time such other financial and business information as Lender may reasonably request, including without limitation, copies of rent rolls and other information with respect to any real property collateral required hereby; and

(f) from time to time such other information as Lender may request for the purpose of enabling Lender to fulfill its regulatory and compliance requirements, standards and processes.

SECTION 4.4 COMPLIANCE.

(a) Preserve and maintain all licenses, permits, governmental approvals, rights, privileges and franchises necessary for the conduct of its business; comply with the provisions of all documents pursuant to which Borrower is organized and/or which govern Borrower's continued existence; comply with the requirements of all laws, rules, regulations and orders of any jurisdiction in which the Borrower is located or doing business, or otherwise is applicable to Borrower; and

(b) comply with, and cause each member of the Borrowing Group to comply with, all Sanctions, Anti-Money Laundering Laws, and Anti-Corruption Laws.

SECTION 4.5 INSURANCE. (a) Maintain and keep in force, for each business in which Borrower is engaged, insurance of the types and in amounts customarily carried in similar lines of business, including but not limited to fire, extended coverage, commercial general liability, flood, and, if required by governmental regulation or Lender, hurricane, windstorm, seismic property damage, workers' compensation, marine cargo insurance, and specific hazards affecting any real property, including terrorism, with all such insurance carried in amounts satisfactory to Lender and where required by Lender, with replacement cost, mortgagee loss payable and lender loss payable endorsements in favor of Lender, and (b) deliver to Lender prior to the date hereof, and from time to time at Lender's request, schedules setting forth all insurance naming Lender as a lender loss payee. Such insurance may be obtained from an insurer reasonably acceptable to Lender.

SECTION 4.6 FACILITIES. Keep all properties useful or necessary to Borrower's business in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that such properties shall be fully and efficiently preserved and maintained.

SECTION 4.7 TAXES AND OTHER LIABILITIES. Pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real or personal, including without limitation federal and state income taxes and state and local property taxes and assessments, except (a) such as Borrower may in good faith contest or as to which a bona fide dispute may arise, and (b) for which Borrower has made provision, to Lender's satisfaction, for eventual payment thereof in the event Borrower is obligated to make such payment.

SECTION 4.8 LITIGATION. Promptly give notice in writing to Lender of any material litigation pending or threatened against Borrower.

SECTION 4.9 FINANCIAL CONDITION. Cause Parent or Borrower, as applicable, to maintain its financial condition as follows using generally accepted accounting principles consistently applied and used consistently with prior practices (except to the extent modified by the definitions herein):

(a) Total Liabilities divided by Tangible Net Worth not greater than 2.0 to 1.0 at each fiscal quarter end, with "Total Liabilities" defined as the aggregate of current liabilities and non-current liabilities less subordinated debt, and with "Tangible Net Worth" defined as the aggregate of total stockholders' equity plus subordinated debt less any intangible assets; notwithstanding any language in this agreement to the contrary, the Total Liabilities divided by Tangible Net Worth Ratio shall be calculated using generally accepted accounting principles.

(b) Current Ratio, with "Current Ratio" defined as total current assets divided by total current liabilities, measured at Parent or Borrower's, as applicable, fiscal quarter end (each a "Measurement Date"):

- (i) as of the first four Measurement Dates following the date hereof: not less than 1.0 to 1.0;
- (ii) as of the succeeding four Measurement Dates: not less than 1.25 to 1.0; and
- (iii) as of each other Measurement Date during the term of this Agreement: not less than 1.50 to 1.0.

SECTION 4.10 NOTICE TO LENDER. Promptly (but in no event more than five (5) days after the occurrence of each such event or matter and in no event more than one (1) business day after the occurrence of each such event or matter described below with respect to Sanctions, Anti-Money Laundering Laws, and Anti-Corruption Laws) give written notice to Lender in reasonable detail of: (a) the occurrence of any Event of Default, or any condition, event or act which with the giving of notice or the passage of time or both would constitute an Event of Default; (b) any change in the name or the organizational structure of Borrower, including, by illustration, merger, conversion or division; (c) the occurrence and nature of any Reportable Event or Prohibited Transaction, each as defined in ERISA, or any funding deficiency with respect to any Plan; (d) any termination or cancellation of any insurance policy which Borrower is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting Borrower's property; or (e) any breach of any covenant contained herein related to Sanctions, Anti-Money Laundering Laws, and Anti-Corruption Laws or the Borrower's inability to make the representations and warranties contained herein related to Sanctions, Anti-Money Laundering Laws, and Anti-Corruption Laws on any date, or the failure of any representations and warranties contained herein related to Sanctions, Anti-Money Laundering Laws, and Anti-Corruption Laws to be true and correct in all respects on or as of any date.

SECTION 4.11 DEPOSIT ACCOUNT CONTROL AGREEMENT. Borrower shall, at its own expense, within 60 days following the date hereof, cause each of its operating accounts, collections accounts, and other deposit accounts to be subject to an account control agreement reasonably acceptable in form and substance to the Lender; provided that no such account control agreement shall be required for Excluded Accounts. For purposes of this Section 4.11, "Excluded Accounts" means (a) each account for which all or substantially all of the deposits consist of amounts utilized to fund payroll, employee benefit or associated tax obligations of Borrower, (b) fiduciary accounts, (c) "zero balance" accounts, and (d) escrow accounts or other similar accounts used solely for escrow funds or other deposits in connection with acquisitions or dispositions that are subject to a binding letter of intent or acquisition agreement.

SECTION 4.12 OTHER DOCUMENTS.

(a) Title Policy. Borrower, at its expense, shall obtain and deliver to Lender a commitment for an ALTA extended coverage lender's title insurance policy or similar policy reasonably acceptable to Lender (the "Title Policy"), with such endorsements as Lender may reasonably require, issued by Land Title Guarantee Company in the amount of the Loan insuring the lien of the Deed of Trust to be a first and prior lien upon the Property, as security for the Loan pursuant to the terms of this Agreement, subject only to such exceptions as Lender may expressly approve in writing. The Title Policy shall be delivered to Lender as soon as practicable after the Effective Date. Borrower shall pay the cost of the premium for the Title Policy and any endorsements required by Lender.

(b) Evidence of Approvals. Within seven days of the Effective Date, Borrower will provide Lender with appropriate evidence of the approval of this Agreement, the Note and the Deed of Trust.

(c) Payoff Letter. Within 14 days of the Effective Date, Borrower will provide Lender with appropriate evidence of the payoff of all amounts outstanding under the Credit Agreement, dated October 13, 2021, by and between Borrower and Wells Fargo Bank, National Association and complete releases of all associated liens and security interests.

ARTICLE V
NEGATIVE COVENANTS

Borrower further covenants that so long as any liabilities (whether direct or contingent, liquidated or unliquidated) of Borrower to Lender under any of the Loan Documents remain outstanding, and until payment in full of all obligations of Borrower subject hereto, Borrower will not without Lender's prior written consent:

SECTION 5.1 USE OF FUNDS. SOURCES OF REPAYMENT AND COLLATERAL.

(a) Use, or permit any member of the Borrowing Group to use, any of the proceeds of any credit extended hereunder except for the purposes stated in Article I hereof, or directly or indirectly use any such proceeds to fund, finance or facilitate any activities, business or transactions: (i) that are prohibited by Sanctions; (ii) that would be prohibited by Sanctions if conducted by Lender or any of Lender's affiliates; or (iii) that would be prohibited by any Anti-Money Laundering Laws or Anti-Corruption Laws.

(b) Fund any repayment of the obligations hereunder or under any other Loan Document with proceeds, or provide any property as collateral for any such obligations, or permit any third party to provide any property as collateral for any such obligations, that is directly or indirectly derived from any transaction or activity that is prohibited by any Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws, or that could otherwise cause Lender or any of Lender's affiliates to be in violation of any Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws.

SECTION 5.2 CAPITAL EXPENDITURES. Make any additional investment in any fixed or capital assets (including assets leased under capital leases) in any fiscal year in excess of an aggregate of \$3,500,000.00.

SECTION 5.3 OTHER INDEBTEDNESS. Create, incur, assume or permit to exist any indebtedness or liabilities resulting from borrowings, loans or advances, whether secured or unsecured, matured or unmatured, liquidated or unliquidated, joint or several, except (a) the liabilities of Borrower to Lender, and (b) any other liabilities of Borrower existing as of, and disclosed to Lender prior to, the date hereof.

SECTION 5.4 MERGER, CONSOLIDATION, TRANSFER OF ASSETS. (a) Merge into or consolidate with any other entity; (b) make any substantial change in the nature of Borrower's business as conducted as of the date hereof; (c) acquire all or substantially all of the assets of any other entity; (d) sell, lease, transfer or otherwise dispose of all or a substantial or material portion of Borrower's assets except in the ordinary course of its business; or (e) accomplish any of the above by virtue of a division or similar transaction.

SECTION 5.5 GUARANTIES. Guarantee or become liable in any way as surety, endorser (other than as endorser of negotiable instruments for deposit or collection in the ordinary course of business), accommodation endorser or otherwise for, nor pledge or hypothecate any assets of Borrower as security for, any liabilities or obligations of any other person or entity, except (a) any of the foregoing in favor of Lender; and (b) additional unsecured guaranties in amounts not to exceed an amount equal to the aggregate of \$3,000,000.00 at any time outstanding minus any loans, advances or investments made pursuant to the Loans, Advances, Investments section below.

SECTION 5.6 LOANS, ADVANCES, INVESTMENTS. Make any loans or advances to or investments in any person or entity, including any of the foregoing accomplished by a division or similar transaction, except any of the foregoing existing as of, and disclosed to Lender prior to, the date hereof, and additional loans or advances in amounts not to exceed an aggregate of \$3,000,000.00 outstanding at any one time minus any guaranties made pursuant to the Guaranties section above.

SECTION 5.7 PLEDGE OF ASSETS. Mortgage, pledge, grant or permit to exist a security interest in, or lien upon, all or any portion of Borrower's assets now owned or hereafter acquired, except any of the foregoing in favor of Lender or which is existing as of, and disclosed to Lender in writing prior to, the date hereof, or customary security interests or liens that would not be material to Borrower.

SECTION 5.8 RESTRICTIONS ON ENCUMBRANCE AND TRANSFER OF REAL PROPERTY. Without in any way limiting the generality of Section 5.7. hereof, mortgage, pledge, grant or permit to exist a security interest in, or lien upon, all or any portion of Borrower's real property located at 265 Turner Drive, Durango, CO 81303 (the "Real Property"), whether now owned or hereafter acquired, except (a) security interests or liens on such real property existing as of, and disclosed to Lender in writing prior to, the date hereof, (b) liens for taxes that are not yet delinquent, (c) security interests or liens on such real property in favor of Lender and (d) security interests and liens permitted by this Agreement; nor transfer, lease, sell, assign or in any manner dispose of all or any portion of such real property.

ARTICLE VI
EVENTS OF DEFAULT

SECTION 6.1 The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

- (a) Borrower shall fail to pay when due any principal, interest, fees or other amounts payable under any of the Loan Documents.
- (b) Any financial statement or certificate furnished to Lender in connection with, or any representation or warranty made by Borrower or any other party under this Agreement or any other Loan Document shall prove to be incorrect, false or misleading in any material respect when furnished or made.
- (c) Any default in the performance of or compliance with: (1) any collateral value requirement set forth herein or in any other Loan Document; (2) any negative covenant set forth in Article V hereof; (3) any affirmative covenant set forth in Article IV hereof requiring the delivery of financial statements and other information to Lender; or (4) any obligation, agreement or other provision contained herein or in any other Loan Document related to Sanctions, Anti- Money Laundering Laws, or Anti-Corruption Laws.
- (d) Any default in the performance of or compliance with any obligation, agreement or other provision contained herein or in any other Loan Document (other than those defaults specifically described as constituting an "Event of Default" under any other subsection of this Section 6.1.), and with respect to such default(s) that by their nature can be cured (excluding subsection of this Section 6.1, none of which shall be subject to a cure period), such default shall continue for a period of twenty (20) days from its occurrence.
- (e) Any default in the payment or performance of any obligation, or any defined event of default, under the terms of any contract, instrument or document (other than any of the Loan Documents) pursuant to which Borrower, any guarantor hereunder, the owner of any collateral securing the obligations hereunder or under any other Loan Document, or any general partner or joint venturer in Borrower if a partnership or joint venture (with each such guarantor, owner of pledged collateral, general partner and/or joint venturer referred to herein as a "Third Party Obligor") has incurred any debt or other liability to any person or entity, including Lender; provided, however, that with respect to a default under any obligation to any person or entity other than Lender, the amount of said obligation exceeds \$25,000.00.

(f) Borrower or any Third Party Obligor shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or shall generally fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors; Borrower or any Third Party Obligor shall file a voluntary petition in bankruptcy, or seeking reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time ("Bankruptcy Code"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect; or Borrower or any Third Party Obligor shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or Borrower or any Third Party Obligor shall be adjudicated a bankrupt, or an order for relief shall be entered against Borrower or any Third Party Obligor by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors.

(g) The filing of a notice of judgment lien against Borrower or any Third Party Obligor; or the recording of any abstract or transcript of judgment against Borrower or any Third Party Obligor in any county or recording district in which Borrower or such Third Party Obligor has an interest in real property; or the service of a notice of levy and/or of a writ of attachment or execution, or other like process, against the assets of Borrower or any Third Party Obligor; or the entry of a judgment against Borrower or any Third Party Obligor; or any involuntary petition or proceeding pursuant to the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors is filed or commenced against Borrower or any Third Party Obligor.

(h) There shall exist or occur any event or condition that Lender in good faith believes impairs, or is substantially likely to impair, the prospect of payment or performance by Borrower, any Third Party Obligor, or the general partner of either if such entity is a partnership, of its obligations under any of the Loan Documents.

(i) The dissolution, division, or liquidation of Borrower or any Third Party Obligor if a corporation, partnership, joint venture or other type of entity; or Borrower or any such Third Party Obligor, or any of its directors, stockholders or members, shall take action seeking to effect the dissolution, division, or liquidation of Borrower or such Third Party Obligor.

(j) Any transaction or series of transactions occurs that results in any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or group or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becoming the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), except that a "person" or "group" shall be deemed to have "beneficial ownership" of all equity interests that such "person" or "group" has the right to acquire, whether such right is exercisable immediately or only after the passage of time, directly or indirectly, of more than thirty-three and one-third percent (33⅓%) of the equity interests of Parent or Borrower, as applicable, entitled to vote in the election of members of the board of directors (or equivalent governing body) of such entity.

(k) The sale, transfer, hypothecation, assignment or encumbrance, whether voluntary, involuntary or by operation of law, without Lender's prior written consent, of all or any part of or interest in any real property collateral required hereby or any Personal Property Collateral (as defined below) required hereby other than in the ordinary course of business, as otherwise permitted by this Agreement or as permitted under the Deed of Trust.

SECTION 6.2 REMEDIES. Upon the occurrence of an Event of Default: (a) all principal, unpaid interest outstanding and other indebtedness of Borrower under each of the Loan Documents, any term thereof to the contrary notwithstanding, shall at Lender's option and without notice (except as expressly provided in any mortgage or deed of trust pursuant to which Borrower has provided Lender a lien on any real property collateral) become immediately due and payable without presentment, demand, protest or any notices of any kind, including without limitation, notice of nonperformance, notice of protest, notice of dishonor, notice of intention to accelerate or notice of acceleration, all of which are hereby expressly waived by Borrower; (b) the obligation, if any, of Lender to extend any further credit under any of the Loan Documents shall immediately cease and terminate; and (c) Lender shall have all rights, powers and remedies available under each of the Loan Documents, or accorded by law, including without limitation the right to resort to any or all security for any credit subject hereto and to exercise any or all of the rights of a beneficiary or secured party pursuant to applicable law, including, without limitation, the Uniform Commercial Code as in effect in the applicable jurisdiction (the "UCC"), and the Deed of Trust. All rights, powers and remedies of Lender may be exercised at any time by Lender and from time to time after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

ARTICLE VII
SECURITY AGREEMENT

SECTION 7.1 GRANT OF SECURITY INTEREST. As security for the payment and performance of the obligations of the Borrower under this Agreement, the Note, the Deed of Trust, and each other Loan Documents, the Borrower does hereby pledge, assign, transfer and deliver to the Lender and does hereby grant to the Lender a continuing and unconditional first priority security interest in and to all right, title and interest of the Borrower in and to the following property, wheresoever located and whether now existing or hereafter arising or acquired (collectively, the "Personal Property Collateral"): the Collateral.

SECTION 7.2 FINANCING STATEMENTS. The Borrower hereby authorizes the Lender at any time, and from time to time, to file in any jurisdiction of organization of the Borrower, and any other jurisdiction deemed appropriate by the Lender, any financing statements and amendments thereto that (a) indicate the Personal Property Collateral is comprised of the property and assets set forth in Section 7.1 hereof or describe the Personal Property Collateral as "all assets of the debtor" or words of similar import, and (b) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Borrower is an organization, the type of organization and any organizational identification number issued to the Borrower. The Borrower agrees to furnish any such information to the Lender promptly upon request.

ARTICLE VIII
MISCELLANEOUS

SECTION 8.1 NO WAIVER. No delay, failure or discontinuance of Lender in exercising any right, power or remedy under any of the Loan Documents shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Lender of any breach of or default under any of the Loan Documents must be in writing and shall be effective only to the extent set forth in such writing.

SECTION 8.2 NOTICES. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the following address:

BORROWER: ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.
265 Turner Drive
Durango, CO 81303
Attn: Chief Executive Officer

LENDER: RMC CREDIT FACILITY, LLC
5050 Factory Shops Blvd #437
Castle Rock, CO 80108

or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by telecopy or e-mail, upon receipt.

SECTION 8.3 COSTS, EXPENSES AND ATTORNEYS' FEES. Borrower shall pay to Lender immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including, to the extent permitted by applicable law, reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Lender's in-house counsel to the extent permissible), expended or incurred by Lender in connection with (a) the negotiation and preparation of this Agreement and the other Loan Documents (it being understood that Borrower will not be obligated to pay in excess of \$45,000 pursuant to this clause (a)), (b) Lender's continued administration hereof and thereof, and the preparation of any amendments and waivers hereto and thereof, (c) the enforcement of Lender's rights and/or the collection of any amounts which become due to Lender under any of the Loan Documents, whether or not suit is brought, and (d) the prosecution or defense of any action in any way related to any of the Loan Documents including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Lender or any other person) relating to Borrower or any other person or entity. Whenever in this Agreement and the other Loan Documents Borrower is obligated to pay for the attorneys' fees of Lender, or the phrase "reasonable attorneys' fees" or a similar phrase is used, it shall be Borrower's obligation to pay the attorneys' fees actually incurred or allocated, at standard hourly rates, without regard to any statutory interpretation, which shall not apply, Borrower hereby waiving the application of any such statute. Notwithstanding anything in this Agreement to the contrary, reasonable attorneys' fees shall not exceed the amount permitted by law.

SECTION 8.4 SUCCESSORS, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assign of the parties; provided however, that neither Borrower nor Lender may assign or transfer its interests or rights hereunder without the other's prior written consent, except that Lender may transfer its interests or rights to any affiliate of Lender.

SECTION 8.5 ENTIRE AGREEMENT; AMENDMENT. To the full extent permitted by law, this Agreement and the other Loan Documents constitute the entire agreement between Borrower and Lender with respect to each credit subject hereto and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. This Agreement may be amended or modified only in writing signed by each party hereto.

SECTION 8.6 NO THIRD PARTY BENEFICIARIES. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective permitted successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any other of the Loan Documents to which it is not a party.

SECTION 8.7 TIME. Time is of the essence of each and every provision of this Agreement and each other of the Loan Documents.

SECTION 8.8 SEVERABILITY OF PROVISIONS. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Agreement.

SECTION 8.9 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement.

SECTION 8.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of Colorado, without reference to the conflicts of law or choice of law principles thereof.

SECTION 8.11 BUSINESS PURPOSE. Borrower represents and warrants that each credit subject hereto is made for (a) a business, commercial, investment, agricultural or other similar purpose, (b) the purpose of acquiring or carrying on a business, professional or commercial activity, or (c) the purpose of acquiring any real or personal property as an investment and not primarily for a personal, family or household use.

SECTION 8.12 RIGHT OF SETOFF; DEPOSIT ACCOUNTS. Upon and after the occurrence and during the continuance of an Event of Default, (a) Borrower hereby authorizes Lender, at any time and from time to time, without notice, which is hereby expressly waived by Borrower, and whether or not Lender shall have declared any credit subject hereto to be due and payable in accordance with the terms hereof, to set off against, and to appropriate and apply to the payment of, Borrower's obligations and liabilities under the Loan Documents (whether matured or unmatured, fixed or contingent, liquidated or unliquidated), any and all amounts owing by Lender to Borrower (whether payable in U.S. dollars or any other currency, whether matured or unmatured, and in the case of deposits, whether general or special (except trust and escrow accounts), time or demand and however evidenced), and (b) pending any such action, to the extent necessary, to hold such amounts as collateral to secure such obligations and liabilities and to return as unpaid for insufficient funds any and all checks and other items drawn against any deposits so held as Lender, in its sole discretion, may elect. Lender may exercise this remedy regardless of the adequacy of any collateral for the obligations of Borrower to Lender and whether or not the Lender is otherwise fully secured.

SECTION 8.13 ARBITRATION.

(a) Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to (i) any credit subject hereto, or any of the Loan Documents, and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit. In the event of a court ordered arbitration, the party requesting arbitration shall be responsible for timely filing the demand for arbitration and paying the appropriate filing fee within 30 days of the abatement order or the time specified by the court. Failure to timely file the demand for arbitration as ordered by the court will result in that party's right to demand arbitration being automatically terminated.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in the State selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a Lender of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral attorney licensed in the State or a neutral retired judge of the state or federal judiciary of the State, in either case with a minimum of ten years' experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of the State and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the corresponding rules of civil practice and procedure applicable in the State or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, except parties who have executed any Loan Document, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(g) Payment of Arbitration Costs and Fees. The arbitrator shall award all costs and expenses of the arbitration proceeding.

(h) Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action require to conclude any arbitration proceeding within 180 days of the filing of the dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a dispute, the arbitration provision most directly related to the Loan Documents or the subject matter of the dispute shall control. This arbitration provision shall survive termination, amendment or expiration of any of the Loan Documents or any relationship between the parties.

(i) Small Claims Court. Notwithstanding anything herein to the contrary, each party retains the right to pursue in Small Claims Court any dispute within that court's jurisdiction. Further, this arbitration provision shall apply only to disputes in which either party seeks to recover an amount of money (excluding attorneys' fees and costs) that exceeds the jurisdictional limit of the Small Claims Court.

SECTION 8.14 TREATMENT OF CERTAIN INFORMATION; CONFIDENTIALITY. Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over Lender (including any self-regulatory authority); (b) to the extent required by applicable laws or regulations or in any legal, judicial, administrative proceeding or other compulsory process; (c) in connection with the exercise of any remedies under this Agreement or any other Loan Document, or any action or proceeding relating to this Agreement or any other Loan Document; (d) to the extent that such Information (i) becomes publicly available other than as a result of a breach of this Section 8.14 or (ii) becomes available to Lender from a third party that is not, to such Person's knowledge, subject to confidentiality obligations to Borrower; (e) to the extent that such information is independently developed by Lender; and (f) to Lender's affiliates, investors, representatives and advisors, but only so long as such persons are informed by Lender of the confidential nature of the Information and agree to keep the Information confidential and be bound by the terms of this Section 8.14, it being understood that Lender will be directly responsible for any actions or omissions by such persons that constitute a violation of this Section 8.14. For purposes of this Agreement, "Information" means all information received from Borrower or any parent or subsidiary thereof relating to Borrower or any parent or subsidiary thereof or any of their respective businesses.

SECTION 8.15 GENERAL RELEASE. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower hereby agrees as follows ("General Release"):

(a) Borrower, for itself and on behalf of its successors and assigns, does hereby release, acquit and forever discharge Lender, all of Lender's predecessors in interest, and all of Lender's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length related to this Agreement, the other Loan Documents, or the loan contemplated thereby (each, a "Released Claim" and collectively, the "Released Claims") that Borrower now has or may acquire as of the later of: (i) the date this Agreement becomes effective through the satisfaction (or waiver by Lender) of all conditions hereto; or (ii) the date that Borrower has executed and delivered this Agreement to Lender (hereafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by Lender, or any of Lender's predecessors in interest, to Borrower, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Borrower hereby acknowledges, represents and warrants to Lender that it agrees to assume the risk of any and all unknown, unanticipated or misunderstood defenses and Released Claims which are released by the provisions of this General Release in favor of Lender, and Borrower hereby waives and releases all rights and benefits which it might otherwise have under any state or local laws or statutes with regard to the release of such unknown, unanticipated or misunderstood defenses and Released Claims.

(c) Each person signing below on behalf of Borrower acknowledges that he or she has read each of the provisions of this General Release. Each such person fully understands that this General Release has important legal consequences, and each such person realizes that they are releasing any and all Released Claims that Borrower may have as of the Release Date. Borrower hereby acknowledges that it has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(d) Borrower hereby specifically acknowledges and agrees that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Lender; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject Borrower to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed as of the effective date set forth above.

ROCKY MOUNTAIN
CHOCOLATE FACTORY, INC.

RMC CREDIT FACILITY, LLC

By: /s/ Jeffrey R. Geygan
Jeffrey R. Geygan
Interim Chief Executive Officer

By: /s/ Steve L. Craig
Steve L. Craig

By: /s/ Carrie E. Cass
Carrie E. Cass
Chief Financial Officer

PROMISSORY NOTE

\$6,000,000.00

Denver, Colorado
September 30, 2024

FOR VALUE RECEIVED, the undersigned ROCKY MOUNTAIN CHOCOLATE FACTORY, INC., a Colorado corporation (“Borrower”) promises to pay to the order of RMC Credit Facility, LLC, a Colorado limited liability company (“Lender”) at its office at 5050 Factory Shops Blvd #437, Castle Rock, CO 80108, or at such other place as the holder hereof may designate, including by wire transfer, in lawful money of the United States of America and in immediately available funds, the principal sum of Six Million Dollars (\$6,000,000.00) (the “Principal Amount”), together with interest thereon, to be computed as set forth herein.

DEFINITIONS:

As used herein, the following terms shall have the meanings set forth after each, and any other term defined in this Promissory Note (the “Note”) shall have the meaning set forth at the place defined:

- (a) “Credit Agreement” means that certain Credit Agreement, dated as of the date hereof, between Borrower and Lender.
- (b) “Deed of Trust” means that certain Deed of Trust dated as of the date hereof among Borrower, Lender, and the Trustee (as defined therein) party thereto for properties in La Plata County, Colorado.
- (c) “Federal Reserve Business Day” means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.
- (d) “Loan Documents” means this the Credit Agreement, this Note, the Deed of Trust, and each other promissory note, contract, instrument, and other document required thereby at any time hereafter delivered to Lender in connection herewith.

INTEREST:

(a) Interest. The outstanding principal balance of this Note shall bear interest (computed on the basis of a 360-day year, actual days elapsed) at a fixed rate per annum equal to twelve percent (12%). Lender is hereby authorized to note the date, principal amount and interest rate applicable to this Note and any payments made thereon on Lender’s books and records (either manually or by electronic entry) and/or on any schedule attached to this Note, which notations shall be prima facie evidence of the accuracy of the information noted. The Lender shall be permitted to estimate the amount of accrued interest that is payable at any time hereunder on the applicable invoice provided by Lender to Borrower in respect thereof, in which case Borrower shall pay such estimated amount and Lender shall to the extent necessary, include on the next invoice an adjustment to correct any difference between the amount on the applicable invoice and the amount of interest that actually accrued pursuant to the terms of this Note.

(b) Default Interest. Lender shall have the option in its sole and absolute discretion to have the outstanding principal balance of this Note bear interest at an increased rate per annum (computed on the basis of a 360-day year, actual days elapsed) equal to four percent (4%) above the rate of interest from time to time applicable to this Note (i) from and after the maturity date of this Note; (ii) from and after the date prior to the maturity date of this Note when all principal owing hereunder becomes due and payable by acceleration or otherwise; and/or (iii) upon the occurrence and during the continuance of any Event of Default hereunder or under any of the other Loan Documents.

BORROWING AND REPAYMENT:

(a) Repayment of Principal. The unpaid principal balance of this Note at any time shall be the total amount advanced hereunder by the holder hereof less the amount of principal payments made hereon by or for Borrower, which balance may be endorsed hereon from time to time by the holder. The outstanding principal balance of this Note and all accrued and unpaid interest thereon, and all fees costs, expenses and other charges owing, due, or payable hereunder, if any, shall be due and payable in full, and this Note shall mature, if not earlier paid, on September 30, 2027 (the "Maturity Date").

(b) Payment of Interest. Interest accrued on this Note shall be payable in cash, in arrears on the last day of each month, commencing October 31, 2024, and running through the Maturity Date.

(c) Application of Payments. Each payment made on this Note shall be credited first, to any fees and costs due and owing to the Lender, second, to any interest then due, and third, to the outstanding principal balance hereof.

PAYMENTS:

If any payment of principal or interest to be made pursuant to this Note other than a prepayment or a payment due on the maturity date of this Note, shall fall due on a day that is not a Federal Reserve Business Day, payment shall be made on the next succeeding Federal Reserve Business Day, except that, if such next succeeding Federal Reserve Business Day would fall in the next calendar month, such payment shall be made on the immediately preceding Federal Reserve Business Day. Any extension or contraction of time shall be reflected in computing interest or fees, as the case may be.

PREPAYMENT:

Except as set forth herein, Borrower may not partially or wholly repay the outstanding principal amount prior to the Maturity Date.

(a) On or after the date that is thirteen months after the date of this Note, Borrower may partially or wholly repay the outstanding Principal Amount, provided that, in the event Borrower prepays an amount greater than \$2,000,000 (the "Permitted Prepayment Amount"), Borrower shall pay to Lender, as a prepayment penalty and not a reduction in the outstanding principal amount, an amount equal to the product of ten percent (10%) multiplied by the amount by which such prepayment exceeds the Permitted Prepayment Amount.

(b) On or after the date that is twenty-five months after the date of this Note, Borrower may partially or wholly repay the outstanding Principal Amount, provided that, in the event Borrower prepays an amount greater than an additional \$2,000,000, Borrower shall pay to Lender, as a prepayment penalty and not a reduction in the outstanding principal amount, an amount equal to the product of ten percent (10%) multiplied by the amount by which such prepayment exceeds the additional Permitted Prepayment Amount.

EVENTS OF DEFAULT:

This Note is made pursuant to and is subject to the terms and conditions of that certain Credit Agreement and the other Loan Documents. Any default in the payment or performance of any obligation under this Note, or any defined event of default under the Credit Agreement or the other Loan Documents, shall constitute an "Event of Default" under this Note.

MISCELLANEOUS:

(a) Remedies. To the extent permitted by the Loan Documents, upon the sale, transfer, hypothecation, assignment or other encumbrance, whether voluntary, involuntary or by operation of law, of all or any interest in any real property securing this Note, if any, or upon the occurrence of any Event of Default, the holder of this Note, at the holder's option, may declare all sums of principal and interest outstanding hereunder to be immediately due and payable without presentment, demand, notice of nonperformance, notice of protest, protest or notice of dishonor, all of which are expressly waived by Borrower, and the obligation, if any, of the holder to extend any further credit hereunder shall immediately cease and terminate. Borrower shall pay to the holder immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the holder's in-house counsel), expended or incurred by the holder in connection with the enforcement of the holder's rights and/or the collection of any amounts which become due to the holder under this Note whether or not suit is brought, and the prosecution or defense of any action in any way related to this Note, including without limitation, any action for declaratory relief, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Lender or any other person) relating to Borrower or any other person or entity.

(b) Obligations Joint and Several. Should more than one entity sign this Note as a Borrower, the obligations of each such Borrower shall be joint and several.

(c) Governing Law. This Note shall be governed by and construed in accordance with the laws of Colorado without reference to the conflicts of law or choice of law principles thereof.

(d) Effective Date. The effective date of this Note shall be the date that Lender has accepted this Note and all conditions to the effectiveness of the Credit Agreement have been fulfilled to Lender's satisfaction. Notwithstanding the occurrence of the effective date of this Note, Lender shall not be obligated to extend credit under this Note until all conditions to each extension of credit set forth in the Credit Agreement have been fulfilled to Lender's satisfaction.

IN WITNESS WHEREOF, the undersigned has executed this Note to be effective as of the effective date set forth herein.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Jeffrey R. Geygan
Jeffrey R. Geygan, CEO

By: /s/ Carrie E. Cass
Carrie E. Cass, CFO

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, CO 80202
Attn: Adam Hirsch

DEED OF TRUST

THIS DEED OF TRUST is dated September 30, 2024, by and among Rocky Mountain Chocolate Factory, Inc., a Colorado corporation, whose address is 265 Turner Drive, Durango, CO 81303, Attention: Chief Executive Officer (“Grantor”); RMC Credit Facility, LLC, a Colorado limited liability company, whose address is 5050 Factory Shops Blvd, Suite 437, Castle Rock, CO 80108 (referred to below sometimes as “Lender” and sometimes as “Beneficiary”); and the Public Trustee of La Plata County, Colorado (referred to below as “Trustee”).

CONVEYANCE AND GRANT. For valuable consideration, Grantor hereby irrevocably grants, transfers and assigns to Trustee for the benefit of Lender as Beneficiary, with the power of sale, all of Grantor’s right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures thereon; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties and profits relating to the real property (other than, for the avoidance of doubt, profits derived from the operation of the business of Grantor and its affiliates), including without limitation all minerals, oil, gas, geothermal and similar matters, (the “Real Property”) located in La Plata County, State of Colorado:

Tract A of the BODO BUSINESS RANCHES, UNIT III, CRAIL LOT CONSOLIDATION, PROJECT NO. 93-206, according to the plat thereof filed for record December 14, 1993 as Reception No. 659418.

The Real Property or Its address is commonly known as 265 Turner Drive, Durango, CO 81303. The Real Property tax identification number is 566905204021.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender under the Related Documents, as well as all claims by Lender thereunder or in connection therewith against Grantor, whether now existing or hereafter arising.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor’s right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Colorado Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) Grantor has not been unduly influenced or coerced to any extent whatsoever by Lender in connection with this Deed of Trust or the Related Documents; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; and (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor.

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Grantor shall strictly perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Except during the existence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender as of the date hereof that: (1) except as previously disclosed to Lender in writing, and except for normal quantities of ordinary office and janitorial supplies used in compliance with Environmental Laws, during the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance in violation of Environmental Laws by Grantor or, to Grantor's knowledge, any other person on, under, about or from the Property; and (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property except for normal quantities of ordinary office and janitorial supplies used in compliance with Environmental Laws, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. Grantor agrees that except as previously disclosed to Lender in writing, and normal quantities of ordinary office and janitorial supplies, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property in violation of Environmental Laws; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property on the terms of the section of this Deed of Trust titled "Lender's Right to Enter" to make such inspections and tests as Lender may reasonably deem appropriate to determine compliance of the Property with this section of the Deed of Trust. The cost of such inspections and tests to be shared evenly between Grantor and Lender, unless the inspections and tests disclose that Grantor has breached the provisions hereof, in which case Grantor shall bear the entirety of such costs. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any material Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Subject to Grantor's reasonable security, operational and insurance requirements, Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times after providing Grantor twenty-four (24) hours advanced notice, or if more urgent, such notice as is practicable under the circumstances (which, in the event of emergency, may be no notice), to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's reasonable opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees not to abandon the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property but excluding any public utility or access easements or similar rights, mechanics' and materialmen's liens unless they remain more than twenty (20) business days after written notice from Lender. Transfer also includes any change in ownership of more than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of Grantor's common voting stock. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Colorado law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay prior to delinquency all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not delinquent and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security reasonably satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least five (5) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, in an amount that exceeds \$25,000, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may reasonably request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within thirty (30) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance in excess of \$200,000 and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner reasonably satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust beyond applicable notice and cure periods. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear. If any of the net proceeds are applied to the Indebtedness it will not trigger any pre-payment penalty described in the Note or Credit Agreement.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such reasonable expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default. Under no circumstance will these repayments or balloon payments trigger the pre-payment penalty as described in the Note or Credit Agreement.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those permitted under Section 5.8 of the Credit Agreement or set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exceptions and encumbrances permitted under this Deed of Trust or the Related Documents, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies in all material respects with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as the Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be reasonably requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation. If any of the net proceeds are applied to the Indebtedness it will not trigger any pre-payment penalty described in the Note or Credit Agreement.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES . The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon reasonable request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS . The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Colorado Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is reasonably requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses reasonably incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within ten (10) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Colorado Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all reasonable costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-In-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph and such failure continues for twenty (20) days after written notice from Lender, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. Upon the full performance of all the obligations under the Note and this Deed of Trust, Trustee may, upon production of documents and fees as required under applicable law, release this Deed of Trust, and such release shall constitute a release of the lien for all such additional sums and expenditures made pursuant to this Deed of Trust. Lender agrees to cooperate with Grantor in obtaining such release and releasing the other collateral securing the Indebtedness. Any release fees required by law shall be paid by Grantor, if permitted by applicable law.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes (other than taxes being contested in good faith, subject to the "Right to Contest" provision contained in the "TAXES AND LIENS" section of this Deed of Trust) or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person in a manner that would reasonably be expected to materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or Grantor's ability to perform its obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty or representation made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect at the time made or furnished.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies and all such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. Lender shall have the right to cause all or any part of the Real Property, and Personal Property, if Lender decides to proceed against it as if it were real property, to be sold by the Trustee according to the laws of the State of Colorado as respects foreclosures against real property. The Trustee shall give notice in accordance with the laws of Colorado. The Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including but not limited to Trustee's fees, attorneys' fees, and the cost of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled to the excess.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Colorado Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law, Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Receiver may be appointed by a court of competent jurisdiction upon ex parte application and without notice or hearing, notice and hearing being expressly waived.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Sale of the Property. In exercising its rights and remedies, Lender shall be free to designate on or before it files a notice of election and demand with the Trustee, that the Trustee sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Upon any sale of the Property, whether made under a power of sale granted in this Deed of Trust or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all, or any portion of, the Indebtedness for or in settlement or payment of all, or any portion of, the purchase price of the Property purchased, and, in such case, this Deed of Trust, the Note, and any documents evidencing expenditures secured by this Deed of Trust shall be presented to the person conducting the sale in order that the amount of Indebtedness so used or applied may be credited thereon as having been paid.

Attorneys' Fees; Expenses. If Lender forecloses or institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. To the extent permitted by applicable law, Trustee shall have all of the rights and duties of Lender as set forth in this section.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

CONSENT TO SELL LOAN. The parties hereto agree: (a) Lender may not assign or transfer its interests or rights hereunder without the Grantor's prior written consent, except that Lender may transfer its interests or rights to any affiliate of Lender; and (b) upon any such assignment or transfer, the assignee or transferee of the loan will be considered its absolute owner and will have all the rights granted under the loan documents or agreements governing the sale of the loan.

FACSIMILE AND COUNTERPART. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

DEFINITION OF INDEBTEDNESS. The definition of "Indebtedness" herein includes, without limitation, all liability under the Note or Related Documents of Grantor or other party having its obligations to Lender secured by this Deed of Trust, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into with Lender in connection with the Note.

ENCUMBRANCES. Grantor shall not, without Lender's consent, mortgage, assign, grant a lien upon or security interest in, or otherwise encumber the Property or any interest in the Property, or allow such a lien or security interest to exist or arise, whether voluntarily, involuntarily or by operation of law, except for liens and security interests in favor of Lender, or property taxes attributable to the Property which are not delinquent or as permitted under the section of this Deed of Trust titled "Due on Sale".

APPRAISALS, FEES AND EXPENSES. Grantor agrees that Lender may obtain appraisals and reappraisals and perform property evaluations and appraisal reviews of the Real Property when required by any regulatory agency, or at such other times as Lender may reasonably require. Appraisals shall be performed by an independent third party appraiser selected by Lender; property evaluations and appraisal reviews may be performed by third party appraisers or appraisers and staff of Lender. The reasonable fees, expenses and other cost of such appraisals, reappraisals, property evaluations and appraisal reviews shall be paid by Grantor. In addition, Grantor shall be responsible for payment of all reasonable third party fees and expenses of Lender relating to inspecting the Real Property, environmental review, title policies and endorsements (or title searches, abstracts of title or legal opinions of title where applicable), and monitoring the payment of property taxes, and any governmental taxes, fees and recording costs relating to this deed.

LEASES AND RENTS. Grantor presently, absolutely and unconditionally assigns to Lender all of Grantor's right, title and interest in and to all present and future leases of the Property and all rents from the Property. This Assignment of Rents is given to secure (A) payment of the Indebtedness and (B) performance of any and all obligations under the Note and Deed of Trust. Grantor's present assignment to Lender hereunder is of all present and future leases includes all leases, licenses, rental agreements and other agreements of any kind relating to the use or occupancy of any of the Property, together with all guarantees of and security for any tenant's performance, and all extensions, renewals and modifications thereto (as used in this paragraph, each, a "Lease" and collectively, the "Leases"), together with any and all Rents from the Property. This assignment shall not impose upon Lender any duty to produce Rents, nor cause Lender to be a "mortgagee in possession," or responsible for performing any of the obligations of the lessor under any Lease. Lender confers upon Grantor a license to collect and retain the Rents as they come due, except during the existence of any Event of Default, at which time the license shall be automatically revoked, and Lender, or its designated agent may, at its option and without notice, make, cancel, enforce or modify any Lease or Rents, collect Rents and do any acts which Lender deems proper to protect the security hereof or exercise any other right or remedy hereunder. Grantor represents and warrants that, as of the date of this Deed of Trust, no Leases are in effect. Lender, at its option, may notify any tenant of this assignment of the Leases and Rents. Grantor agrees, at its expense, (i) to comply with and enforce all the terms and conditions under each Lease, and defend in any action in connection with any Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease, nor waive or release any tenant under any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) to give prompt notice to Lender of its knowledge of any default by any tenant under any Lease, and of any notice of default on the part of Grantor under any Lease received from a tenant. Should Grantor fail to do any act required to be done by Grantor hereunder, then Lender, at its option and without notice, may make or do the same in such manner and to such extent as Lender deems necessary to protect the security hereof. Grantor agrees to pay to Lender immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per annum payable under any Indebtedness, and the same, at Lender's option, may be added to the Indebtedness and secured hereby.

ASSOCIATION OF UNIT OWNERS. The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property:

A. Power of Attorney. Grantor grants an irrevocable power of attorney to Lender to vote in Lender's discretion on any matter that may come before the association of unit owners. Lender shall have the right to exercise this power of attorney only after Grantor's default; however, Lender may decline to exercise this power as Lender sees fit.

B. Insurance. The insurance as required herein may be carried by the association of unit owners on Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Lender.

C. Default. Grantor's failure to perform any of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, which continues for more than twenty (20) days after written notice thereof from Lender shall be an event of default under this Deed of Trust. If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, any failure by Grantor to perform any of the obligations imposed on Grantor by the lease of the Real Property from its owner, any default under such lease which might result in termination of the lease as it pertains to the Real Property, or any failure of Grantor as a member of an association of unit owners to take any reasonable action within Grantor's power to prevent a default under such lease by the association of unit owners or by any member of the association shall be an Event of Default under this Deed of Trust.

ARBITRATION AGREEMENT. Arbitration – Binding Arbitration. Lender and each party to this agreement hereby agree, upon demand by any party, to submit any Dispute to binding arbitration in accordance with the terms of this Arbitration Program. Arbitration may be demanded before the institution of a judicial proceeding, or during a judicial proceeding, but not more than 60 days after service of a complaint, third party complaint, cross-claim, or any answer thereto, or any amendment to any of such pleadings. A "Dispute" shall include any dispute, claim or controversy of any kind, whether in contract or in tort, legal or equitable, now existing or hereafter arising, relating in any way to any aspect of this agreement, or any related agreement incorporating this Arbitration Program (the "Documents"), or any renewal, extension, modification or refinancing of any indebtedness or obligation relating thereto, including without limitation, their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination. DISPUTES SUBMITTED TO ARBITRATION ARE NOT RESOLVED IN COURT BY A JUDGE OR JURY. TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARBITRATED PURSUANT TO THIS ARBITRATION PROGRAM.

A. Governing Rules. Any arbitration proceeding will (i) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (ii) be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs, in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes are referred to herein, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Arbitration proceedings hereunder shall be conducted at a location mutually agreeable to the parties, or if they cannot agree, then at a location selected by the AAA in the state of the applicable substantive law primarily governing the Note. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. Section 91 or any similar applicable state law.

B. No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

C. Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Every arbitrator must be a neutral practicing attorney or a retired member of the state or federal judiciary, in either case with a minimum of ten years' experience in the substantive law applicable to the subject matter of the Dispute. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all Disputes in accordance with the applicable substantive law and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the applicable state rules of civil procedure, or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

D. Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than 20 days before the hearing date. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

E. Class Proceedings and Consolidations. No party hereto shall be entitled to join or consolidate disputes by or against non-parties in any arbitration, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity. As used herein, "non-parties" shall mean all persons and entities except Lender and the party(ies) executing this agreement or any related Document.

F. Miscellaneous. To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation. If more than one agreement for arbitration by or between the parties potentially applies to a Dispute, the arbitration provision most directly related to the documents between the parties or the subject matter of the Dispute shall control. This arbitration provision shall survive the repayment of the Note and the termination, amendment or expiration of any of the Documents or any relationship between the parties.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Colorado.

Joint and Several Liability. All obligations of Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor. This means that each Grantor signing below is responsible for all obligations in this Deed of Trust. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners, members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Deed of Trust.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption/Marshaling Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Colorado as to all Indebtedness secured by this Deed of Trust. Grantor further waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. Each successor and assign of Grantor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waivers, as if it had given the waivers itself.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Colorado Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means RMC Credit Facility, LLC, a Colorado limited liability company, and its successors and assigns.

Credit Agreement. The words "Credit Agreement" mean the Credit Agreement of even date herewith between Grantor and Lender.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means an Event of Default set forth in this Deed of Trust in the section titled "Event of Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words “Event of Default” mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word “Grantor” means Rocky Mountain Chocolate Factory, Inc., a Colorado corporation and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word “Guarantor” means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word “Guaranty” means the guaranty from Guarantor to Lender of any of the Indebtedness, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words “Hazardous Substances” mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words “Hazardous Substances” are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term “Hazardous Substances” also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word “Improvements” means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word “Indebtedness” means all principal, interest, and other amounts, costs and expenses payable under the Note or the Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or the Related Documents and any amounts expended or advanced by Lender to discharge Grantor’s obligations or expenses incurred by Trustee or Lender to enforce Grantor’s obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word “Lender” means RMC Credit Facility, LLC, a Colorado limited liability company, its successors and assigns.

Note. The word “Note” means the promissory note dated September, 2024, in the original principal amount of \$6,000,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note is September 15, 2027.

Personal Property. The words “Personal Property” mean all equipment, fixtures, inventory and raw materials now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word “Property” means collectively the Real Property and the Personal Property.



ROCKY MOUNTAIN CHOCOLATE FACTORY ENTERS INTO NEW \$6 MILLION CREDIT FACILITY

DURANGO, CO, Oct. 4, 2024 (GLOBE NEWSWIRE) --Rocky Mountain Chocolate Factory Inc. (Nasdaq: RMCF) (the "Company", "we", or "RMCF"), an international franchisor and producer of premium chocolates and other confectionery products, including gourmet caramel apples, has entered into a new three-year \$6 million credit agreement with RMC Credit Facility, LLC, a special purposes investment entity affiliated with current RMCF board member Steve Craig.

"This credit facility is a key component of our capital structure, enabling us to invest further in equipment and machinery while funding our growth initiatives," stated Jeff Geygan, Interim CEO of RMCF. "With a strengthened balance sheet and improved liquidity, we are well-positioned to execute our three-year strategic plan and drive RMCF toward sustainable growth and profitability."

The credit facility provides for interest-only payments until the September 30, 2027 maturity date. Borrowings under the credit agreement will bear interest at 12% per annum.

The Company used the proceeds to retire its existing \$4 million revolving credit facility, of which \$3.45 million was outstanding on September 30, 2024. The remaining balance from the new credit agreement will be used for continued capital investment and working capital needs.

Additional details regarding the credit facility can be found on the Company's Form 8-K to be filed with the Securities and Exchange Commission.

Forward-Looking Statements

This press release includes statements of our 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 press release are forward-looking statements. Many of the forward-looking statements contained in this press release may be identified by the use of forward-looking words such as "will," "intend," "believe," "expect," "anticipate," "should," "plan," "estimate," "potential," or similar expressions. However, the absence of these words or similar expressions does not mean that a statement is not forward-looking. All statements that address operating performance, events or developments that we expect or anticipate will occur in the future - including statements expressing general views about future operating results, statements regarding the execution of our strategic plan, and statements regarding future growth and profitability - are forward-looking statements. Management of the Company believes that these forward-looking statements are reasonable as and when made. However, caution should be taken not to place undue reliance on any such forward-looking statements because such statements speak only as of the date of this press release. The Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. In addition, forward-looking statements are subject to certain risks and uncertainties that could cause our Company's actual results to differ materially from historical experience and our present expectations or projections. These risks and uncertainties include, but are not limited to: inflationary impacts, changes in the confectionery business environment, seasonality, consumer interest in our products, receptiveness of our products internationally, consumer and retail trends, costs and availability of raw materials, competition, the success of our co-branding strategy, the success of international expansion efforts and the effect of government regulations. For a detailed discussion of the risks and uncertainties that may cause our actual results to differ from the forward-looking statements contained herein, please see the section entitled "Risk Factors" contained in our most recent Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, each filed with the Securities and Exchange Commission.

About Rocky Mountain Chocolate Factory, Inc.

Rocky Mountain Chocolate Factory, Inc. is an international franchiser of premium chocolate and confection stores, and a producer of an extensive line of premium chocolates and other confectionery products, including gourmet caramel apples. Rocky Mountain Chocolate Factory was ranked in both the Franchise 500 by Entrepreneur Magazine and the Franchise 400 by Franchise Times for 2024. The Company is headquartered in Durango, Colorado. The Company and its franchisees and licensees operate over 260 Rocky Mountain Chocolate stores across the United States, with several international locations. The Company's common stock is listed on the Nasdaq Global Market under the symbol "RMCF."

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