

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): **December 18, 2025**

**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:

Title of each class  
**Common Stock, \$0.001 par value per share**

Trading Symbol  
**RMCF**

Name of each exchange on which registered  
**Nasdaq Capital 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.**

### *Common Stock Issuance*

On December 18, 2025, Rocky Mountain Chocolate Factory, Inc. (the “Company”) completed the private placement of an aggregate of 1,500,000 of shares of the Company’s common stock at a price per share equal to \$1.80 (the “Transaction”) to ARM-D Rocky Mountain Chocolate Holdings LLC (the “Purchaser”) pursuant to a securities purchase agreement (the “Purchase Agreement”). Total proceeds received by the Company were \$2.7 million. The proceeds will be used for general working capital purposes.

The Purchase Agreement contains customary representations and warranties of the Company, on the one hand, and the Purchaser, on the other hand.

In connection with the Purchase Agreement, the Company entered into an investor rights agreement with the Purchaser, dated December 18, 2025 (the “Investor Rights Agreement”), pursuant to which the Purchaser is, among other things, entitled to certain resale registration rights with respect to shares of the Company’s common stock issued to the Purchaser. Pursuant to the Investor Rights Agreement, the Company will be required to prepare and file a resale registration statement with the Securities and Exchange Commission (the “SEC”) within 30 days following the closing of the Transaction. The Company is obligated to use its commercially reasonable efforts to cause this registration statement to be declared effective by the SEC within 90 days following the closing of the Transaction (or within 120 days following the closing of the Transaction if the SEC reviews the registration statement). The Purchaser is also entitled to customary preemptive rights on certain securities issuances by the Company for so long as it meets the Minimum Ownership Threshold (as defined in the Investor Rights Agreement).

The Investor Rights Agreement permits the Purchaser to designate an individual for membership on the Company’s board of directors (the “Board”), and that individual will initially be Alberto Pérez-Jácome Friscione.

In addition, the Investor Rights Agreement provides that the Purchaser, so long as it meets the Minimum Ownership Threshold, is subject to customary “standstill” provisions. The standstill provisions provide, among other things, that the Purchaser cannot, subject to certain exceptions:

- initiate, propose, or otherwise solicit the Company’s stockholders for the approval of any stockholder proposals, or cause or encourage the initiation or submissions of any such stockholder proposal;
- seek, alone or in concert with others, representation on the Board, encourage others to nominate or propose members to the Board, or seek, alone or in concert with others, the removal of any member of the Board;
- make any offer or proposal with respect to any tender offer, merger, liquidation, dissolution or similar extraordinary transaction involving the Company, any of its subsidiaries or any of their respective securities or assets; or
- increase its ownership of the Company’s securities to an amount that would result in the Purchaser or the other Restricted Persons (as defined in the Investor Rights Agreement) owning, controlling or otherwise having any beneficial or other ownership interest of more than 25.0% of the then-outstanding Voting Securities (as defined in the Investor Rights Agreement).

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

### *Amendment to Letter Agreement*

In connection with the Transaction, the Company and the other parties thereto entered into an amendment (the “Amendment”) to the letter agreement, dated November 26, 2024 (the “Letter Agreement”), between the Company, Global Value Investment Corporation and certain of its affiliates (collectively “GVIC”) and certain other parties. As a result of the Amendment, GVIC is not permitted to increase its ownership of the Company’s securities to an amount that would result in GVIC owning, controlling or otherwise having any beneficial or other ownership interest of more than 25.0% of the then-outstanding Voting Securities (as defined in the Letter Agreement).

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The preceding summary of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, which is filed as Exhibit 10.3 to this Current Report on Form 8-K and which is incorporated herein by reference.

### Item 3.02 Unregistered Sales of Equity Securities.

The securities issued and sold to the Purchaser were not registered under the Securities Act of 1933, as amended (the “Securities Act”), and were issued and sold in reliance on the exemption from registration requirements provided by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D as promulgated by the SEC under the Securities Act. The Company relied on this exemption from registration based in part on representations made by the Purchaser in the Purchase Agreement.

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

### Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Effective upon the closing of the Transaction, Mr. Pérez-Jácome was appointed to the Board to serve until the Company’s next annual meeting of stockholders or until his earlier death, resignation or removal. In connection with his appointment, Mr. Pérez-Jácome was also appointed as a member of the Nominating and Corporate Governance Committee, Audit Committee and Compensation Committee of the Board. It is expected that Mr. Pérez-Jácome will serve as the chair of the Nominating and Corporate Governance Committee.

Mr. Pérez-Jácome is an experienced executive, entrepreneur, and director with over 20 years of leadership in infrastructure, real estate, energy, consumer goods, and financial services. Most recently, he has served as CEO of Hermes Infraestructura (2012-2024), co-founder of Encore Inc. (2004 – Present), and as a board member of Banorte Bank (2020-2024) and RedHawk Rebar LLC (2025 – Present). Mr. Pérez-Jácome holds an MBA from the MIT Sloan School of Management, a Master’s degree in Public Administration from Harvard University, and a Bachelor’s degree in Industrial Engineering from the Universidad Iberoamericana, Mexico City.

Other than the Investor Rights Agreement, there is no arrangement or understanding between Mr. Pérez-Jácome and any other persons pursuant to which Mr. Pérez-Jácome was elected as a director. The Board has determined that Mr. Pérez-Jácome is “independent” under applicable Nasdaq listing rules. There are no related party transactions between the Company and Mr. Pérez-Jácome (or any of his immediate family members) requiring disclosure under Item 404(a) of Regulation S-K. Mr. Pérez-Jácome does not have any family relationships with any of the Company’s directors or executive officers. The Company believes that Mr. Pérez-Jácome’s appointment resolves any potential non-compliance with Nasdaq Listing Rule 5605.

In accordance with the Company’s current Non-Employee Director Compensation Policy, the Company will pay Mr. Pérez-Jácome (i) an annual cash retainer of \$32,000 (in addition to any amounts that Mr. Pérez-Jácome is entitled to in connection with his service as a chair of one or more of the Board’s standing committees) and (ii) an annual equity award of \$40,000 of restricted stock units (based on the 10-day volume-weighted average price of the Company’s common stock as reported on the Nasdaq Capital Market as of and including the last business day prior to the grant date) for his service on the Board, both of which will be pro-rated for his first year of service. The equity award vested 25% on the grant date of December 18, 2025, with the remainder vesting in one or more equal installments thereafter (as reflected in the grant documentation), subject to continued service on the Board. The grant will be fully vested as of the Company’s first annual meeting following the grant date.

Mr. Pérez-Jácome will also enter into the Company’s standard form of director indemnification agreement with the Company pursuant to which the Company agrees to indemnify its directors to the fullest extent permitted by applicable law and, subject to certain conditions, to advance expenses in connection with proceedings as described in such indemnification agreement.

### Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
10.1	<a href="#">Securities Purchase Agreement, dated as of December 18, 2025, by and between Rocky Mountain Chocolate Factory, Inc. and ARM-D Rocky Mountain Chocolate Holdings LLC.</a>
10.2	<a href="#">Investor Rights Agreement dated as of December 18, 2025, by and between Rocky Mountain Chocolate Factory, Inc. and ARM-D Rocky Mountain Chocolate Holdings LLC.</a>
10.3	<a href="#">Amendment to the Letter Agreement, by and between Rocky Mountain Chocolate Factory, Inc. and Global Value Investment Corporation and its affiliates.</a>
104	Cover Page Interactive Data File (embedded withing the Inline XBRL document).

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**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: December 19, 2025

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

## SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (this “Agreement”) is dated as of December 18, 2025, by and among Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (the “Company”), and ARM-D Rocky Mountain Chocolate Holdings LLC, a Florida limited liability company (including its successors and assigns, the “Purchaser”).

## RECITALS

A. The Purchaser wishes to purchase, and the Company wishes to issue and sell, upon the terms and conditions stated in this Agreement, 1,500,000 shares (the “Securities”) of common stock, par value \$0.001 per share (“Common Stock”), of the Company.

B. The Company is offering to sell to the Purchaser the Securities in reliance upon the exemption from registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 of Regulation D promulgated by the Commission (as defined below) thereunder.

C. Contemporaneously with the execution and delivery of this Agreement, the parties hereto shall execute and deliver an Investor Rights Agreement, substantially in the form attached hereto as **Exhibit B** (the “Rights Agreement”), pursuant to which, among other things, the Company will agree to provide certain information, pro rata, governance and registration rights with respect to the Securities under the Securities Act and the rules and regulations promulgated thereunder and applicable state securities laws.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser hereby agree as follows:

ARTICLE I  
DEFINITIONS

1.1. **Definitions.** In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms shall have the meanings indicated in this Section 1.1:

“Acquiring Person” has the meaning set forth in Section 4.5.

“Affiliate” when used with respect to any party shall mean any Person who is an “affiliate” of that party within the meaning of Rule 405 promulgated under the Securities Act.

“Agreement” has the meaning set forth in the Preamble.

“Audited Balance Sheet” means the audited consolidated balance sheets of the Company and its Subsidiaries as of February 28, 2025, included in the Company’s Annual Report on Form 10-K filed with the Commission on June 20, 2025.

“Board of Directors” means the board of directors of the Company.

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“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banking institutions in New York, New York, Durango, Colorado or Wilmington, Delaware are required or permitted by Law to be closed.

“Closing” has the meaning set forth in Section 2.2(a).

“Closing Date” has the meaning set forth in Section 2.2(a).

“Commission” means the United States Securities and Exchange Commission.

“Company” has the meaning set forth in the Preamble.

“Company’s Knowledge” means with respect to any statement made to the Company’s Knowledge, that the statement is based upon the actual knowledge, or knowledge that would have been acquired after reasonable inquiry, of the executive officers of the Company having responsibility for the matter or matters that are the subject of the statement. With respect to any matters relating to intellectual property, such awareness or reasonable expectation to have knowledge does not require any such individual to conduct or have conducted or obtain or have obtained any freedom to operate opinions of counsel or any intellectual property rights clearance searches.

“Contract” means, with respect to any Person, any written, oral or other agreement, contract, subcontract, lease (whether for real or personal property), mortgage, understanding, arrangement, instrument, note, option, warranty, license, sublicense, insurance policy, benefit plan or commitment or undertaking of any nature to which such Person is a party or by which such person or any of its assets are bound under applicable Law.

“Delaware Courts” means the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Court of Chancery of the State of Delaware finds it does not have subject matter jurisdiction, the United States District Court for the District of Delaware or, if jurisdiction is not then available in the United States District Court for the District of Delaware, then any Delaware state court).

“Disclosure Letter” means the disclosure letter delivered by the Company to the Purchaser on the date of Agreement. The information in the Disclosure Letter is disclosed under separate Section and subsection references that correspond to the Sections and subsections of this Agreement to which such information relates. The information set forth in each Section or subsection of the Company Disclosure Letter will be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations, warranties or covenants of the Company that are set forth in the corresponding Section or subsection of this Agreement; and (b) any other representations, warranties or covenants of the Company that are set forth in this Agreement, but in the case of this clause (b) only if the relevance of that disclosure as an exception to (or a disclosure for purposes of) such other representations, warranties or covenants is reasonably apparent on the face of such disclosure.

“Effective Date” means the date on which the initial registration statement required by Section 2(a) of the Rights Agreement is first declared effective by the Commission.

“Encumbrance” means any lien, pledge, hypothecation, charge, mortgage, security interest, lease, exclusive license, option, easement, reservation, servitude, adverse title, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction or encumbrance of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“GAAP” means generally accepted accounting principles and practices in effect from time to time within the United States applied consistently throughout the period involved.

“Governmental Authority” means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign, supra-national or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, bureau, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or entity and any court or other tribunal, and any taxing authority) or (d) self-regulatory organization (including Nasdaq).

“Law” means each applicable transnational, domestic or foreign federal, state or local laws (statutory, common or otherwise), order, judgment, rule, code, statute, regulation, requirement, variance, decree, writ, injunction, award, ruling, Permit or ordinance of any Governmental Authority, including any applicable stock exchange rule or requirement.

“Material Adverse Effect” means any change, effect, event, circumstance or development (each, an “Effect”) that, individually or in the aggregate with all other Effects that have occurred through the date of determination, has had, or is reasonably likely to have, a material adverse effect on the business, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that no Effect, to the extent resulting from or arising out of any of the following, shall be deemed to be a Material Adverse Effect or be taken into account for purposes of determining whether a Material Adverse Effect has occurred or is reasonably likely to occur: (A) changes in prevailing economic or market conditions in the United States or any other jurisdiction (except to the extent those changes have a disproportionate effect on the Company relative to the other participants in the industry or industries in which the Company operates, in which case only the incremental disproportionate effect may be taken into account in determining whether a Material Adverse Effect has occurred), (B) changes or events affecting the industry or industries in which the Company operates generally (except to the extent those changes have a disproportionate effect on the Company relative to the other participants in the industry or industries in which the Company operates, in which case only the incremental disproportionate effect may be taken into account in determining whether a Material Adverse Effect has occurred), (C) changes in generally accepted accounting principles or requirements or the interpretation thereof (except to the extent those changes have a disproportionate effect on the Company relative to the other participants in the industry or industries in which the Company operates, in which case only the incremental disproportionate effect may be taken into account in determining whether a Material Adverse Effect has occurred), (D) changes in laws, rules or regulations of general applicability or interpretations thereof by any Governmental Authority (except to the extent those changes have a disproportionate effect on the Company relative to the other participants in the industry or industries in which the Company operates, in which case only the incremental disproportionate effect may be taken into account in determining whether a Material Adverse Effect has occurred), (E) any natural disaster, epidemic, pandemic or other disease outbreak (including the COVID-19 pandemic) or any outbreak of major hostilities or any act of terrorism (except to the extent those changes have a disproportionate effect on the Company relative to the other participants in the industry or industries in which the Company operates, in which case only the incremental disproportionate effect may be taken into account in determining whether a Material Adverse Effect has occurred), (F) the announcement of this Agreement or the pendency of the transactions contemplated hereby or (G) any failure by the Company to meet any internal guidance, budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations (but not, in the case of this clause (G), the underlying cause of such changes or failures, unless such changes or failures would otherwise be excepted from this definition).

“Material Contract” means any Contract to which the Company or any Subsidiary is a party or by which either is bound that is material to the business of the Company, including those that have been filed as an exhibit to the SEC Reports pursuant to Item 601(b)(10) of Regulation S-K.

“Nasdaq” means The Nasdaq Stock Market.

“Permit” means all required permits, licenses, registrations, authorizations, certificates, orders, approvals, franchises, variances and other similar rights issued by or obtained from any Governmental Authority.

“Permitted Liens” means: (a) liens of landlords, carriers, warehousemen, mechanics, vendors, materialmen or other Persons securing obligations arising in the ordinary course of business that are not yet due and payable, (b) liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, (c) liens incurred to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations in the ordinary course of business, (d) liens for Taxes (i) not yet due, or (ii) being contested through appropriate proceedings and for which adequate reserves are reflected on the Audited Balance Sheet, (e) liens expressly set forth in any Contract that is not a Material Contract, (f) liens pursuant to any debt instrument of the Company or any of its Subsidiaries and (g) other liens that are not material.

“Person” means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Press Release” has the meaning set forth in Section 4.4.

“Principal Trading Market” means the Trading Market on which the Common Stock is primarily listed on and quoted for trading, which, as of the date of this Agreement, shall be the Nasdaq Capital Market.



“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Purchaser” has the meaning set forth in the Preamble.

“Rights Agreement” has the meaning set forth in the Recitals.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“SEC Reports” has the meaning set forth in Section 3.1(g).

“Secretary’s Certificate” has the meaning set forth in paragraph 2.3(a)(ii).

“Securities” has the meaning set forth in the Recitals.

“Securities Act” has the meaning set forth in the Recitals.

“Short Sales” include, without limitation, (i) all “short sales” as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act, whether or not against the box, and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, “put equivalent positions” (as defined in Rule 16a-1(h) under the Exchange Act) and similar arrangements (including on a total return basis), and (ii) sales and other transactions through non-U.S. broker dealers or non-U.S. regulated brokers (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

“Subscription Amount” means the aggregate amount to be paid for the Securities purchased hereunder by the Purchaser set forth in the “Aggregate Cash Purchase Price” column opposite the Purchaser’s name in the table set forth on **Exhibit A**, in United States dollars and in immediately available funds.

“Subsidiary” means any material subsidiary of the Company.

“Taxes” shall mean any taxes, charges, fees, duties, contributions, levies or other similar assessments or liabilities in the nature of a tax, including, without limitation, income, gross receipts, corporation, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, national insurance, business license, business organization, environmental, workers compensation, payroll, profits, severance, stamp, occupation, windfall profits, escheat or unclaimed property, customs duties, franchise and other taxes of any kind imposed by the United States of America or any state, local or non-U.S. government, or any agency or political subdivision thereof, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items.

“Trading Day” means a day on which the Principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the schedules and exhibits attached hereto, the Rights Agreement and any other documents or agreements explicitly contemplated hereunder.

“Transfer Agent” means Computershare Trust Company, the current transfer agent of the Company, or any successor transfer agent for the Company.

## ARTICLE II PURCHASE AND SALE

2.1. Purchase and Sale. Subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase at the Closing (as defined below), and the Company agrees to sell and issue to the Purchaser at the Closing, that number of shares of Common Stock set forth opposite the Purchaser’s name on **Exhibit A** at a price per share equal to \$1.80. Notwithstanding anything to the contrary in this Agreement, the Company will not issue any shares of Common Stock as part of the transactions contemplated by this Agreement in excess of an amount equal to 19.9% of the Company’s outstanding shares of Common Stock on the day prior to the Closing Date.

2.2. Closing.

(a) Closing. The closing of the purchase and sale of the Securities (the “Closing”) shall take place remotely via exchange of executed documents and funds simultaneously with the execution of this Agreement (the day on which the Closing occurs, the “Closing Date”).

(b) Payment. On or before the Closing Date, the Purchaser shall deliver to the Company the Subscription Amount in full by wire transfer of immediately available funds to an account designated in writing by the Company. At or following the Closing, the Company shall deliver to the Purchaser, against payment therefor, a book-entry statement from the Transfer Agent evidencing the number of Securities set forth opposite the Purchaser’s name on **Exhibit A**, registered in the name of the Purchaser (or its nominee in accordance with its delivery instructions), free and clear of any liens or restrictions (other than those arising under state and federal securities laws) and bearing the legend set forth in Section 4.1(b).

2.3. Closing Deliverables.

- (a) At or prior to the Closing, the Company shall issue, deliver or cause to be delivered, to the Purchaser the following:
  - (i) this Agreement and the Rights Agreement, each duly executed by the Company;

(ii) a certificate of the Secretary of the Company (the “Secretary’s Certificate”), dated as of the Closing Date, (A) certifying the resolutions adopted by the Board of Directors or a duly authorized committee thereof approving the transactions contemplated by this Agreement and the other Transaction Documents, (B) certifying the current versions of the Certificate of Incorporation and Bylaws (as defined below) and (C) certifying as to the signatures and authority of persons signing the Transaction Documents on behalf of the Company; and

(iii) a certificate evidencing the good standing of the Company issued by the Secretary of State of the State of Delaware, as of a date within three Business Days of the Closing Date.

(b) At or prior to the Closing, the Purchaser shall deliver or cause to be delivered to the Company the following:

- (i) the Subscription Amount in accordance with Section 2.2(b);
- (ii) this Agreement and the Rights Agreement, each duly executed by the Purchaser; and
- (iii) a fully completed Stock Issuance Questionnaire in the form attached hereto as **Exhibit C**.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

3.1. Representations and Warranties of the Company. Except as disclosed in the SEC Reports or as set forth in the Disclosure Letter, the Company represents and warrants to the Purchaser as of the date of this Agreement as follows:

(a) Due Organization; Subsidiaries. Each of the Company and its Subsidiaries is a corporation or limited liability company duly incorporated or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization and has all necessary corporate power and authority: (i) to conduct its business in the manner in which its business is currently being conducted and as proposed to be conducted as described in the SEC Reports, (ii) to own or lease and use its property and assets in the manner in which its property and assets are currently owned or leased and used and (iii) to perform its obligations under all Contracts by which it is bound. All of the Subsidiaries are wholly owned by the Company. Each of the Company and the Subsidiaries is licensed and qualified to do business, and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions where the nature of its business or the manner in which its business is currently being conducted requires such licensing or qualification, other than in jurisdictions where the failure to be so qualified would not have or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Authorization, Enforcement, Validity. The Company has the requisite corporate power and authority to enter into the Transaction Documents, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby or thereby. All corporate action on the part of the Company necessary for the authorization, execution, sale, issuance and delivery of the Securities has been or will be taken prior to the Closing. Each of the Transaction Documents have been (or upon delivery will have been) duly executed and delivered by the Company and is, or when delivered in accordance with the terms hereof or thereof, will constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its respective terms, except (i) as such enforceability may be limited by applicable bankruptcy, examinership, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(c) No Conflicts. The execution, delivery and performance by the Company of the Transaction Documents and the issuance, sale and delivery of the securities to be sold by the Company under the Transaction Documents (including the issuance of the Securities), the performance by the Company of its obligations under the Transaction Documents and the consummation of the transactions contemplated hereby or thereby (including, without limitation, the issuance of the Securities) do not and will not conflict with, result in the breach or violation of, or constitute (with or without the giving of notice or the passage of time or both) a violation of, or default under, (i) any bond, debenture, note or other evidence of indebtedness, or under any lease, license, franchise, permit, indenture, mortgage, deed of trust, loan agreement, joint venture or other Contract, agreement or instrument to which the Company or any of its Subsidiaries is a party or by which it or its properties may be bound or affected, (ii) the Company's certificate of incorporation (as amended, the "Certificate of Incorporation"), the Company's bylaws (as amended, the "Bylaws"), or the equivalent document with respect to any of the Company's Subsidiaries, as amended and as in effect on the date hereof, or (iii) any statute or Law, judgment, decree, rule, regulation, ordinance or order of any Governmental Authority applicable to the Company, any of its Subsidiaries or their respective properties, except in the case of clauses (i) and (iii) for such conflicts, breaches, violations or defaults that would not have or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) Filings, Consents and Approvals. Except for any Current Report on Form 8-K to be filed by the Company in connection with the transaction contemplated hereby, any required filing with Nasdaq and the registration statement required to be filed by the Rights Agreement, neither the Company nor any of its Subsidiaries is required to give any notice to, or make any filings with, or obtain any authorization, consent, or approval of, any Governmental Authority in order to consummate the transactions contemplated by the Transaction Documents. Assuming the accuracy of the representations of the Purchaser in Section 3.2, no consent, approval, authorization or other order of, or registration, qualification or filing with, any Governmental Authority is required for the execution and delivery of the Transaction Documents, the valid issuance, sale and delivery of the Securities to be sold pursuant to the Transaction Documents other than such as have been or will be made or obtained, or for any securities filings required to be made under federal or state securities laws applicable to the offering of the Securities (other than filings that have been made, or will be made, pursuant to the rules and regulations of Nasdaq).

(e) Issuance of the Securities. The issuance of the Securities has been duly authorized, and the Securities, when issued and paid for in accordance with the terms of the Transaction Documents, will be duly and validly issued, fully paid and nonassessable and free and clear of any Encumbrances, preemptive rights or restrictions (other than any restrictions on transfer generally imposed under applicable securities laws).

(f) Capitalization. As of immediately prior to the Closing, the Company will have an authorized capitalization as set forth in the SEC Reports. All outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. None of the outstanding shares of capital stock of the Company were issued in violation of the preemptive or other similar rights of any securityholder of the Company which have not been waived. There are no securities or instruments issued by or to which the Company is a party containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities pursuant to this Agreement.

(g) SEC Reports; Disclosure Materials. The Company has filed or furnished, as applicable, on a timely basis all forms, statements, schedules, certifications, reports and other documents required to be filed or furnished by it with the Commission under the Exchange Act or the Securities Act since January 1, 2023 (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, the “SEC Reports”). As of the time it was filed with the Commission (or, if amended or superseded by a filing prior to the Closing Date, then on the date of such filing), each of the SEC Reports complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be) and as of the time they were filed, none of the SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. There are no material outstanding or unresolved comments in comment letters from the staff of the Division of Corporation Finance of the Commission with respect to any of the SEC Reports.

(h) Financial Statements. As of their respective filing dates, the financial statements (including any related notes) contained or incorporated by reference in the SEC Reports (i) complied as to form in all material respects with the Securities Act and the Exchange Act, as applicable, and the published rules and regulations of the Commission applicable thereto, (ii) were prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, as permitted by Form 10-Q of the Commission, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments that are not reasonably expected to be material in amount) applied on a consistent basis unless otherwise noted therein throughout the periods indicated and (iii) fairly present, in all material respects, the consolidated financial position of the Company as of the respective dates thereof and the results of operations and cash flows of the Company for the periods covered thereby. There has been no material change in the Company’s accounting methods or principles that would be required to be disclosed in the Company’s financial statements in accordance with GAAP. There are no liabilities of the Company or any of its Subsidiaries of any kind that would be required by GAAP to be reflected on the face of the consolidated balance sheet of the Company, except (i) liabilities disclosed, reflected or reserved against in the financial statements and the notes thereto contained in the SEC Reports, (ii) liabilities incurred since February 28, 2025, in the ordinary course of business and (iii) liabilities that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The books of account and other financial records of the Company and each of its Subsidiaries are true and complete in all material respects.

(i) Absence of Certain Changes. Since the date of the Audited Balance Sheet, there has been no Material Adverse Effect. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law, nor does the Company have any knowledge or reason to believe that its creditors (if any) intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead any such creditor to do so. The Company and its Subsidiaries, individually and on a consolidated basis, are not as of the date hereof, and after giving effect to the transactions contemplated hereby, will not be Insolvent (as defined below). For purposes of this Section 3.1(i), “Insolvent” means, with respect to any Person, (i) the present fair saleable value of such Person’s assets is less than the amount required to pay such Person’s total indebtedness, (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(j) Litigation. There is no action, suit, proceeding or investigation pending or, to the Company’s Knowledge, currently threatened against the Company, any of its Subsidiaries or any of their respective directors and officers that questions the validity of the Transaction Documents or the right of the Company to enter into the Transaction Documents or to consummate the transactions contemplated hereby and thereby. There is no action, suit, proceeding or investigation pending or, to the Company’s Knowledge, currently threatened against the Company or any Subsidiary or any of their respective directors and officers which would, if there were an unfavorable decision, have or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(k) Title to Properties and Assets. The Company or one of its Subsidiaries has good and marketable indefeasible fee simple title to all land, together with all land use rights, buildings, structures, improvements, and fixtures located thereon, and all easements and other rights and interests appurtenant thereto, in each case, owned by the Company or any of its Subsidiaries. The Company’s or its Subsidiaries’ possession, occupancy, lease, use and/or operation of each leased property conforms to all applicable Laws in all material respects, and the Company or its Subsidiary, as applicable, has exclusive possession of each such leased property and leasehold interest and has not granted any occupancy rights to tenants or licensees with respect to such leased property or leasehold interest. In addition, each such leased property and leasehold interest is free and clear of all Encumbrances other than Permitted Liens. The Company and each of its Subsidiaries owns, and has good and marketable title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or tangible assets and equipment used or held for use in their respective business or operations or purported to be owned by any of them, including: (a) all tangible assets reflected on the Audited Balance Sheet and (b) all other tangible assets reflected in the books and records of the Company as being owned by the Company or any of its Subsidiaries. All of such assets are owned or, in the case of leased assets, leased by the Company or any of its Subsidiaries free and clear of any Encumbrances, other than Permitted Liens.

(l) No General Solicitation. The Company is not offering the Securities by any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar, or any other “general advertisement” or “general solicitation” within the meaning of Rule 502(c) under the Securities Act.

(m) No Disqualifications. The Company is not subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act and will not be disqualified from relying on the exemption from registration under the Securities Act provided by Rule 506 under the Securities Act with regard to the offer and sale of the Securities by the occurrence or issuance of any conviction, order, judgment, decree, suspension, injunction, expulsion or bar described in Rule 506(d)(1)(i) to (viii) under the Securities Act (each, an “Issuer Disqualifying Event”), except for an Issuer Disqualifying Event covered by Rule 506(d)(2) or (3) under the Securities Act. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e) under the Securities Act.

(n) No Additional Representations. Notwithstanding anything to the contrary in this Agreement:

(i) The Company acknowledges that the Purchaser does not make any representation or warranty as to any matter whatsoever except as expressly set forth in Section 3.2, and specifically (but without limiting the generality of the foregoing), that, except as expressly set forth in Section 3.2, the Purchaser makes no representation or warranty with respect to: (A) any matters relating to the Purchaser, its business, financial condition, results of operations, prospects or otherwise, (B) any projections, estimates or budgets delivered or made available to the Company (or any of its Affiliates, officers, directors, employees or other representatives of any of the foregoing) of future revenues, results of operations (or any component thereof), cash flows or financial condition (or any component thereof) of the Purchaser and its Affiliates or (C) the future business and operations of the Purchaser and its Affiliates. The Company has not relied on or been induced by any information or any other representations or warranties (whether express or implied or made orally or in writing) not expressly set forth in Section 3.2.

(ii) The Company acknowledges and agrees that, except for the representations and warranties expressly set forth in Section 3.2, (A) no person has been authorized by any Purchaser or any of its Affiliates to make any representation or warranty relating to itself or its business or otherwise in connection with the transactions contemplated hereby, and if made, such representation or warranty must not be relied upon by the Company as having been authorized by any Purchaser or any of its Affiliate, and (B) any estimates, projections, predictions, data, financial information, memoranda, presentations or any other materials or information provided or addressed to the Company or its Affiliates, agents or representatives are not and shall not be deemed to be or include representations or warranties of the Purchaser unless any such materials or information are the subject of any express representation or warranty set forth in Section 3.2.

3.2. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Company as of the date of this Agreement as follows:

(a) Organization; Authority. The Purchaser is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization with the requisite corporate or, if the Purchaser is not a corporation, such partnership, limited liability company or other applicable power and authority to enter into and to consummate the transactions contemplated by the applicable Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement by the Purchaser and performance by the Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate or, if the Purchaser is not a corporation, such partnership, limited liability company or other applicable like action, on the part of the Purchaser. Each Transaction Document to which it is a party has been duly executed by the Purchaser, and when delivered by the Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of the Purchaser, enforceable against it in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, examinership, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application, (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) No Conflicts. The execution, delivery and performance by the Purchaser of this Agreement and the other Transaction Documents and the consummation by the Purchaser of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Purchaser, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Purchaser is a party, or (iii) result in a violation of any Law, rule, regulation, order, judgment or decree (including U.S. federal and state securities laws) applicable to the Purchaser, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Purchaser to perform its obligations hereunder.

(c) Investment Intent. The Purchaser understands that the Securities are "restricted securities" and the offer and sale thereof have not been registered under the Securities Act or any applicable U.S. state securities law and is acquiring the Securities as principal for its own account and not with a view to, or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable U.S. state or other securities laws, *provided, however*, that by making the representations herein, the Purchaser does not agree to hold any of the Securities for any minimum period of time and reserves the right, subject to the provisions of this Agreement and the Rights Agreement, at all times to sell or otherwise dispose of all or any part of such Securities pursuant to an effective registration statement under the Securities Act or under an exemption from such registration and in compliance with applicable U.S. federal, state and other securities laws. The Purchaser is acquiring the Securities hereunder in the ordinary course of its business. The Purchaser does not presently have any agreement, plan or understanding, directly or indirectly, with any Person to distribute or effect any distribution of any of the Securities (or any securities which are derivatives thereof) to or through any person or entity in violation of federal securities law; the Purchaser is not a registered broker-dealer under Section 15 of the Exchange Act or an entity engaged in a business that would require it to be so registered as a broker-dealer.



(d) Purchaser Status. At the time the Purchaser was offered the Securities, it was, and as of the date hereof it is, an “accredited investor” as defined in Rule 501(a) under the Securities Act.

(e) No General Solicitation. The Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar, or any other “general advertisement” or “general solicitation” within the meaning of Rule 502(c) under the Securities Act.

(f) No Disqualification Events. Neither (i) the Purchaser, (ii) any of its directors, managers, executive officers, other officers that may serve as a director, manager or officer of any company in which it invests, general partners or managing members, nor (iii) any beneficial owner of the Company’s voting equity securities (in accordance with Rule 506(d) of the Act) held by the Purchaser is subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act.

(g) Experience of the Purchaser. The Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. The Purchaser is able to bear the economic risk of an investment in the Securities.

(h) Access to Information. The Purchaser acknowledges that it has had the opportunity to review the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and the Subsidiaries, and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of the Purchaser or its representatives or counsel shall modify, amend or affect the Purchaser’s right to rely on the truth, accuracy and completeness of the SEC Reports and the Company’s representations and warranties contained in the Transaction Documents. The Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed decision with respect to its acquisition of the Securities.

(i) Certain Trading Activities. Other than with respect to the transactions contemplated herein, since the time that the Purchaser was first contacted by the Company or any other Person regarding the transactions contemplated hereby, the Purchaser has not, directly or indirectly, effected or agreed to effect any Short Sales. Notwithstanding the foregoing, (i) in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of the Purchaser's assets, the foregoing representation shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement and (ii) and in the case of a Purchaser whose investment adviser utilized an information barrier with respect to the information regarding the transactions contemplated hereunder after first being contacted by the Company or such other Person representing the Company, the representation set forth above shall only apply after the point in time when the portfolio manager who manages the Purchaser's assets was informed of the information regarding the transactions contemplated hereunder and, with respect to the Purchaser's investment adviser, the representation set forth above shall only apply with respect to any purchases or sales, including Short Sales, of the securities of the Company on behalf of other funds or investment vehicles for which the Purchaser's investment adviser is also an investment adviser or sub-adviser after the point in time when the portfolio manager who manages the assets of such other funds or investment vehicles for which the Purchaser's investment adviser is also an investment adviser or sub-adviser was informed of the information regarding the transactions contemplated hereunder. Other than to other Persons party to this Agreement and to the Purchaser's representatives or agents, including, but not limited to, the Purchaser's legal, tax and investment advisors, the Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

(j) Brokers and Finders. No Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Purchaser for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Purchaser. The Purchaser shall not have any obligation with respect to any fees, or with respect to any claims made by or on behalf of other Persons for fees, in each case of the type contemplated by this Section 3.2(i), that may be due in connection with the transactions contemplated by this Agreement or the Transaction Documents.

(k) Independent Investment Decision. The Purchaser has independently evaluated the merits of its decision to purchase Securities pursuant to the Transaction Documents. The Purchaser understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchaser in connection with the purchase of the Securities constitutes legal, tax or investment advice. The Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

(l) Reliance on Exemptions. The Purchaser understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Purchaser's compliance with, the representations, warranties, agreements, acknowledgements and understandings of the Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of the Purchaser to acquire the Securities.

(m) No Governmental Review. The Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(n) Regulation M. The Purchaser is aware that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of Securities and other activities with respect to the Securities by the Purchaser.

(o) Beneficial Ownership. The purchase by the Purchaser of the Securities will not result in the Purchaser (individually or together with any other Person) acquiring, or obtaining the right to acquire, beneficial ownership in excess of 19.9% of the outstanding shares of Common Stock or the voting power of the Company on a post-transaction basis that assumes that such Closing shall have occurred. The Purchaser does not presently intend to, alone or together with others, make a public filing with the Commission to disclose that it has (or that it together with such other Persons have) acquired, or obtained the right to acquire, as a result of such Closing when added to any other securities of the Company that it or they then own or have the right to acquire, beneficial ownership in excess of 19.9% of the outstanding shares of Common Stock or the voting power of the Company on a post-transaction basis that assumes that such Closing shall have occurred.

(p) Residency. The Purchaser's offices in which its investment decision with respect to the Securities was made are located at the address set forth under the Purchaser's name on **Exhibit A** hereto or as otherwise specified below its address on **Exhibit A** hereto.

(q) Litigation. There is no action, suit, proceeding or investigation pending or, to the Purchaser's knowledge, currently threatened against the Purchaser or any of its directors, officers or equityholders that questions the validity of the Transaction Documents or the right of the Purchaser to enter into the Transaction Documents or to consummate the transactions contemplated hereby and thereby. There is no action, suit, proceeding or investigation pending or, to the Purchaser's knowledge, currently threatened against the Purchaser or any of its directors, officers or equityholders that would, if there were an unfavorable decision, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Purchaser to perform its obligations hereunder.

(r) No Additional Representations. Notwithstanding anything to the contrary in this Agreement:

(i) The Purchaser acknowledges that the Company does not make any representation or warranty as to any matter whatsoever except as expressly set forth in Section 3.1, and specifically (but without limiting the generality of the foregoing), that, except as expressly set forth in Section 3.1, the Company makes no representation or warranty with respect to: (A) any matters relating to the Company, its business, financial condition, results of operations, prospects or otherwise, (B) any projections, estimates or budgets delivered or made available to the Purchaser (or any of its Affiliates or any officers, directors, employees or other representatives of the foregoing) of future revenues, results of operations (or any component thereof), cash flows or financial condition (or any component thereof) of the Company and its Subsidiaries or (C) the future business and operations of the Company and its Subsidiaries. The Purchaser has not relied on or been induced by any information or any other representations or warranties (whether express or implied or made orally or in writing) not expressly set forth in Section 3.1.

(ii) The Purchaser has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and its Subsidiaries and acknowledges the Purchaser has been provided with sufficient access for such purposes. The Purchaser acknowledges and agrees that, except for the representations and warranties expressly set forth in Section 3.1, (A) no person has been authorized by the Company to make any representation or warranty relating to itself or its business or otherwise in connection with the transactions contemplated hereby, and if made, such representation or warranty must not be relied upon by the Purchaser as having been authorized by the Company, and (B) any estimates, projections, predictions, data, financial information, memoranda, presentations or any other materials or information provided or addressed to the Purchaser (or any of its Affiliates or any officers, directors, employees or other representatives of the foregoing) shall not be deemed to be or include representations or warranties of the Company unless any such materials or information are the subject of any express representation or warranty set forth in Section 3.1.

#### **ARTICLE IV OTHER AGREEMENTS OF THE PARTIES**

##### **4.1. Transfer Restrictions.**

(a) Compliance with Laws. Notwithstanding any other provision of this Article IV, the Purchaser covenants that the Securities may be disposed of only pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act, or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with any applicable U.S. state and federal securities laws. In connection with any transfer of the Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, (iii) pursuant to Rule 144 (provided that the Purchaser provides the Company with reasonable assurances (in the form of seller and, if applicable, broker representation letters) that the securities may be sold pursuant to such rule), or (iv) in connection with a bona fide pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act and, as a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Rights Agreement and shall have the rights of the Purchaser under this Agreement and the Rights Agreement with respect to such transferred Securities.

(b) Legends. Book-entry statements evidencing the Securities shall bear any legend as required by the “blue sky” Laws of any state and a restrictive legend in substantially the following form:

“THE OFFER AND SALE OF THE SECURITIES REPRESENTED BY THE CERTIFICATE TO WHICH THIS CONFIRMATION RELATES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS, UNLESS OFFERED, SOLD, PLEDGED, HYPOTHECATED OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS. THE COMPANY AND ITS TRANSFER AGENT SHALL BE ENTITLED TO REQUIRE AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND THE TRANSFER AGENT THAT SUCH REGISTRATION IS NOT REQUIRED.”

(c) Removal of Legends. Once a registration statement covering the resale of the Securities is declared effective, the Company shall remove all restrictive legends, including the legend set forth in Section 4.1(b) above, and the Company shall provide the Transfer Agent with a blanket opinion of counsel permitting such removal. Further, the Company shall remove all restrictive legends, including the legend set forth in Section 4.1(b) above, (i) following any sale of such Securities pursuant to Rule 144 or any other applicable exemption from the registration requirements of the Securities Act, or (ii) if such Securities are eligible for resale under Rule 144(b)(1) or any successor provision.

(d) Acknowledgement. The Purchaser hereunder acknowledges its primary responsibilities under the Securities Act and accordingly will not sell or otherwise transfer the Securities or any interest therein without complying with the requirements of the Securities Act.

4.2. Furnishing of Information. In order to enable the Purchaser to sell the Securities under Rule 144, until such time as the Purchaser may sell the Securities without limitation under Rule 144, the Company shall use its commercially reasonable efforts to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act and, if during such period, the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to the Purchaser and make publicly available in accordance with Rule 144(c) such information as is required for the Purchaser to sell the Securities under Rule 144.

4.3. Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that will be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities to the Purchaser, or that will be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

4.4. Securities Laws Disclosure; Publicity. By no later than 9:00 A.M., New York City time, on the fourth Trading Day immediately following the date hereof, the Company shall (a) issue a press release (the "Press Release") disclosing all material terms of the transactions contemplated hereby and (b) file a Current Report on Form 8-K with the Commission describing the terms of the Transaction Documents (and including as exhibits to such Current Report on Form 8-K the material Transaction Documents (including, without limitation, this Agreement, the Rights Agreement)); *provided* that the Press Release shall not publicly disclose the name of the Purchaser or investment adviser of the Purchaser or an Affiliate of the Purchaser without the prior written consent of the Purchaser, unless required by the rules and regulations of the Commission or Trading Market. In addition, notwithstanding the foregoing, the Company shall not publicly disclose the name of the Purchaser or investment adviser of the Purchaser, or include the name of the Purchaser or an Affiliate of the Purchaser without the prior written consent of the Purchaser (i) in any press release or marketing materials or (ii) in any filing with the Commission or any regulatory agency or Trading Market, except as required by U.S. federal securities law (A) in connection with any registration statement contemplated by the Rights Agreement (which shall be subject to review and comment of the Purchaser pursuant to the terms of the Rights Agreement) or the filing of final Transaction Documents (including signature pages thereto) with the Commission and (B) to the extent such disclosure is required by Law, request of the Commission's staff or Trading Market regulations, in which case the Company shall provide the Purchaser with prior written notice of such disclosure permitted under this subclause (ii). The Purchaser covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the Press Release, the Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information provided in connection therewith; provided, however, that any disclosure may be made by the Purchaser to the Purchaser's representatives or agents, including, but not limited to, the Purchaser's legal, tax and investment advisors.

4.5. Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, including this Agreement, or as expressly required by any applicable securities law, the Company covenants and agrees that neither it, nor any other Person acting on its behalf, will provide the Purchaser or its agents or counsel with any information regarding the Company that the Company believes constitutes material non-public information without the express written (email being sufficient) consent of the Purchaser, (i) unless prior thereto the Purchaser shall have committed to customary obligations regarding the confidentiality and use of such information and (ii) except in the case of material, nonpublic information provided to an observer of the Board of Directors or member of the Board of Directors who is affiliated with the Purchaser. The Company understands and confirms that the Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.6. Use of Proceeds. The Company shall use the net proceeds from the sale of the Securities hereunder only for working capital and general corporate purposes.

4.7. Principal Trading Market Listing. The Company shall use its reasonable best efforts to take all steps necessary to cause the Securities to be approved for listing on the Principal Trading Market as promptly as possible.

4.8. Blue Sky; Form D. The Company, on or before the Closing Date, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Securities for sale to the Purchaser under applicable securities or “blue sky” Laws of the states of the United States (or to obtain an exemption from such qualification), including, if necessary, a Form D filed with the Commission under the Securities Act, and shall provide evidence of such actions promptly upon the written request of the Purchaser.

4.9. Short Sales After the Date Hereof. The Purchaser shall not engage, directly or indirectly, in any transactions in the Company’s securities (including, without limitation, any Short Sales involving the Company’s securities) during the period from the date hereof until the transactions contemplated by this Agreement are first publicly announced as required by and described in Section 4.4. Notwithstanding the foregoing, the Purchaser does not make any representation, warranty or covenant hereby that it will not engage in Short Sales in the securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced as described in Section 4.4; *provided, however*, the Purchaser agrees that it will not enter into any Net Short Sales (as hereinafter defined) from the period commencing on the Closing Date and ending on the earliest of (x) the Effective Date, (y) the 24 month anniversary of the Closing Date or (z) the date that the Purchaser no longer holds any Securities. For purposes of this Section 4.9, a “Net Short Sale” by the Purchaser shall mean a sale of Common Stock by the Purchaser that is marked by the Purchaser as a short sale and that is made at a time when there is no equivalent offsetting long position in Common Stock held by the Purchaser. Notwithstanding the foregoing, in the event that the Purchaser is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of the Purchaser’s assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of the Purchaser’s assets, the representation set forth above shall apply only with respect to the portion of assets managed by the portfolio manager that have knowledge about the financing transaction contemplated by this Agreement.

## ARTICLE V MISCELLANEOUS

5.1. Fees and Expenses. The Company and the Purchaser shall each pay the fees and expenses of their respective advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party in connection with the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees and any stamp Taxes and other Taxes and duties levied in connection with the issuance and sale of the Securities to the Purchaser.

5.2. Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, discussions and representations, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. Before or at the Closing, the Company and the Purchaser will execute and deliver to the other such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

5.3. Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via electronic mail at the e-mail address specified in this Section 5.3 prior to 5:00 P.M., New York City time, on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via electronic mail at the e-mail address specified in this Section 5.3 on a day that is not a Trading Day or later than 5:00 P.M., New York City time, on any Trading Day, (c) the Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service with next day delivery specified, or (d) upon actual receipt by the party to whom such notice is required to be given if delivered personally or if sent by U.S. certified or registered mail, return receipt requested; provided, in the case of clauses (a) and (b), that notice shall not be deemed given or effective if the sender receives an automatic system-generated response that such electronic mail was undeliverable. The address for such notices and communications shall be as follows:

If to the Company:

Rocky Mountain Chocolate Factory, Inc.  
265 Turner Drive  
Durango, CO 81303  
Attention: Jeff Geygan  
Email: [redacted]

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

Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, CA 94304  
Attention: [redacted]  
Email: [redacted]

If to the Purchaser:

To the address set forth under the Purchaser's name on **Exhibit A** hereto;

or such other address as may be designated in writing hereafter, in the same manner, by such Person.

5.4. Amendments; Waivers; No Additional Consideration. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchaser. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.



5.5. Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any of the Transaction Documents. As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

5.6. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors and permitted assigns. This Agreement, or any rights or obligations hereunder, may not be assigned by the Company without the prior written consent of the Purchaser. The Purchaser may assign its rights hereunder in whole or in part to any Person to whom the Purchaser assigns or transfers any Securities in compliance with the Transaction Documents and applicable Law, provided such transferee shall agree in writing to be bound, with respect to the transferred Securities, by the terms and conditions of this Agreement that apply to the Purchaser.

5.7. No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

5.8. Governing Law; Venue. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective Affiliates, employees or agents) shall be commenced exclusively in the Delaware Courts. Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the Delaware Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such Delaware Court, or that such Proceeding has been commenced in an improper or inconvenient forum. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

5.9. Survival. Subject to applicable statute of limitations, the representations, warranties, agreements and covenants contained herein shall survive the Closing and the delivery of the Securities for a period of one year.

5.10. Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or by e-mail delivery of a “.pdf” format data file, or by any electronic signature complying with the U.S. E-SIGN Act of 2000, such signature shall create a legally valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

5.11. Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

5.12. Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company may issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company and the Transfer Agent of such loss, theft or destruction and the execution by the holder thereof of a customary lost certificate affidavit of that fact and an agreement to indemnify and hold harmless the Company and the Transfer Agent for any losses in connection therewith or, if required by the Transfer Agent, a bond in such form and amount as is required by the Transfer Agent. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities. If a replacement certificate or instrument evidencing any Securities is requested due to a mutilation thereof, the Company may require delivery of such mutilated certificate or instrument as a condition precedent to any issuance of a replacement.

5.13. Remedies. In addition to being entitled to exercise all rights provided herein or granted by Law, including recovery of damages, each of the Purchaser and the Company will be entitled to specific performance under the Transaction Documents, without the requirement of posting a bond. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agree to waive in any action for specific performance of any such obligation (other than in connection with any action for a temporary restraining order) the defense that a remedy at law would be adequate.

5.14. Payment Set Aside. To the extent that the Company makes a payment or payments to the Purchaser pursuant to any Transaction Document or the Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other person under any Law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

*[Remainder Of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**COMPANY:**

**Rocky Mountain Chocolate Factory, Inc.**

By: /s/ Jeffrey R. Geygan

Name: Jeffrey R. Geygan

Title: Interim Chief Executive Officer

**PURCHASER:**

**ARM-D Rocky Mountain Chocolate  
Holdings LLC**

By: /s/ Gloria Eugenia Pérez-Jácome

Name: Gloria Eugenia Pérez-Jácome

Title: Manager

*(Signature Page to Securities Purchase Agreement)*

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**EXHIBIT A**

**SCHEDULE OF PURCHASER**

<b>Purchaser Name</b>	<b>Number of Securities</b>	<b>Aggregate Cash Purchase Price</b>
ARM-D Rocky Mountain Chocolate Holdings LLC Address: [redacted] Email: [redacted]	1,500,000	\$2,700,000

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

Seward & Kissel LLP  
One Battery Park Plaza  
New York, NY 10004  
Attn: Walter Van Dorn  
Email: vandorn@sewkis.com

**EXHIBIT B**

**INVESTOR RIGHTS AGREEMENT**

*(See Attached)*

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**EXHIBIT C**

**STOCK ISSUANCE QUESTIONNAIRE**

*(See Attached)*

## INVESTOR RIGHTS AGREEMENT

This **INVESTOR RIGHTS AGREEMENT** (this “Agreement”) is dated as of December 18, 2025, by and among Rocky Mountain Chocolate Factory, Inc., a Delaware corporation (the “Company”), and ARM-D Rocky Mountain Chocolate Holdings LLC, a Florida limited liability company (including its successors and assigns, the “Purchaser”).

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and the Purchaser (the “Purchase Agreement”).

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“Advice” has the meaning set forth in Section 9(c).

“Affiliate” when used with respect to any party shall mean any Person who is an “affiliate” of that party within the meaning of Rule 405 promulgated under the Securities Act.

“Agreement” has the meaning set forth in the Preamble.

“Allowed Suspension” has the meaning set forth in Section 9(c).

“Common Stock” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Company” has the meaning set forth in the Preamble.

“Effective Date” means the date that the Registration Statement filed pursuant to Section 2(a) is first declared effective by the Commission.

“Effectiveness Deadline” means, with respect to the Initial Registration Statement or the New Registration Statement, the 90th calendar day following the Closing Date (or, in the event the Commission reviews and has written comments to the Initial Registration Statement or the New Registration Statement, the 120th calendar day following the Closing Date); provided, however, that (i) if the Company is notified by the Commission that the Initial Registration Statement or the New Registration Statement will not be reviewed or is no longer subject to further review and comments, the Effectiveness Deadline as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above; and (ii) if the Effectiveness Deadline falls on a Saturday, Sunday or other day that the Commission is closed for business, the Effectiveness Deadline shall be extended to the next Business Day on which the Commission is open for business.

“Effectiveness Period” has the meaning set forth in Section 2(b).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

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“Filing Deadline” means, with respect to the Initial Registration Statement required to be filed pursuant to Section 2(a), the 30th calendar day following the Closing Date, provided, however, that if the Filing Deadline falls on a Saturday, Sunday or other day that the Commission is closed for business, the Filing Deadline shall be extended to the next Business Day on which the Commission is open for business.

“FINRA” has the meaning set forth in Section 3(i).

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities.

“Indemnified Party” has the meaning set forth in Section 5(c).

“Indemnifying Party” has the meaning set forth in Section 5(c).

“Initial Registration Statement” has the meaning set forth in Section 2(a).

“Losses” has the meaning set forth in Section 5(a).

“New Registration Statement” has the meaning set forth in Section 2(a).

“Person” means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Principal Market” means the Trading Market on which the Common Stock are primarily listed on and quoted for trading.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430B promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Purchase Agreement” has the meaning set forth in the Recitals.

“Purchaser” has the meaning set forth in the Preamble.

“Registrable Securities” means all of (i) the Shares, and (ii) any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing, provided that the Holder has completed and delivered to the Company a Selling Stockholder Questionnaire; and provided, further, that, with respect to a particular Holder, such Holder’s Shares shall cease to be Registrable Securities upon the earlier to occur of the following: (A) a sale pursuant to a Registration Statement or Rule 144 under the Securities Act (in which case, only such security sold by the Holder shall cease to be a Registrable Security); and (B) such Shares become eligible for resale by the Holder under Rule 144 without the requirement for the Company to be in compliance with the current public information required thereunder and without volume or manner-of-sale restrictions, pursuant to a written opinion letter of counsel for the Company to such effect, addressed, delivered and reasonably acceptable to the Transfer Agent.



“Registration Statements” means any one or more registration statements of the Company filed under the Securities Act that cover the resale of any of the Registrable Securities pursuant to the provisions of this Agreement (including without limitation the Initial Registration Statement, any New Registration Statement and any Remainder Registration Statements), amendments and supplements to such Registration Statements, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such Registration Statements.

“Remainder Registration Statement” has the meaning set forth in Section 2(a).

“Restricted Persons” means the Purchaser and the members, principals, directors, general partners, officers, employees, agents, Affiliates and representatives of the Purchaser.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 172” means Rule 172 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Rule 461” means Rule 461 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“SEC Guidance” means (i) any publicly available written or oral guidance, comments, requirements or requests of the Commission staff; provided, that any such oral guidance, comments, requirements or requests are reduced to writing by the Commission and (ii) the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Selling Stockholder Questionnaire” means a questionnaire in the form attached as Annex B hereto, or such other form of questionnaire or information provided to the Company in connection with the preparation of a Registration Statement hereunder.

“Shares” means the shares of Common Stock issued to the Purchaser pursuant to the Purchase Agreement.

“Trading Day” means a day on which the Principal Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

“Voting Securities” means the shares of the Company’s capital stock and any other securities of the Company entitled to vote in the election of directors, or securities convertible into, or exercisable or exchangeable for, such shares or other securities, whether or not subject to the passage of time or other contingencies.

## 2. Registration

(a) On or prior to the Filing Deadline, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities not then registered on an existing and effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 or, if Rule 415 is not available for offers and sales of the Registrable Securities, by such other means of distribution of Registrable Securities as the Holders may reasonably specify (the “Initial Registration Statement”). The Company shall file the Initial Registration Statement on Form S-1 or, if available Form S-3, subject to the provisions of this Section 2(a), and it shall contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such Registration Statement) the “Plan of Distribution” section substantially in the form attached hereto as Annex A (which may be modified to respond to comments, if any, provided by the Commission). Notwithstanding the registration obligations set forth in this Section 2, in the event the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly (i) inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission and/or (ii) withdraw the Initial Registration Statement and file a new registration statement (a “New Registration Statement”), in either case covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-1; *provided, however*, that prior to filing such amendment or New Registration Statement, the Company shall be obligated to use its commercially reasonable efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, the Securities Act Rules Compliance and Disclosure Interpretations Question 612.09.

(b) Notwithstanding any other provision of this Agreement, if the Commission or any SEC Guidance sets forth a limitation of the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater number of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will first be reduced by Registrable Securities not acquired pursuant to the Purchase Agreement (whether pursuant to registration rights or otherwise), and second by Registrable Securities represented by Shares applied to the Holders on a pro rata basis based on the total number of Shares held by such Holders, subject to a determination by the Commission that certain Holders must be reduced first based on the number of Shares held by such Holders. In the event of a cutback hereunder, the Company shall give the Holder at least one Trading Day prior notice along with the calculations as to such Holder’s allotment. In the event the Company amends the Initial Registration Statement or files a New Registration Statement, as the case may be, in accordance with the foregoing, the Company will use its commercially reasonable efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-1 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended, or the New Registration Statement (the “Remainder Registration Statements”). No Holder shall be named as an “underwriter” in any Registration Statement without such Holder’s prior written consent.

(c) The Company shall use its commercially reasonable efforts to cause each Registration Statement to be declared effective by the Commission as soon as practicable and, with respect to the Initial Registration Statement or the New Registration Statement, as applicable, no later than the Effectiveness Deadline (including filing with the Commission a request for acceleration of effectiveness in accordance with Rule 461 promulgated under the Securities Act), and shall use its commercially reasonable efforts to keep each Registration Statement continuously effective under the Securities Act until the earlier of (i) such time as all of the Registrable Securities covered by such Registration Statement have been publicly sold by the Holders; or (ii) the date that all Registrable Securities covered by such Registration Statement may be sold by non-affiliates without volume or manner-of-sale restrictions pursuant to Rule 144, without the requirement for the Company to be in compliance with the current public information requirement under Rule 144 (the “Effectiveness Period”). The Company shall request effectiveness of a Registration Statement as of 4:00 p.m. New York City time on a Trading Day. The Company shall promptly notify the Holders via e-mail of the effectiveness of a Registration Statement or any post-effective amendment thereto on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which date of confirmation shall initially be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. New York City time on the first Trading Day after the Effective Date, file a final Prospectus with the Commission, in compliance with Rule 424(b) and shall provide the Purchaser with copies of the final Prospectus to be used in connection with the sale or other disposition of the securities covered thereby. The Company shall promptly inform each Holder in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172, and, as a result thereof, the Holder is required to deliver a Prospectus in connection with any disposition of Registrable Securities.

(d) Each Holder of Registrable Securities to be sold agrees to furnish to the Company a completed Selling Stockholder Questionnaire not more than five Trading Days following the date of this Agreement. At least 10 Trading Days prior to the first anticipated filing date of a Registration Statement for any registration under this Agreement, the Company will notify each Holder of the information the Company requires from that Holder for inclusion in the Registration Statement other than the information contained in the Selling Stockholder Questionnaire, if any, which shall be completed and delivered to the Company promptly upon request and, in any event, within three Trading Days prior to the applicable anticipated filing date. Each Holder further agrees that it shall not be entitled to be named as a selling securityholder in the Registration Statement or use the Prospectus for offers and resales of Registrable Securities at any time, unless such Holder has provided such information to the Company and responded to any reasonable requests for further information as described in the previous sentence. Each Holder acknowledges and agrees that the information in the Selling Stockholder Questionnaire or request for further information as described in this Section 2(d) will be used by the Company in the preparation of the Registration Statement and hereby consents to the inclusion of such information in the Registration Statement (subject to such Holder’s right to timely review the Registration Statement as set forth herein).

(e) The Company undertakes to register the Registrable Securities on Form S-3 promptly after such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f) (i) If a Registration Statement covering the Registrable Securities is not filed with the Commission on or prior to the Filing Deadline (a “Registration Failure”), then, in addition to any other rights the Purchaser may have hereunder or under applicable law, the Company will make payment to the Purchaser as liquidated damages and not as a penalty (the “Registration Liquidated Damages”), in an amount equal to 1.0% of the aggregate amount invested by the Purchaser for the Registrable Securities then held by the Purchaser for the initial day of a Registration Failure and for each 30 day period (or pro rata portion thereof with respect to a final period, if any) thereafter until the Registration Failure is cured. The Registration Liquidated Damages shall be paid monthly within 10 Business Days of the date of such Registration Failure and the end of each subsequent 30-day period (or portion thereof with respect to a final period, if any) thereafter until the Registration Failure is cured. Such payments shall be made in cash to the Purchaser if it is then holding Registrable Securities. Interest shall accrue at the rate of 1% per month on any such liquidated damages payments that shall not be paid by the applicable payment date until such amount is paid in full.

(i) If (A) a Registration Statement covering the Registrable Securities is not declared effective by the Commission by the Effectiveness Deadline or (B) after a Registration Statement has been declared effective by the Commission or otherwise becomes effective, sales cannot be made pursuant to such Registration Statement for any reason (including, without limitation, by reason of a stop order or the Company’s failure to update such Registration Statement) (each of (A) and (B), a “Maintenance Failure”), then the Company will make payment to the Purchaser as liquidated damages and not as a penalty (the “Effectiveness Liquidated Damages” and together with the Registration Liquidated Damages, the “Liquidated Damages”), in an amount equal to 1.0% of the aggregate amount invested by the Purchaser for the Registrable Securities then held by the Purchaser for the initial day of a Maintenance Failure and for each 30-day period (pro rata for any portion thereof) thereafter until the Maintenance Failure is cured. The Effectiveness Liquidated Damages shall be paid monthly within 10 Business Days of the end of the date of such Maintenance Failure and each subsequent thirty 30-day period (pro rata for any portion thereof). Such payment shall be made to the Purchaser in cash. Interest shall accrue at the rate of 1.0% per month on any such liquidated damages payments that shall not be paid by the applicable payment date until such amount is paid in full.

(ii) Notwithstanding the foregoing, (A) no Liquidated Damages shall be payable with respect to any period after the expiration of the Effectiveness Period (it being understood that this sentence shall not relieve the Company of any Liquidated Damages accruing prior to the expiration of the Effectiveness Period), (B) in no event shall the aggregate amount of Liquidated Damages payable to the Purchaser exceed, in the aggregate, 5.0% of the aggregate purchase price paid by the Purchaser pursuant to the Purchase Agreement, (C) no Liquidated Damages shall accrue or be payable with respect to any reduction in the number of Registrable Securities to be included in a Registration Statement due to the application of Rule 415 as set forth in Section 2(a) and (D) no Liquidated Damages shall accrue or be payable with respect to any Allowed Suspension or a suspension as described in the last sentence of Section 3(h).

3. Registration Procedures. In connection with the Company’s registration obligations hereunder, the Company shall:

(a) Not less than five Trading Days prior to the filing of each Registration Statement and not less than two Trading Days prior to the filing of any related Prospectus or any amendment or supplement thereto (except for Annual Reports on Form 10-K, and Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and any similar or successor reports), (i) furnish to each Holder copies of such Registration Statement, Prospectus or amendment or supplement thereto, as proposed to be filed, which documents will be subject to the review of such Holder (it being acknowledged and agreed that if a Holder does not object to or comment on the aforementioned documents within such five Trading Day or two Trading Day period, as the case may be, then the Holder shall be deemed to have consented to and approved the use of such documents) and (ii) to the extent that a Holder is identified in the Registration Statement as an “underwriter” (as defined in the Securities Act), use commercially reasonable efforts to cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file any Registration Statement or amendment or supplement thereto in a form to which a Holder reasonably objects in good faith, provided that, such Holder notifies the Company of such objection in writing within the five Trading Day or two Trading Day periods described above, as applicable.

(b) (i) Prepare and file with the Commission such amendments (including post-effective amendments) and supplements, to each Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement continuously effective as to the applicable Registrable Securities for its Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities; (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424; (iii) respond as promptly as reasonably practicable to any comments received from the Commission with respect to each Registration Statement or any amendment thereto and, as promptly as reasonably possible, provide the Holders true and complete copies of all correspondence from and to the Commission relating to such Registration Statement that pertains to the Holders as “Selling Stockholders” but not any comments that would result in the disclosure to the Holders of material and non-public information concerning the Company (unless such Holder consents to receive such material and non-public information); and (iv) comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement until such time as all of such Registrable Securities shall have been disposed of (subject to the terms of this Agreement) in accordance with the intended methods of disposition by the Holders thereof as set forth in such Registration Statement as so amended or in such Prospectus as so supplemented; provided, however, that the Purchaser shall be responsible for the delivery of the Prospectus to the Persons to whom the Purchaser sells any of the Registrable Securities (including in accordance with Rule 172 under the Securities Act) to the extent required under the Securities Act, and the Purchaser agrees to dispose of Registrable Securities in compliance with the “Plan of Distribution” described in the Registration Statement and otherwise in compliance with applicable federal and state securities laws. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q or Form 8-K or any analogous report under the Exchange Act, the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the Commission on the same day on which the Exchange Act report which created the requirement for the Company to amend or supplement such Registration Statement was filed.

(c) Notify the Holders of Registrable Securities to be sold (which notice shall, if given pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made, provided that the Company shall omit any material, non-public information relating to the Company and/or any of its subsidiaries) as promptly as reasonably practicable (and, in the case of (i) (A) below, not less than one Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one Trading Day following the day: (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed; (B) when the Commission notifies the Company whether there will be a “review” of such Registration Statement and whenever the Commission comments in writing on any Registration Statement (in which case the Company shall provide to each of the Holders true and complete copies of all comments that pertain to the Holders as a “Selling Stockholder” or to the “Plan of Distribution” and all written responses thereto, but not information that the Company believes would constitute material and non-public information); and (C) with respect to each Registration Statement or any post-effective amendment, when the same has become effective; (ii) of any request by the Commission or any other Federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information that pertains to the Holders as “Selling Stockholders” or the “Plan of Distribution”; (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; (v) of the occurrence of any event or passage of time that makes the financial statements included or incorporated by reference in a Registration Statement ineligible for inclusion or incorporation by reference therein or any statement made in such Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to such Registration Statement, Prospectus or other documents so that, in the case of such Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, form of prospectus or supplement thereto, in light of the circumstances under which they were made), not misleading and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that, upon the advice of legal counsel, the Company’s board of directors reasonably believes may be material and that would require additional disclosure by the Company in the Registration Statement of such material information that the Company has a bona fide business purpose for keeping confidential and the non-disclosure of which in the Registration Statement would be expected, in the reasonable determination of the Company’s board of directors, upon the advice of legal counsel, to cause the Registration Statement to fail to comply with applicable disclosure requirements, provided that, any and all such information shall remain confidential to each Holder until such information otherwise becomes public, unless disclosure by a Holder is required by law; and provided, further, that notwithstanding each Holder’s agreement to keep such information confidential, each such Holder makes no acknowledgement that any such information is material, non-public information.

(d) Use commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, as soon as practicable.

(e) If requested by a Holder, furnish to such Holder, without charge, at least one conformed copy of each Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; provided, that the Company shall have no obligation to provide any document pursuant to this clause that is publicly available on the Commission’s EDGAR system.

(f) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the registration or qualification) of the resale of such Registrable Securities (or, in the case of qualification, of such Registrable Securities for the resale) by the Holder under the securities or blue sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement; provided, that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(g) Cooperate with such Holder to facilitate the timely preparation and delivery of certificates or book entry statements, as applicable, representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statement, which certificates or statements shall be free, to the extent permitted by the Purchase Agreement and under law, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

(h) Following the occurrence of any event contemplated by Section 3(c), as promptly as reasonably practicable (taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event), prepare a supplement or amendment, including a post-effective amendment, to the affected Registration Statements or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, no Registration Statement nor any Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, form of prospectus or supplement thereto, in light of the circumstances under which they were made), not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(c) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus until such time. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(h) to suspend the availability of a Registration Statement and Prospectus in accordance with the time periods set forth in Section 10(d), which may be extended only in accordance with this Section 3(h). For the avoidance of doubt, the Company's rights under this Section 3(h) shall include suspensions of availability arising from the filing of a post-effective amendment to a Registration Statement to update the Prospectus therein to include the information contained in the Company's Annual Report on Form 10-K, which suspensions may extend for the amount of time reasonably required to respond to any comments of the staff of the Commission on such amendment and which, for the avoidance of doubt, shall be in accordance with the time periods set forth in Section 10(d), which may be extended only in accordance with Section 10(f).

(i) Require each selling Holder to furnish to the Company a certified statement as to (i) the number of shares of Common Stock beneficially owned by such Holder and any Affiliate thereof, (ii) any Financial Industry Regulatory Authority, Inc. ("FINRA") affiliations, (iii) any natural persons who have the power to vote or dispose of the Common Stock and (iv) any other information as may be requested by the Commission, FINRA or any state securities commission.

(j) Cooperate with any registered broker through which a Holder proposes to resell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as requested by any such Holder and the Company shall pay the filing fee required for the first such filing within two Business Days of the request therefor.

(k) If at any time the Commission takes the position that the offering of some or all of the Registrable Securities in a Registration Statement is not eligible to be made on a delayed or continuous basis under the provisions of Rule 415 under the Securities Act or requires any Holder to be named as an "underwriter," the Company shall use commercially reasonable efforts to persuade the Commission that the offering contemplated by such Registration Statement is a valid secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 and that none of the Holders is an "underwriter."

4. Registration Expenses. All fees and expenses incident to the Company's performance of or compliance with its obligations under this Agreement (excluding any underwriting discounts and selling commissions and all legal fees and expenses of legal counsel for any Holder) shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants (A) with respect to filings required to be made with any Trading Market on which the Common Stock are then listed for trading, (B) with respect to compliance with applicable state securities or blue sky laws (including, without limitation, fees and disbursements of counsel for the Company in connection with blue sky qualifications or exemptions of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as requested by the Holders) and (C) if not previously paid by the Company in connection with Section 3(j) above, with respect to any filing that may be required to be made by any broker through which a Holder intends to make sales of Registrable Securities with FINRA pursuant to the FINRA Rule 5110, so long as the broker is receiving no more than a customary brokerage commission in connection with such sale), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is reasonably requested by the Holders of a majority of the Registrable Securities included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) fees, expenses and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the registrations and consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any underwriting, broker or similar fees or commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify, defend and hold harmless each Holder and each of the members, officers, directors, agents, partners, members, managers, stockholders, Affiliates, investment advisers and employees of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the members, officers, directors, partners, members, managers, stockholders, agents, investment advisers and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and investigation and reasonable attorneys' fees), expenses and disbursements (collectively, "Losses"), as incurred, that arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in (or incorporated by reference in) any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, or (ii) any violation or alleged violation by the Company or its agents of the Securities Act, the Exchange Act or any state securities law or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement or any action or inaction required of the Company in connection with any registration, except to the extent, but only to the extent, that (A) such untrue statements, alleged untrue statements, omissions or alleged omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein (and such information was not altered by the Company), or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and approved in writing by such Holder expressly for use in the Registration Statement (and such information was not altered by the Company), such Prospectus or such form of Prospectus or in any amendment or supplement thereto (it being understood that each Holder has approved Annex A hereto for this purpose), (B) in the case of an occurrence of an event of the type specified in Section 3(c)(iii)-(vi), related to the use by a Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated and defined in Section 10(d) below, to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected or (C) to the extent that any such Losses arise out of the Purchaser's (or any other indemnified Person's) failure to send or give a copy of the Prospectus or supplement (as then amended or supplemented), if required, pursuant to Rule 172 under the Securities Act (or any successor rule) to the Persons asserting an untrue statement or alleged untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such Person if such statement or omission was corrected in such Prospectus or supplement. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined in Section 5(c)) and shall survive the transfer of the Registrable Securities by the Holders.



(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising out of or are based solely upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, or any form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent that such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein (and such information was not altered by the Company) or (ii) to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and approved in writing by such Holder expressly for use in a Registration Statement (and such information was not altered by the Company) (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 3(c)(iii)-(vi), to the extent related to the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of the Advice contemplated in Section 10(d). In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees, expenses and disbursements incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees, expenses and disbursements of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees, expenses and amounts; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest exists if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided, that the Indemnifying Party shall not be liable for the fees, expenses and disbursements of more than one separate firm of attorneys at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all fees, expenses and disbursements of the Indemnified Party (including reasonable fees, expenses and disbursements to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section 5) shall be paid to the Indemnified Party, as incurred, within 20 Trading Days of written notice thereof to the Indemnifying Party; provided, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees, expenses and disbursements applicable to such actions for which such Indemnified Party is finally judicially determined to not be entitled to indemnification hereunder. The failure to deliver written notice to the Indemnifying Party within a reasonable time of the commencement of any such action shall not relieve such Indemnifying Party of any liability to the Indemnified Party under this Section 5, except to the extent that the Indemnifying Party is materially and adversely prejudiced in its ability to defend such action.

(d) Contribution. If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other reasonable fees, expenses or disbursements incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees, expenses or disbursements if the indemnification provided for in this Section 5 was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), (A) no Holder shall be required to contribute, in the aggregate with any other amounts payable by it under this Section 5, any amount in excess of the net proceeds actually received by such Holder from the sale of the Registrable Securities giving rise to such contribution obligation and (B) no contribution will be made under circumstances where the maker of such contribution would not have been required to indemnify the Indemnified Party under the fault standards set forth in this Section 5. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

The indemnity and contribution agreements contained in this Section 5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties and are not in diminution or limitation of the indemnification provisions under the Purchase Agreement.

6. Board of Directors Appointment and Related Agreements.

(a) Subject to the execution of this Agreement by the Parties, the Board of Directors and any applicable committee of the Board of Directors have taken all actions necessary to appoint Alberto Pérez-Jácome Friscione (the “Purchaser Designee”) as a member of the Board of Directors, with such appointment to be effective immediately following the Closing. During such individual’s service on the Board of Directors, the Board of Directors will take all action necessary to provide the Purchaser Designee with the opportunity to serve as the chair of the Nominating and Corporate Governance Committee of the Board of Directors.

(b) Subject to (A) the terms of this Agreement and (B) the Purchaser at all times since the date of this Agreement having beneficially owned at least 50% of the Registrable Securities (such ownership, the “Minimum Ownership Threshold”), if the Purchaser Designee is no longer serving on the Board of Directors, then the Purchaser may designate a replacement director to serve in place of the Purchaser Designee (a “Replacement Designee”). Upon becoming a member of the Board, the Replacement Designee will be deemed to be the Purchaser Designee for all purposes of this Agreement. Any Replacement Designee must (1) be reasonably acceptable to the Board of Directors in the good faith exercise of their fiduciary duties and discretion (such acceptance not to be unreasonably withheld); (2) be qualified to serve as a member of the Board of Directors under all applicable policies of the Company and all applicable legal and regulatory requirements; (3) meet the independence requirements with respect to the Company of the listing rules of the Trading Market and all applicable rules of the Commission; and (4) have complied with the Company’s procedures for new director candidates (including the full completion of a directors and officers questionnaire, successfully (in the reasonable determination of the Board of Directors) undergoing a customary background check, and participating in interviews with members of the Board of Directors). The Board of Directors will notify the Purchaser of its good faith determination regarding whether a proposed Replacement Designee meets the foregoing criteria within 10 days after such proposed Replacement Designee has fully completed the procedures specified in clause (4) of the preceding sentence. If the Board of Directors does not accept a proposed Replacement Designee, then the Purchaser may recommend one or more additional proposed Replacement Designees, whose appointment to the Board of Directors will be subject to the procedures contemplated by this Section 6(b).

(c) As a condition to the Purchaser Designee's appointment to the Board of Directors, the Purchaser Designee shall, and the Purchaser shall cause the Purchaser Designee to, submit to the Board of Directors an irrevocable resignation letter in the form attached as Annex C. The Purchaser shall promptly (and in any event within five Business Days) inform the Company in writing if the Purchaser fails to satisfy the Minimum Ownership Threshold at any time.

(d) Notwithstanding anything to the contrary in this Agreement, the Company acknowledges and agrees that nothing in this Agreement will prohibit the Purchaser Designee, during the Purchaser Designee's service as a member of the Board of Directors, from acting in the Purchaser Designee's capacity as a director of the Company or from complying with the Purchaser Designee's fiduciary duties as a director of Company.

(e) So long as the Purchaser satisfies the Minimum Ownership Threshold, the Board of Directors will not be comprised of more than six members without the prior consent of the Purchaser.

7. Standstill. During the period from the date of this Agreement until the Purchaser fails to satisfy the Minimum Ownership Threshold, the Purchaser will not, and will cause the other Restricted Persons not to, in any way, directly or indirectly (in each case, except as expressly permitted by this Agreement):

(a) with respect to the Company or the Voting Securities, (i) make, participate in or encourage any "solicitation" (as such term is used in the proxy rules of the Commission ), including any solicitations of the type contemplated by Rule 14a-2(b) promulgated under the Exchange Act of proxies or consents with respect to the election or removal of directors in any manner or any other matter or proposal; (ii) become a "participant" (as such term is used in the proxy rules of the Commission) in any such solicitation of proxies or consents; (iii) seek to advise, encourage or influence any Person, or assist any Person in so encouraging, advising or influencing any Person, with respect to the giving or withholding of any proxy, consent or other authority to vote or act (other than such encouragement, advice or influence that is consistent with the Board of Director's recommendation in connection with such matter, if applicable); or (iv) initiate, encourage or participate, directly or indirectly, in any "vote no," "withhold" or similar campaign;

(b) initiate, propose or otherwise "solicit" (as such term is used in the proxy rules of the Commission, including any solicitations of the type contemplated by Rule 14a-2(b) promulgated under the Exchange Act) the Company's stockholders for the approval of any shareholder proposal, whether made pursuant to Rule 14a-4 or Rule 14a-8 promulgated under the Exchange Act, or otherwise, or cause or encourage any Person to initiate or submit any such shareholder proposal;

(c) with respect to the Company or the Voting Securities, (i) communicate with the Company's stockholders or others pursuant to Rule 14a-1(l)(2)(iv) promulgated under the Exchange Act; (ii) participate in, or take any action pursuant to, or encourage any Person to take any action pursuant to, any type of "proxy access"; or (iii) conduct any nonbinding referendum or hold a "stockholder forum";

(d) (i) seek, alone or in concert with others, election or appointment to, or representation on, the Board of Directors; (ii) nominate or propose the nomination of, or recommend the nomination of, or encourage any Person to nominate or propose the nomination of or recommend the nomination of, any candidate to the Board of Directors; or (iii) seek, alone or in concert with others, or encourage any Person to seek, the removal of any member of the Board of Directors;

(e) (i) call or seek to call a special meeting of the Company's stockholders, or encourage any Person to call a special meeting of the Company's stockholders; (ii) act or seek to act by written consent of stockholders; or (iii) make a request for any stockholder list or other records of the Company;

(f) other than solely with other Restricted Persons with respect to Voting Securities now or subsequently owned by them, (i) form, join (whether or not in writing), encourage, influence, advise or participate in a partnership, limited partnership, syndicate or other group, including a "group" as defined pursuant to Section 13(d) of the Exchange Act, with respect to any Voting Securities; (ii) deposit any Voting Securities into a voting trust, arrangement or agreement; or (iii) subject any Voting Securities to any voting trust, arrangement or agreement (other than granting proxies in solicitations approved by the Board of Directors);

(g) (i) make any offer or proposal (with or without conditions) with respect to any tender offer, exchange offer, merger, amalgamation, consolidation, acquisition, business combination, recapitalization, consolidation, restructuring, liquidation, dissolution or similar extraordinary transaction involving the Company, any of its subsidiaries or any of their respective securities or assets (each, an "Extraordinary Transaction") and any Restricted Person; (ii) knowingly solicit any Person not a party to this Agreement (a "Third Party") to, on an unsolicited basis, make an offer or proposal (with or without conditions) with respect to any Extraordinary Transaction, or encourage, initiate or support any Third Party in making such an offer or proposal; (iii) participate in any way in, either alone or in concert with others, any Extraordinary Transaction; or (iv) prior to the Company announcing an Extraordinary Transaction, publicly or privately comment to any Third Party on any proposal regarding any Extraordinary Transaction (it being understood that, subject to compliance with this clause (g), this clause (g) will not restrict any Restricted Person from tendering shares, receiving payment for shares or otherwise participating in any such Extraordinary Transaction in their sole discretion);

(h) institute, solicit, assist or join, as a party, any litigation, arbitration or other proceeding against or involving the Company, its Affiliates or any of their respective current or former directors or officers (including derivative actions), except that this clause (h) will not prevent any Restricted Person from (i) bringing litigation to enforce the provisions of this Agreement instituted in accordance with this Agreement; (ii) making counterclaims with respect to any proceeding initiated by, or on behalf of, the Company or its Affiliates against a Restricted Person; (iii) bringing bona fide commercial disputes that do not in any manner relate to the subject matter of this Agreement; (iv) exercising statutory appraisal rights; or (v) responding to or complying with a validly issued legal process;

(i) take any action in support of, or make any proposal or request that constitutes: (i) controlling, changing or influencing the Board of Directors or management of the Company, including any plans or proposals to change the number or term of directors or to fill any vacancies on the Board of Directors; (ii) controlling, changing or influencing the capitalization, stock repurchase programs and practices, capital allocation programs and practices, or dividend policy of the Company; (iii) controlling, changing or influencing the Company's management, business or corporate structure; (iv) seeking to have the Company waive or make amendments or modifications to its certificate of incorporation or bylaws; (v) causing a class of securities of the Company to be delisted from, or to cease to be authorized to be quoted on, any securities exchange; or (vi) causing a class of securities of the Company to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;

(j) sell, offer or agree to sell to any Third Party, through swap or hedging transactions, derivative agreements or otherwise, any voting rights decoupled from the underlying Voting Securities;

(k) engage in any short sale or any purchase, sale or grant of any option, warrant, convertible security, stock appreciation right or other similar right (including any put or call option or swap transaction) with respect to any security (other than a broad-based market basket or index) that includes, relates to or derives any significant part of its value from a decline in the market price or value of the securities of the Company;

(l) enter into any stock borrowing, stock pledging or stock lending arrangement or agreement with respect to securities of the Company;

(m) other than through non-public communications with the Company that would not reasonably be expected to trigger public disclosure obligations for any party, make or disclose any statement regarding any intent, purpose, plan or proposal with respect to the Board of Directors, the Company or its management, policies, affairs or assets, or the Voting Securities or this Agreement, that is inconsistent with the provisions of this Agreement, including any intent, purpose, plan or proposal that is conditioned on, or that would require, the waiver, amendment, nullification or invalidation of any provision of this Agreement, or take any action that could require the Company to make any public disclosure relating to any such intent, purpose, plan, proposal or condition;

(n) enter into any economic relationship with any Person in respect of the Company, or compensate or enter into any agreement, arrangement or understanding, whether written or oral, to compensate any person for his or her service as a director of the Company (other than pursuant to ordinary course compensation arrangements related to the Purchaser Designee's service as an employee of the Purchaser) with any cash, securities (including any rights or options convertible into or exercisable for or exchangeable into securities or any profit sharing agreement or arrangement) or other form of compensation directly or indirectly related to the Company or its securities (it being understood that, notwithstanding anything to the contrary in this Agreement and notwithstanding any termination of this Agreement, the restrictions on the Purchaser and the other Restricted Persons contemplated by this clause (n) will be operative so long as the Purchaser Designee is serving on the Board of Directors);

(o) other than with other Restricted Persons, enter into any negotiations, agreements (whether written or oral), arrangements or understandings with, or advise, finance, assist or encourage, any Third Party to take any action that the Restricted Persons are prohibited from taking pursuant to this Agreement;

(p) acquire, offer, agree or propose to acquire, whether by purchase, tender or exchange offer, through the acquisition of control of another Person, by joining a partnership, limited partnership, syndicate or other group (including a "group" as defined pursuant to Section 13(d) of the Exchange Act), through swap or hedging transactions, or otherwise, or direct any Third Party in the acquisition of, any securities of the Company or any rights decoupled from the underlying securities of the Company that would result in the Purchaser and/or the other Restricted Persons in the aggregate owning, controlling or otherwise having any beneficial or other ownership interest of more than 25.0% of the then-outstanding Voting Securities (or, once the Purchaser fails to satisfy the Minimum Ownership Threshold, 9.9% of the then-outstanding Voting Securities) (including, for purpose of this calculation, all Voting Securities that the Purchaser and/or the other Restricted Persons has the right to acquire pursuant to the exercise of any rights in connection with any securities or any agreement, regardless of when such rights may be exercised and whether they are conditional and including economic ownership pursuant to a cash settled call option or other derivative security, contract or instrument primarily related to the price of Voting Securities), it being understood that the following will not be deemed to violate this clause (p): (i) any transaction that the Board of Directors has approved in advance; (ii) the receipt by the Purchaser Designee from the Company of any ordinary course compensation received as a director of the Company in the form of Voting Securities (or securities exercisable for Voting Securities); and (iii) the pro rata acquisition of securities of the Company or any rights decoupled from the underlying securities of the Company pursuant to any stock splits, stock dividends, reclassifications, recapitalizations, combinations or rights issuances (including the pro rata acquisition of securities upon the exercise of such rights) in respect of securities of the Company beneficially owned by the Purchaser and/or its Affiliates in compliance with this Agreement (it being understood that, notwithstanding anything to the contrary in this Agreement and notwithstanding any termination of this Agreement, the restrictions on the Purchaser and/or its Affiliates and the other Restricted Persons contemplated by this clause (p) will be operative until the later of (i) five years from the date of this Agreement and (ii) the Purchaser failing to satisfy the Minimum Ownership Threshold, and it being further understood that during this period the Company will not take any action that would reasonably be expected to prohibit or impair the Purchaser from acquiring additional Voting Securities to the extent permitted by this Agreement); or

(q) other than through open market broker sale transactions where the identity of the purchaser is not known and in underwritten widely dispersed public offerings, sell, offer or agree to sell, through swap or hedging transactions or otherwise, any securities of the Company to any Third Party that, to the knowledge of the Purchaser and/or its Affiliates (after due inquiry in connection with a private, non-open market transaction, it being understood that such knowledge will be deemed to exist with respect to any publicly available information, including information in documents filed with the Commission), would result in such Third Party, together with its Affiliates, owning, controlling or otherwise having any beneficial or other ownership interest of more than 4.9% of the then-outstanding Voting Securities or that would increase the beneficial or other ownership interest of any Third Party who, together with its Affiliates, has a beneficial or other ownership interest of more than 4.9% of the then-outstanding Voting Securities; *provided*, that, this clause (q) shall not prohibit the Purchaser from selling or otherwise transferring securities of the Company to its Affiliates or to other Restricted Persons so long as any such transferee signs a joinder in form and substance reasonably satisfactory to the Company pursuant to which such transferee agrees to be bound by this Agreement as if a signatory hereto.

8. Preemptive Rights.

(a) Notwithstanding anything contained in Section 7, from and after the Closing Date, for so long as the Purchaser meets the Minimum Ownership Threshold, if the Company makes any public or non-public offering of any New Securities, then the Purchaser shall be afforded the opportunity to acquire from the Company all or a portion of the Purchaser's Preemptive Rights Portion of such New Securities for the same price as that offered to the other purchasers of such New Securities; provided, that the Purchaser shall not be entitled to acquire any New Securities pursuant to this Section 8 to the extent that the issuance of such New Securities to the Purchaser would require approval of the stockholders of the Company pursuant to applicable law, rule or regulation.

(b) If the Company proposes to offer New Securities, it shall give the Purchaser written notice of its intention, describing the anticipated price (or range of anticipated prices), anticipated amount of New Securities and other material terms and timing upon which the Company proposes to offer the same (including, in the case of a registered public offering and to the extent possible, a copy of the prospectus included in the registration statement filed with respect to such offering) at least seven Business Days prior to such issuance (or, in the case of a registered public offering, at least seven Business Days prior to the commencement of such registered public offering) (provided that, to the extent the terms of such offering cannot reasonably be provided seven Business Days prior to such issuance, notice of such terms may be given as promptly as reasonably practicable but in any event prior to such issuance). The Company may provide such notice to the Purchaser on a confidential basis prior to public disclosure of such offering. Other than in the case of a registered public offering, the Purchaser may notify the Company in writing at any time on or prior to the second Business Day immediately preceding the date of such issuance (or, if notice of all such terms has not been given prior to the second Business Day immediately preceding the date of such issuance, at any time prior to such issuance) whether the Purchaser will exercise such preemptive rights and as to the amount of New Securities the Purchaser desires to purchase, up to the Purchaser's Preemptive Rights Portion. In the case of a registered public offering, the Purchaser shall notify the Company in writing at any time prior to the second Business Day immediately preceding the date of commencement of such registered public offering (or, if notice of all such terms has not been given prior to the second Business Day immediately preceding the date of commencement of such registered public offering, at any time prior to the date of commencement of such registered public offering) whether the Purchaser will exercise such preemptive rights and as to the amount of New Securities the Purchaser desires to purchase, up to the Purchaser's Preemptive Rights Portion. Such notice to the Company shall constitute a binding and irrevocable commitment by the Purchaser to purchase the amount of New Securities so specified at the price and other terms set forth in the Company's notice to the Purchaser. Subject to receipt of the requisite notice of such issuance by the Company, the failure of the Purchaser to respond prior to the time a response is required pursuant to this Section 8(b) shall be deemed to be a waiver of the Purchaser's purchase rights under this Section 8 only with respect to the offering described in the applicable notice.

(c) The Purchaser shall purchase the New Securities that it has elected to purchase under this Section 8 concurrently with the related issuance of such New Securities by the Company (subject to the receipt of any required approvals from any governmental entity to consummate such purchase by the Purchaser). If the proposed issuance by the Company of securities which gave rise to the exercise by the Purchaser of its preemptive rights pursuant to this Section 8 shall be terminated or abandoned by the Company without the issuance of any securities, then the purchase rights of the Purchaser pursuant to this Section 8 shall also terminate as to such proposed issuance by the Company (but not any subsequent or future issuance), and any funds in respect thereof paid to the Company by the Purchaser in respect thereof shall be promptly refunded in full.

(d) In the case of the offering of securities for consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the Board of Directors; provided, however, that such fair value as determined by the Board of Directors shall not exceed the aggregate market price of the securities being offered as of the date the Board of Directors authorizes the offering of such securities.

(e) In the event that the Purchaser is not entitled to acquire any New Securities pursuant to this Section 8 because such issuance would require the Company to obtain stockholder approval in respect of the issuance of such New Securities to the Purchaser, the Company shall, upon the Purchaser's reasonable request delivered to the Company in writing within seven Business Days following its receipt of the written notice of such issuance to the Purchaser pursuant to this Section 8, consider and discuss in good faith modifications proposed by the Purchaser to the terms and conditions of such portion of the New Securities that would otherwise be issued to the Purchaser such that the Company would not be required to obtain stockholder approval in respect of the issuance of such New Securities as so modified.

(f) If the Purchaser does not elect to purchase New Securities pursuant to this Section 8, the Company may sell such portion of the New Securities on terms and conditions that are not materially more favorable in the aggregate to the applicable purchaser(s) than those set forth in the written notice of such offer. If such sale is not consummated within 120 days of the date upon which the written notice of such offer was given, then no issuance of such New Securities may be made thereafter by the Company without again offering the same to the Purchaser in accordance with this Section 8. The election by the Purchaser to not exercise its subscription rights under this Section 8 in any one instance shall not affect its right as to any subsequent proposed issuance.

(g) For purposes of this Section 8, the following terms have the following meanings:

- (i) "Convertible Securities" means any security convertible into or exchangeable for capital stock of the Company.



(ii) “Equity Securities” means (A) all capital stock of the Company, (B) all Convertible Securities and (C) all Options to acquire from the Company shares of capital stock of the Company or Convertible Securities.

(iii) “Excluded Securities” means (A) any securities issued by the Company as full or partial consideration in connection with a merger, acquisition, consolidation or purchase of all or substantially all of the securities or assets of a corporation or other entity; (B) any shares of capital stock or options to purchase shares of capital stock, or other equity-based awards (including restricted stock units), issued or granted to employees (or prospective employees who have accepted an offer of employment), directors or consultants of the Company or any of its Subsidiaries; (C) any securities issued by the Company upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of capital stock and are outstanding as of the date of this Agreement; and (D) any securities issued by the Company pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by the Board of Directors.

(iv) “New Securities” means all Equity Securities other than: (A) Excluded Securities; (B) shares of any class of capital stock of the Company issued on a pro rata basis to all holders of such class as a stock dividend or upon any stock split or other subdivision of shares of capital stock; (C) shares of capital stock of the Company issued as consideration in connection with an acquisition (approved by the Board of Directors) by the Company of assets or capital stock of any Person; (D) shares of capital stock of the Company issued pursuant to a bona fide public offering, or Convertible Securities or shares of capital stock of the Company issuable upon exercise or conversion of Convertible Securities issued pursuant to a bona fide public offering; (E) shares of capital stock of the Company, Convertible Securities or Options issued to existing or former employees, directors or consultants of the Company or any of its Subsidiaries, including any shares of capital stock of the Company issuable upon exercise of any such Option; (F) rights issued pursuant to a shareholder rights plan, and (G) the issuance of warrants with indebtedness.

(v) “Options” means any options, warrants or other rights to subscribe for, purchase or otherwise acquire any capital stock of the Company or Convertible Securities.

(vi) “Preemptive Rights Portion” means the amount of New Securities that the Purchaser shall be entitled to purchase in the aggregate determined by multiplying (1) the total number of such offered New Securities by (2) the quotient of (a) the aggregate number of shares of Common Stock or shares or rights convertible or exercisable into Common Stock (whether or not presently convertible or exercisable) (on an as-converted and as-exercised basis) held by the Purchaser as of such date, divided by (b) the aggregate number of shares of Common Stock (on an as-converted and as-exercised basis) outstanding as of such date.

#### 9. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to seek specific performance of its rights under this Agreement, without the requirement of posting a bond. The Company and each Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(b) Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Securities pursuant to the Registration Statement and shall sell the Registrable Securities only in accordance with a method of distribution described in the Registration Statement, or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

(c) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(c)(iii)-(vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the “Advice”) by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. Notwithstanding anything herein to the contrary, no Holder shall be required to discontinue disposition of Registrable Securities under a Registration Statement by virtue of the delivery by the Company of a notice of the occurrence of any event of the kind described in Section 3(c)(v) or Section 3(c)(vi) on more than two occasions or for more than 90 total calendar days, in each case during any twelve-month period, or for more than 45 calendar days during any 90-day period (an “Allowed Suspension”).

(d) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date hereof, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(e) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, or waived unless the same shall be in writing and signed by the Company and Holders holding no less than a majority of the then outstanding Registrable Securities, provided that (i) any party may give a waiver as to itself and (ii) any proposed amendment that would, by its terms, have a disproportionate and materially adverse effect on any Holder shall require the consent of such Holder(s). Notwithstanding the foregoing, (1) a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders and that does not directly or indirectly affect the rights of other Holders may be given by Holders of all of the Registrable Securities to which such waiver or consent relates and (2) none of the definitions of Filing Deadline, Effectiveness Deadline or Effectiveness Period, Section 2(f), Section 3(c), Section 5, Section 10(d), or the provisions of this sentence, may be amended, modified, or supplemented except with the consent of each Holder.

(f) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(g) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. The Company may not assign its rights (except by merger or in connection with another entity acquiring all or substantially all of the Company’s assets) or obligations hereunder without the prior written consent of all the Holders of the then outstanding Registrable Securities. Each Holder may assign its respective rights hereunder in the manner and to the Persons as permitted under the Purchase Agreement; provided in each case that (i) the Holder agrees in writing with the transferee or assignee to assign such rights and related obligations under this Agreement, and for the transferee or assignee to assume such obligations, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred or assigned, (iii) at or before the time the Company received the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein and (iv) the transferee is an “accredited investor,” as that term is defined in Rule 501 of Regulation D.

(h) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, or by e-mail delivery of a “.pdf” format data file, or by any electronic signature complying with the U.S. ESIGN Act of 2000, such signature shall create a legally valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(i) Governing Law; Venue. All questions concerning the construction, validity, enforcement and interpretation of this Agreement and the venue for any Proceeding in respect of this Agreement, shall be determined in accordance with the provisions of the Purchase Agreement.

(j) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(k) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their good faith reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(l) Headings. The headings in this Agreement are for convenience only and shall not limit or otherwise affect the meaning hereof.

(m) Current Public Information. With a view to making available to the Holders the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the Commission that may at any time permit the Holders to sell shares of Common Stock to the public without registration, for so long as the Shares remain outstanding, the Company covenants and agrees to use commercially reasonable efforts to: (i) make and keep adequate current public information available, as those terms are understood and defined in Rule 144, until such date on which the Holders no longer hold any Registrable Securities; and (ii) file with the Commission in a timely manner all reports and other documents required of the Company under the Exchange Act.

*[Remainder Of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties have executed this Investor Rights Agreement as of the date first written above.

**COMPANY:**

**Rocky Mountain Chocolate Factory, Inc.**

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

**PURCHASER:**

**ARM-D Rocky Mountain Chocolate  
Holdings LLC**

By: /s/ Gloria Eugenia Pérez-Jácome  
Name: Gloria Eugenia Pérez-Jácome  
Title: Manager

*(Signature Page to Investor Rights Agreement)*

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## Annex A

### PLAN OF DISTRIBUTION

We are registering the shares of common stock issued to the Selling Stockholder to permit the sale, transfer or other disposition of these shares by the Selling Stockholder or its donees, pledgees, transferees or other successors-in-interest from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the Selling Stockholder of the shares of common stock. We will, or will procure to, bear all fees and expenses incident to our obligation to register the shares of common stock.

The Selling Stockholder may sell all or a portion of the shares of common stock beneficially owned by it and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the Selling Stockholder will be responsible for underwriting discounts (it being understood that the Selling Stockholder shall not be deemed to be an underwriter solely as a result of its participation in this offering) or commissions or agent's commissions. The shares of common stock may be sold on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale, in the over-the-counter market or in transactions otherwise than on these exchanges or systems or in the over-the-counter market and in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions. The Selling Stockholder may use any one or more of the following methods when selling shares of common stock:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- to or through underwriters or purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- broker-dealers may agree with the Selling Stockholder to sell a specified number of such shares at a stipulated price per share;
- through the writing or settlement of options or other hedging transactions, whether such options are listed on an options exchange or otherwise;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The Selling Stockholder also may resell all or a portion of the shares of common stock in open market transactions in reliance upon Rule 144, as permitted by that rule, or Section 4(a)(1) under the Securities Act, if available, rather than under this prospectus, provided that it meets the criteria and conforms to the requirements of those provisions.

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Broker-dealers engaged by the Selling Stockholder may arrange for other broker-dealers to participate in sales. If the Selling Stockholder effects such transactions by selling shares of common stock shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the Selling Stockholder or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal. Such commissions will be in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction will not be in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2121.01.

In connection with sales of the shares of common stock or otherwise, the Selling Stockholder may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The Selling Stockholder may also sell shares of common stock short and if such short sale takes place after the date that this registration statement is declared effective by the SEC, the Selling Stockholder may deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares of common stock in connection with such short sales. The Selling Stockholder may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares, to the extent permitted by applicable law. The Selling Stockholder may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction). Notwithstanding the foregoing, the Selling Stockholder has been advised that it may not use shares of common stock the resale of which has been registered on this registration statement to cover short sales of our common stock made prior to the date the registration statement, of which this prospectus forms a part, has been declared effective by the SEC.

The Selling Stockholder may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by it and, if it defaults in the performance of its secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act, amending, if necessary, the list of Selling Stockholders to include the pledgee, transferee or other successors in interest as Selling Stockholders under this prospectus. The Selling Stockholder also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The Selling Stockholder and any broker-dealer or agents participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of Section 2(11) of the Securities Act in connection with such sales. In such event, any commissions paid, or any discounts or concessions allowed to, any such broker-dealer or agent and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. If the Selling Stockholder is an “underwriter” within the meaning of Section 2(11) of the Securities Act, it will be subject to the applicable prospectus delivery requirements of the Securities Act including Rule 172 thereunder and may be subject to certain statutory liabilities of, including but not limited to, Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Exchange Act.

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The Selling Stockholder has informed us that it is not a registered broker-dealer and does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the shares of common stock. Upon us being notified in writing by the Selling Stockholder that any material arrangement has been entered into with a broker-dealer for the sale of common stock through a block trade, special offering, exchange distribution or secondary distribution or a purchase by a broker or dealer, a supplement to this prospectus will be filed, if required, pursuant to Rule 424(b) under the Securities Act, disclosing (i) the name of the Selling Stockholder and of the participating broker-dealer(s), (ii) the number of shares of common stock involved, (iii) the price at which such the shares of common stock were sold, (iv) the commissions paid or discounts or concessions allowed to such broker-dealer(s), where applicable, (v) that such broker-dealer(s) did not conduct any investigation to verify the information set out in this prospectus, and (vi) other facts material to the transaction. In no event shall any broker-dealer receive fees, commissions and markups, which, in the aggregate, would exceed 8.0%.

Under the securities laws of some U.S. states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some U.S. states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that the Selling Stockholder will sell any or all of the shares of common stock registered pursuant to the shelf registration statement, of which this prospectus forms a part.

The Selling Stockholder and any other person participating in such distribution will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the Selling Stockholder and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock set forth in the registration rights agreements, including, without limitation, SEC filing fees and expenses of compliance with state securities or "blue sky" laws; provided, however, that the Selling Stockholder will pay all underwriting discounts and selling commissions, if any and any related legal expenses incurred by it. We will indemnify the Selling Stockholder against certain liabilities, including some liabilities under the Securities Act, in accordance with the registration rights agreement, or the Selling Stockholder will be entitled to contribution. We may be indemnified by the Selling Stockholder against certain civil liabilities set forth in the registration rights agreement, including liabilities under the Securities Act, that may arise from any written information furnished to us by the Selling Stockholder, specifically for use in this prospectus, in accordance with the related registration rights agreements, or we may be entitled to contribution.

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## Annex B

### Rocky Mountain Chocolate Factory, Inc.

#### Selling Stockholder Notice and Questionnaire

The undersigned beneficial owner of shares of common stock (the “Registrable Securities”) of Rocky Mountain Chocolate Factory, Inc. (the “Company”), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the “Commission”) a registration statement (the “Registration Statement”) for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), of the Registrable Securities issued to the undersigned in connection with its execution of the Securities Purchase Agreement, dated December 18, 2025 (the “Purchase Agreement”). All capitalized terms not otherwise defined herein shall have the meanings given to them in the Purchase Agreement.

This Questionnaire will assist the Company in gathering information needed to include you as a selling stockholder in the Registration Statement; information you provide may be included in the Registration Statement and related prospectus.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

#### NOTICE

The undersigned beneficial owner (the “Selling Stockholder”) of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

#### QUESTIONNAIRE

##### 1. Name.

- (a) Full Legal Name of Selling Stockholder
- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:
- (c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

##### 2. Address for Notices to Selling Stockholder:

Telephone:

Fax:

Contact Person:

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**3. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If “yes” to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If “no” to Section 3(b), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If “no” to Section 3(d), the Commission’s staff has indicated that you should be identified as an underwriter in the Registration Statement.

**4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.**

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.*

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

**5. Relationships with the Company:**

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors, or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur after the date of this questionnaire at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

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By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date:

**ARM-D Rocky Mountain Chocolate Holdings LLC**

By: /s/ Gloria Eugenia Pérez-Jácome

Name: Gloria Eugenia Pérez-Jácome

Title: Manager

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**Annex C**

**Form of Resignation Letter**

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Rocky Mountain Chocolate Factory, Inc.  
265 Turner Drive  
Durango, Colorado 81303  
Attn: Board of Directors

**Re: Director Resignation**

To the Board of Directors:

Reference is made to the Investor Rights Agreement, dated December 18, 2025 (the “Agreement”), between the Company and the Purchaser. Capitalized terms used in this letter but not defined have the meaning set forth in the Agreement.

I hereby irrevocably offer to resign from my position as a member of the Board of Directors, and from any committees of the Board of Directors on which I serve, upon the Purchaser no longer meeting the Minimum Ownership Threshold.

Sincerely,

**Rocky Mountain Chocolate Factory, Inc.**  
**265 Turner Drive**  
**Durango, Colorado 81303**

December 17, 2025

Global Value Investment Corp.  
1433 N. Water Street, Suite 400  
Milwaukee, Wisconsin 53202  
Attn: James P. Geygan

Ladies and Gentlemen:

Reference is made to the letter agreement, dated November 26, 2024 (the “**Agreement**”), between (a) Rocky Mountain Chocolate Factory, Inc. (“**Company**”) and (b) Global Value Investment Corp. and certain other related Persons (collectively, the “**Global Value Signatories**”). Capitalized terms used in this letter and not otherwise defined have the meaning given to them in the Agreement.

This letter confirms that Section 8(p) of the Agreement is amended to replace the reference to “29.9 percent” with “25.0 percent.”

The amendment to the Agreement contemplated by this letter will be automatically effective immediately following the closing of the acquisition in a single transaction of no less than 1,500,000 shares of Company’s common stock by ARM-D Rocky Mountain Chocolate Holdings LLC.

Except as expressly amended by this letter, all terms, conditions and provisions of the Agreement remain in full force and effect without modification.

This letter may be executed in counterparts, including electronically.

\* \* \*

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Very truly yours,

**ROCKY MOUNTAIN CHOCOLATE  
FACTORY, INC.**

By: /s/ Jeff Geygan  
Name: Jeff Geygan  
Title: Interim CEO

ACCEPTED AND AGREED  
as of the date written above:

**GLOBAL VALUE SIGNATORIES**

**GLOBAL VALUE INVESTMENT CORP.**

By: /s/ James P. Geygan  
Name: James P. Geygan  
Title: Chief Executive Officer

**GVP 2021-A, L.P.**  
By: GVP 2021-A, L.L.C.  
By: GLOBAL VALUE INVESTMENT CORP.

By: /s/ James P. Geygan  
Name: James P. Geygan  
Title: Chief Executive Officer

**GVP 2021-A, L.L.C.**  
By: GLOBAL VALUE INVESTMENT CORP.

By: /s/ James P. Geygan  
Name: James P. Geygan  
Title: Chief Executive Officer

**JEFFREY R. GEYGAN**

/s/ Jeffrey R. Geygan

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**JAMES P. GEYGAN**

/s/ James P. Geygan

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**STACY A. WILKE**

/s/ Stacy A. Wilke

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**KATHLEEN M. GEYGAN**

/s/ Kathleen M. Geygan

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**SHAWN G. RICE**

/s/ Shawn G. Rice

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