

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-K**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended February 29, 2024

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 001-36865



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

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

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

265 Turner Drive
Durango, CO 81303
(Address of principal executive offices, including ZIP code)
(970) 259-0554
(Registrant's telephone number, including area code)
Securities Registered Pursuant To Section 12(b) Of The Act:

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

Securities Registered Pursuant To Section 12(g) Of The Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the registrant's common stock (based on the closing price as quoted on the Nasdaq Global Market on August 31, 2023, the last business day of the registrant's most recently completed second fiscal quarter) held by non-affiliates was \$27,685,881. For purposes of this calculation, shares of common stock beneficially owned by each executive officer and director and by holders of more than 10% of the registrant's outstanding common stock have been excluded since those persons may under certain circumstances be deemed to be affiliates of the registrant. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of May 31, 2024, there were 6,332,506 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement in connection with the 2024 Annual Meeting of Stockholders (the "Proxy Statement") are incorporated by reference in Part III of this Annual Report on Form 10-K. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended February 29, 2024.

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

FORM 10-K

TABLE OF CONTENTS

PART I.		3
ITEM 1.	Business	3
ITEM 1.A	Risk Factors	14
ITEM 1.B	Unresolved Staff Comments	24
ITEM 1.C	Cybersecurity	24
ITEM 2.	Properties	24
ITEM 3.	Legal Proceedings	24
ITEM 4.	Mine Safety Disclosures	25
PART II.		26
ITEM 5.	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	26
ITEM 6.	Reserved	26
ITEM 7.	Management’s Discussion and Analysis of Financial Condition and Results of Operations	27
ITEM 7A.	Quantitative and Qualitative Disclosures About Market Risk	33
ITEM 8.	Financial Statements and Supplementary Data	34
ITEM 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	64
ITEM 9A.	Controls and Procedures	64
ITEM 9B.	Other Information	64
ITEM 9C.	Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	65
PART III.		66
ITEM 10.	Directors, Executive Officers and Corporate Governance	66
ITEM 11.	Executive Compensation	66
ITEM 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	66
ITEM 13.	Certain Relationships and Related Transactions, and Director Independence	66
ITEM 14.	Principal Accountant Fees and Services	66
PART IV.		67
ITEM 15.	Exhibits, Financial Statement Schedules	67
ITEM 16.	Form 10-K Summary	70

Cautionary Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K (this "Annual Report") contains statements of our expectations, intentions, plans and beliefs that constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and are intended to come within the safe harbor protection provided by those sections. All statements other than statements of historical fact are "forward-looking statements," including, but not limited to, any projections of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management, including for future operations, or capital expenditures; any statements concerning proposed new products, services, or developments; any statements regarding future economic conditions or performance; any statements of belief or expectation; and any statements of assumptions underlying any of the foregoing or other future events. Forward-looking statements may include, among others, words such as "will," "may," "would," "could," "might," "likely," "objective," "predict," "project," "drive," "seek," "aim," "target," "outlook," "continue," "intend," "believe," "expect," "anticipate," "should," "plan," "estimate," "potential," or similar expressions. Forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those projected, anticipated, or implied. Although it is not possible to predict or identify all such risks and uncertainties, they include, but are not limited to, the factors discussed in Item 1A. "Risk Factors" of Part I of this Annual Report and as described elsewhere in this Annual Report. All forward-looking statements are expressly qualified in their entirety by these and other cautionary statements that we make from time to time in our other SEC filings and public communications. You should evaluate forward-looking statements in the context of these risks and uncertainties and are cautioned not to place undue reliance on such statements. Forward-looking statements in this Annual Report are made only as of the date hereof, and we undertake no obligation to update or revise any forward-looking statement except as may be required by law.

PART I.

ITEM 1. BUSINESS

Our Company

Rocky Mountain Chocolate Factory, Inc., a Delaware corporation, and its subsidiaries (collectively, the “Company,” “Rocky Mountain,” “we,” “us,” or “our”), including its operating subsidiary with the same name, Rocky Mountain Chocolate Factory, Inc., a Colorado corporation (“RMCF”), is an international franchisor, confectionery producer and retail operator. Founded in 1981, we are headquartered in Durango, Colorado and produce an extensive line of premium chocolate candies and other confectionery products (“Durango Products”). Our revenues and profitability are derived principally from our franchised/licensed system of retail stores that feature chocolate and other confectionery products. We also sell our candy in select locations outside of our system of retail stores. As of February 29, 2024, we operated 2 Company-owned and had 115 licensee-owned and 152 Rocky Mountain Chocolate Factory franchised stores spread across 36 states and the Philippines.

In fiscal year (“FY”) 2024, roughly half of all retail store sales were of the products prepared on premises and the other half were of products purchased from our Durango plant. We believe that in-store product preparation creates a special store ambiance, and the aroma and sight of products being made attracts foot traffic and assures customers that products are fresh.

Our principal competitive advantage lies in our brand name recognition, and reputation for the quality, variety and taste of our products. Further, we believe the ambiance of our stores, our expertise in the production of chocolate candy products, the merchandising and marketing of confectionery products, and the control and training infrastructures we have implemented to ensure consistent customer service and execution of successful practices and techniques at our stores provides Rocky Mountain Chocolate Factory with a unique franchise offering.

We believe our production expertise and reputation for quality has facilitated the sale of select products through Specialty Markets. We are currently selling our products in a select number of Specialty Markets, including wholesale, fundraising, corporate sales, e-commerce, and private label (collectively “Specialty Markets”).

Our consolidated revenues in FY 2024 were primarily derived from three principal sources: (i) sales to franchisees and other third parties of chocolates and other confectionery products produced by us (74%-77%-76% in 2024, 2023 and 2022 respectively); (ii) sales at Company-owned stores of chocolates and other confectionery products (including products produced by us) (5%-3%-4%), and (iii) the collection of initial franchise, royalties and marketing fees from franchisees (21%-20%-20%). For FY 2024, nearly all of our revenues were derived from domestic sources, with less than 1% derived from international sources. As described below, the Company sold its frozen yogurt business subsequent to the end of FY 2023.

Sale of Frozen Yogurt Business

On May 1, 2023, subsequent to the end of FY 2023, we completed the sale of substantially all of the assets of its wholly-owned subsidiary and frozen yogurt business, U-Swirl International, Inc. (“U-Swirl”). The aggregate sale price of U-Swirl was \$2.75 million, consisting of (i) \$1.75 million in cash and (ii) \$1.0 million evidenced by a three-year secured promissory note. The business divestiture of the U-Swirl segment was preceded by a separate sale of our three owned U-Swirl locations on February 24, 2023. With the sale of our frozen yogurt segment on May 1, 2023, we continue to focus on our confectionery business to further enhance our competitive position and operating margin, simplify our business model, and deliver sustainable value to our stockholders. The consolidated financial statements present the historical financial results of the former U-Swirl segment as discontinued operations for all periods presented. See Note 17 of the Notes to Consolidated Financial Statements included in Item 8, “Financial Statements and Supplementary Data”, of this Annual Report for information on this divestiture.

Business Strategy

Our updated long term strategic objective is to build upon the solid market position of our brand and high-quality products to create a world-class experience for consumers of premium chocolate and confectionery products, whether in premium confection stores operated by our franchisees or by us, or purchased from us through a variety of other

[Table of Contents](#)

channels. We intend to lead this effort through the delivery of an exceptional store experience and development of category leadership through innovation. To accomplish this objective, we will employ a business strategy that includes the elements set forth below.

Product Quality and Variety

We maintain the gourmet taste and quality of our chocolate products by using the finest chocolate and other wholesome ingredients. We use our proprietary recipes, primarily developed by our master candy makers. A typical Rocky Mountain Chocolate Factory store offers up to 100 of our chocolate products throughout the year and as many as 200, including many packaged products, during holiday seasons. Individual stores also offer numerous varieties of gourmet caramel apples as well as other products prepared in the store from Company recipes. We continue to enhance our product development and innovation capabilities through the Company's in-house R&D department.

Store Atmosphere and Ambiance

We seek to establish a fun, enjoyable and inviting atmosphere in each of our store locations. Unlike most other confectionery stores, each Rocky Mountain Chocolate Factory store prepares numerous products, including caramel apples, in the store. In-store preparation is designed to be both fun and entertaining for customers. We believe the in-store preparation and aroma of our products enhances the ambiance at Rocky Mountain Chocolate Factory stores, and conveys an image of freshness and homemade quality. We have been, and are committed to, deploying increased resources to our retail store network to further improve the store experience and enhance profitability, all while maintaining brand standards.

Site Selection

Careful selection of a new retail site is critical to the success of our stores. We consider many factors in identifying suitable sites, including tenant mix, visibility, attractiveness, accessibility, level of foot traffic and occupancy costs. Final site selection occurs only after our senior management has approved the site.

Increase Same Store Retail Sales at Existing Rocky Mountain Chocolate Factory Stores

We seek to increase profitability of our store system by increasing sales at existing store locations through a combination of offering the optimal product assortment to stores, improving order fulfillment, facilitating increased product availability to stores through streamlined logistics, and providing Company personnel to help franchised locations improve their sales and profitability. We estimate that a 10% system-wide increase in revenues from our existing store base would be the equivalent of opening 15 new stores.

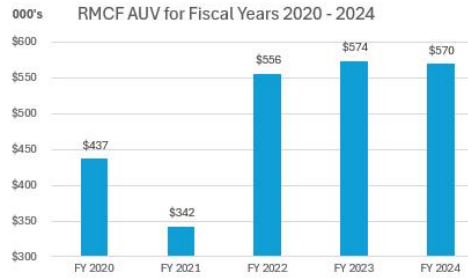
Changes in system-wide domestic same store retail sales at Rocky Mountain Chocolate Factory locations are as follows:

FY 2020 compared to FY 2019	0.5 %
FY 2021 compared to FY 2020	(24.8)%
FY 2022 compared to FY 2021	62.4 %
FY 2023 compared to FY 2022	0.5 %
FY 2024 compared to FY 2023	(1.9)%

Same store sales declined during FY 2021 primarily as a result of nearly all of the franchise stores being directly and negatively impacted by public health measures taken in response to COVID-19, with nearly all locations experiencing reduced operations as a result of, among other things, modified business hours and store and mall closures. This decline was offset by a same store sales increase during FY 2022 when store operations resumed normal operations following the initial impacts of COVID-19.

Increased System-Wide Annual Unit Volume (“AUV”)

A critical part of success in selling new franchises is the attractiveness of store level economics, which include robust and expanding system-wide annual sales. For FY 2024 our AUV was approximately \$570,000, which represents a 30% increase from the FY 2020 AUV of \$437,000.



Enhanced Operating Efficiencies

We have added highly experienced production and supply chain talent in order to bring sustained operating efficiencies to our Durango plant. In addition to such actions as investing in new and more efficient production equipment, we are rationalizing our portfolio of products and streamlining production lines to reduce labor costs as well as improve product quality and consistency.

Expansion Strategy

We are continually exploring opportunities to grow our brand and expand our business. Key elements of our expansion strategy are set forth below.

Unit Growth

We continue to pursue unit growth opportunities in locations where we have traditionally been successful, by improving and expanding our retail store concepts and product portfolio, and by targeting high pedestrian traffic environments.

High Traffic Environments

We currently establish franchised stores in the following environments: regional centers, outlet centers, tourist areas, street fronts, airports, other entertainment-oriented environments and festival and community centers. We have established business relationships with most of the major developers in the United States and believe that these relationships provide us with the opportunity to take advantage of attractive sites in new and existing real estate environments.

Multi-unit Operators

We have historically focused our franchise marketing efforts on single unit operators. By further enhancing our brand strength, product offering, and strong store experience, coupled with enhanced economics, we believe we will be able to appeal more, and market to, multi-unit operators looking to expand their portfolio of franchised opportunities into a premium chocolate franchise concept where we continue to identify substantial interest driven in large part by leased property owners.

Rocky Mountain Chocolate Factory Name Recognition and New Market Penetration

We believe the visibility of our stores and the high foot traffic at many of our locations has generated strong name recognition of Rocky Mountain Chocolate Factory and demand for our franchises. The Rocky Mountain Chocolate Factory system currently is concentrated in the western and Rocky Mountain region of the United States, but growth

[Table of Contents](#)

has generated a gradual easterly momentum as new stores have been opened in the eastern half of the country. We believe this growth has further increased our name recognition and demand for our franchises. We believe that distribution of Rocky Mountain Chocolate Factory products through our Specialty Market business also increases name recognition and brand awareness in areas of the country in which we have not previously had a significant presence and we believe it will also improve and benefit our entire store system.

We seek to establish a fun, enjoyable and inviting atmosphere in each of our store locations. Unlike many other confectionery stores, each Rocky Mountain Chocolate Factory store prepares a variety of products, including caramel apples and fudge, in the store. In FY 2024, approximately one-half of the revenues of franchised stores were generated by sales of products prepared on premises. In-store preparation is designed to be both fun and entertaining for customers and we believe the in-store preparation and aroma of our products enhance the ambiance at Rocky Mountain Chocolate Factory stores, conveys an image of freshness and homemade quality.

The average store size is approximately 1,000 square feet, approximately 650 square feet of which is selling space. Most stores are open seven days a week.

In January 2007, we began testing co-branded locations, such as the co-branded stores with Cold Stone Creamery. Co-branding a location is a vehicle to develop retail environments that would not typically support a stand-alone Rocky Mountain Chocolate Factory store. Co-branding can also be used to more efficiently manage rent structure, payroll and other operating costs in environments that have not historically supported stand-alone Rocky Mountain Chocolate Factory stores. As of February 29, 2024, Cold Stone Creamery franchisees operated 104 co-branded locations, and U-Swirl franchisees operated 11 co-branded locations. As of February 29, 2024, the Company had 3 international units in operation, all within the Republic of the Philippines.

Products and Packaging

We produce approximately 400 chocolates and other confectionery products using proprietary recipes developed primarily by our master candy makers. These products include many varieties of clusters, caramels, creams, toffees, mints and truffles. These products are offered for sale and also configured into approximately 250 varieties of packaged assortments. During the Christmas, Easter and other holiday seasons, we make a variety of seasonal items, including many candies offered in packages, that are specially designed for holidays. A typical Rocky Mountain Chocolate Factory store offers up to 100 of these approximately 400 chocolate candies and other confectionery products throughout the year and up to an additional 90 during the holiday seasons. Individual stores also offer more than 15 varieties of caramel apples and other products prepared in the store. In FY 2024, approximately one-half of the revenues of Rocky Mountain Chocolate Factory stores were generated by products produced at our Durango production facility, and one-half of products made in individual stores using our recipes and ingredients purchased from us or approved suppliers and with a small amount of products such as ice cream, coffee and other sundries purchased from approved suppliers.

In FY 2024, approximately 10% of our Durango plant sales resulted from the sale of products outside of our system of franchised and licensed locations, which we refer to as Specialty Market customers, compared with 15% of our Durango plant sales resulting from Specialty Market customers in FY 2023. See Item 1A “Risk Factors—Risks Related to Our Company and Strategy—Our Sales to Specialty Market Customers, Customers Outside Our System of Franchised Stores, Are Concentrated Among a Small Number of Customers.” These products are produced using the same quality ingredients and production processes as the products sold in our network of retail stores.

We use the finest chocolates, nutmeats and other wholesome ingredients in our confectionery products and continually strive to offer new items in order to maintain the excitement and appeal of our offerings. We develop special packaging for the holidays and seasonal offerings, and consumers can have their purchases packaged in decorative boxes and fancy tins throughout the year.

Operating Environment

Rocky Mountain Chocolate Factory

We currently establish Rocky Mountain Chocolate Factory stores in six primary environments: outlet centers, festival and community centers, regional centers, tourist areas, street fronts, airports and other entertainment-oriented

[Table of Contents](#)

shopping centers. Each of these environments has a number of attractive features, including high levels of foot traffic. Rocky Mountain Chocolate Factory domestic franchise locations in operation as of February 29, 2024, include:

Outlet Centers	19.4 %
Festival/Community Centers	20.8 %
Regional Centers	19.5 %
Tourist Areas	20.8 %
Street Fronts	10.1 %
Airports	5.4 %
Other	4.0 %

Outlet Centers

As of February 29, 2024, there were approximately 29 Rocky Mountain Chocolate Factory stores in outlet centers. We have established business relationships with a number of the major outlet center developers in the United States. Although not all factory outlet centers provide desirable locations for our stores, we believe our relationships with these developers will provide us with the opportunity to take advantage of attractive sites in new and existing outlet centers.

Festival and Community Centers

As of February 29, 2024, there were approximately 31 Rocky Mountain Chocolate Factory stores in festival and community centers. Festival and community centers offer retail shopping outside of traditional regional and outlet center shopping.

Regional Centers

As of February 29, 2024, there were Rocky Mountain Chocolate Factory stores in approximately 29 regional centers, including a location in the Mall of America in Bloomington, Minnesota. Although they often provide favorable levels of foot traffic, regional centers typically involve more expensive rent structures and competing food and beverage concepts.

Tourist Areas, Street Fronts, Airports and Other Entertainment-Oriented Shopping Centers

As of February 29, 2024, there were approximately 31 Rocky Mountain Chocolate Factory stores in locations considered to be tourist areas. Tourist areas are very attractive locations because they offer high levels of foot traffic and favorable customer spending characteristics, and greatly increase our visibility and name recognition. We believe there are a number of other environments that have the characteristics necessary for the successful operation of Rocky Mountain Chocolate Factory stores such as airports and casinos. As of February 29, 2024, there were 8 franchised Rocky Mountain Chocolate Factory stores at airport locations.

Franchising Program

General

We continue to attract qualified and experienced franchisees, whom we consider to be a vital part of our continued growth. We believe our relationship with our franchisees is fundamental to the performance of our brand and we strive to maintain a collaborative relationship with our franchisees. Our franchising philosophy is one of service and commitment to our franchise system and we continuously seek to improve our franchise support services. Our concept has been rated as an outstanding franchise opportunity by publications and organizations rating such opportunities. The Rocky Mountain Chocolate Factory concept has frequently been ranked in the Top 500 Franchises by Entrepreneur Magazine.

Franchisee Sourcing and Selection

The majority of new franchises are awarded to persons referred to us by existing franchisees, to interested consumers who have visited one of our domestic franchise locations and to existing franchisees. We also advertise for new

[Table of Contents](#)

franchisees in national and regional newspapers and online as suitable potential store locations come to our attention. We are exploring the use of third-party franchise lead generators to supplement our efforts. Franchisees are currently approved by a committee of the senior executive team based on the applicant's net worth and liquidity, business acumen, and prior experience with franchising and/or fast moving consumer goods ("FMCG"), together with an assessment of work ethic and personality compatibility with our operating philosophy.

International Franchising and Licensing

International growth is generally achieved through entry into a Master License Agreement covering specific countries, with a licensee that meets minimum qualifications to develop Rocky Mountain Chocolate Factory in that country. License agreements are generally entered into for a period of 3-10 years and allow the licensee exclusive development rights in a country. Generally, we require an initial license fee and commitment to a development schedule. Active international license agreements in place include the following:

- In October 2014, we entered into a Licensing Agreement in the Republic of the Philippines. As of February 29, 2024, 3 units were operating under the agreement.

Co-Branding

In August 2009, we entered into a Master License Agreement with Kahala Franchise Corp. Under the terms of the agreement, select current and future Cold Stone Creamery franchise stores are co-branded with both the Rocky Mountain Chocolate Factory and the Cold Stone Creamery brands. Locations developed or modified under the agreement are subject to the approval of both parties. Locations developed or modified under the agreement will remain franchisees of Cold Stone Creamery and will be licensed to offer the Rocky Mountain Chocolate Factory brand. As of February 29, 2024, Cold Stone Creamery franchisees operated 104 stores under this agreement.

Additionally, we allow U-Swirl brands to offer Rocky Mountain Chocolate Factory products under terms similar to other co-branding agreements. As of February 29, 2024, there were 11 U-Swirl cafés offering Rocky Mountain Chocolate Factory products.

Training and Support

Each domestic franchisee owner/operator and each store manager for a domestic franchisee is required to complete a comprehensive training program in store operations and management. We have established a training center at our Durango headquarters in the form of a full-sized replica of a properly configured and merchandised Rocky Mountain Chocolate Factory store. Topics covered in the training course include our philosophy of store operation and management, customer service, merchandising, pricing, cooking, inventory and cost control, quality standards, record keeping, labor scheduling and personnel management. Training is based on standard operating policies and procedures contained in an operations manual provided to all franchisees, which the franchisee is required to follow by terms of the franchise agreement. Additionally, and importantly, trainees are provided with a complete orientation to our operations by working in key factory operational areas and by meeting with members of our senior management.

Our operating objectives include providing knowledge and expertise in merchandising, marketing and customer service to all front-line store level employees to maximize their skills and ensure that they are fully versed in our operational techniques.

We provide ongoing support to franchisees through our field consultants, who maintain regular and frequent communication with the stores by phone and by site visits. The field consultants also review and discuss store operating results with the franchisee and provide advice and guidance in improving store profitability and in developing and executing store marketing and merchandising programs.

Quality Standards and Control

The franchise agreements for Rocky Mountain Chocolate Factory brand franchisees require compliance with our procedures of operation and food quality specifications and permit audits and inspections by us.

[Table of Contents](#)

Operating standards for Rocky Mountain Chocolate Factory brand stores are set forth in operating manuals. These manuals cover general operations, factory ordering, merchandising, advertising and accounting procedures. Through their regular visits to franchised stores, our field consultants audit performance and adherence to our brand standards. We have the right to terminate any franchise agreement for non-compliance with our operating standards. Products sold at the stores and ingredients used in the preparation of products approved for on-site preparation must be purchased from us or from approved suppliers.

The Franchise Agreement: Terms and Conditions

The domestic offer and sales of our franchise concepts are made pursuant to the respective franchise disclosure document (FDD) prepared in accordance with federal and state laws and regulations. States that regulate the sale and operation of franchises require a franchisor to register or file certain notices with the state authorities prior to offering and selling franchises in those states.

Under the current form of our domestic franchise agreements, franchisees pay us (i) an initial franchise fee for each store, (ii) royalties based on monthly gross sales, and (iii) a marketing fee based on monthly gross sales. Franchisees are generally granted exclusive territory with respect to the operation of their stores only in the immediate vicinity of their stores. Chocolate products not made on premises by franchisees must be purchased from us or approved suppliers. The franchise agreements require franchisees to comply with our procedures of operation and food quality specifications, to permit inspections and audits by us and to remodel stores to conform with standards then in effect. We may terminate the franchise agreement upon the failure of the franchisee to comply with the conditions of the agreement and upon the occurrence of certain events, such as insolvency or bankruptcy of the franchisee or the commission by the franchisee of any unlawful or deceptive practice, which in our judgment is likely to adversely affect the network system. Our ability to terminate franchise agreements pursuant to such provisions is subject to applicable bankruptcy and state laws and regulations. See “Regulation” below for additional information.

The agreements prohibit the transfer or assignment of any interest in a franchise without our prior written consent. The agreements also give us a right of first refusal to purchase any interest in a franchise if a proposed transfer would result in a change of control of that franchise. The refusal right, if exercised, would allow us to purchase the interest proposed to be transferred under the same terms and conditions and for the same price as offered by the proposed transferee.

The term of franchise agreements signed before July 1, 2023 is ten years, and franchisees have the right to renew for one additional ten-year term. The term of franchise agreements signed after July 1, 2023 is ten years, and franchisees have the right to renew for two additional five-year terms. Our revised Franchise Agreement offers a flat royalty payment on all retail stores sales ranging from 6% to as low as 4% based upon the retail sales mix of Durango produced product sold in comparison to all retail store sales. These terms are only effective with Franchise Agreements entered into after July 1, 2023 or when a current franchise operator agrees to enter into a new agreement with the Company

Franchise Financing

We do not typically provide prospective franchisees with financing for their stores for new or existing franchises, but we have developed relationships with several sources of franchisee financing to whom we will refer franchisees. Typically, franchisees have obtained their own sources of such financing and have not required our assistance. In the normal course of business, we extend credit to customers, primarily franchisees that satisfy pre-defined credit criteria, for inventory and other operational costs.

In select instances, we have provided limited financing to franchisees. As a result, as of February 29, 2024, we have approximately \$0.2 million of notes receivable as a result of financing our franchisees. When we finance franchisees the notes are secured by the assets financed.

Company Store Operations

As of February 29, 2024, there were two Company-owned Rocky Mountain Chocolate Factory stores. Our flagship store, located in Durango, Colorado, (“Flagship Store”) provides a training ground for Company personnel and a controllable testing ground for new products and promotions, operating and training methods and merchandising techniques, which may then be incorporated into the franchise store operations.

Production Operations

General

We manufacture our chocolate and confectionary products at our production facility in Durango, Colorado. All products are produced consistent with our philosophy of using the finest high-quality ingredients to achieve our marketing motto of “*The Peak of Perfection in Handmade Chocolates®*.”

We have always believed that we should control the production of our own chocolate products. By controlling operations and production, we are able to better maintain our high quality standards, offer unique proprietary products, control production and shipment schedules and potentially pursue new or under-utilized distribution channels.

Production Processes

The production process primarily involves cooking or preparing candy centers, including nuts, caramel, peanut butter, creams and jellies, and then coating them with chocolate or other toppings. All of these processes are conducted in carefully controlled temperature ranges, and we employ strict quality control procedures at every stage of the production process. We use a combination of manual and automated processes at production facility. Although we believe that it is currently preferable to perform certain production processes, such as the dipping of some large pieces by hand, automation increases the speed and efficiency of the production process. We have from time-to-time automated certain processes formerly performed by hand where it has become cost-effective for us to do so without compromising product quality or appearance.

We also seek to ensure the freshness of products sold in Rocky Mountain Chocolate Factory stores with frequent shipments. Most Rocky Mountain Chocolate Factory stores do not have significant space for the storage of inventory, and we encourage franchisees and store managers to order only the quantities that they can reasonably expect to sell within approximately two to four weeks. For these reasons, we generally do not have a significant backlog of orders.

The production and sale of consumer food products is highly regulated. In the U.S., our activities are subject to regulation by various government agencies, including the Food and Drug Administration (“FDA”), the Department of Agriculture, the Federal Trade Commission, the Department of Commerce and the Environmental Protection Agency, as well as various state and local agencies. Similar agencies also regulate our businesses outside of the U.S.

We have a product quality and safety program. This program is integral to our supply chain platform and is intended to ensure that all products we purchase, produce, and distribute are safe, are of high quality and comply with applicable laws and regulations. Through our product quality and safety program, we evaluate our supply chain including ingredients, packaging, processes, products, distribution and the environment to determine where product quality and safety controls are necessary. We follow the FDA mandated Hazard Analysis and Risk-based Preventive Controls which includes a 12-step process to determine risks based on individual processes. To support this hazard analysis model, and in accordance with private and federal mandated requirements, we also adhere to all good manufacturing practices (“GMPs”) including several supporting policies and procedures that ensure all risks identified are in control. Various government agencies and third-party firms, as well as our quality assurance staff, conduct audits of all facilities that produce our products to ensure effectiveness and compliance with our program and applicable laws and regulations.

Ingredients

The principal ingredients used in our products are chocolate, nuts, sugar, corn syrup, cream and butter. Our production facility receives shipments of ingredients daily. To ensure the consistency of our products, we buy ingredients from a limited number of reliable suppliers. In order to ensure a continuous supply of chocolate and certain nuts, we frequently enter into purchase contracts of between six to eighteen months for these products. Because prices for these products may fluctuate, we may benefit if prices rise during the terms of these contracts, but we may be required to pay above-market prices if prices fall. We have one or more alternative sources for most essential ingredients and therefore believe that the loss of any one supplier would not have a material adverse effect on our business or results of operations. We currently purchase small amounts of finished candy from third parties on a private label basis for sale in Rocky Mountain Chocolate Factory stores. As a result of recent macro-economic inflationary trends and disruptions to the global supply chain, we have experienced and may continue to experience higher raw material, labor, and freight costs.

[Table of Contents](#)

Trucking Operations

We operate eight trucks and ship a substantial portion of our products from the production facility on our own fleet. Our trucking operations enable us to deliver our products to the stores quickly and cost-effectively. In addition, we back-haul our own ingredients and supplies, as well as products from third parties, on return trips, which helps achieve even greater efficiencies and cost savings.

Marketing

General

We rely primarily on in-store promotion and point-of-purchase materials to promote the sale of our products. The monthly marketing fees collected from franchisees are used by us to develop new packaging and in-store promotion and point-of-purchase materials, and to create and update our local store marketing guides and materials.

We focus on local store marketing efforts by providing customizable marketing materials, including advertisements, coupons, flyers and brochures generated by our in-house Creative Services department. The department works directly with franchisees to implement local store marketing programs.

We have not historically, and do not intend to, engage in national traditional media advertising in the near future. Consistent with our commitment to community support, we seek opportunities to participate in local and regional events, sponsorships and charitable causes. This support leverages low-cost, high return publicity opportunities for mutual gain partnerships.

Internet and Social Media

We've initiated a program to leverage the marketing benefits of various social media outlets. These lower-cost marketing opportunities leverage the positive feedback of our customers, expanding brand awareness through a customer's network of contacts. Complementary to local store marketing efforts, these networks also provide a medium for us to communicate regularly and authentically with customers. When possible, we work to facilitate direct relationships between our franchisees and their customers. We use social media as a tool to build brand recognition, increase repeat exposure, and enhance dialogue with consumers about their preferences and needs. The majority of stores have location-specific Facebook® and Instagram® accounts dedicated to helping customers interact directly with their local store. Proceeds from the monthly marketing fees collected from franchisees are used by us to facilitate and assist stores in managing their online presence consistent with our brand and marketing efforts.

Competition

The retailing of confectionery products is highly competitive. We and our franchisees compete with numerous businesses that offer products similar to those offered by our retail stores and Specialty Markets. Many of these competitors have greater name recognition and financial, marketing and other resources than us. In addition, there is intense competition among retailers for attractive commercial real estate sites suitable for Rocky Mountain Chocolate Factory stores, store personnel and qualified franchisees.

We believe that our principal competitive strengths lie in our name recognition and our reputation for the quality, value, variety and taste of our products and the ambiance of our stores; our knowledge and experience in applying criteria for the selection of new store locations; our expertise in merchandising and marketing of chocolate and other confectionary products; and the control and training infrastructures we have implemented to ensure execution of successful practices and techniques at our retail store locations. In addition, by controlling the production of our own confectionary products, we can better maintain our high product quality standards for those products, offer proprietary products, manage costs, control production and shipment schedules and pursue new or under-utilized distribution channels.

Trade Name and Trademarks

The trade name “*Rocky Mountain Chocolate Factory*®,” the phrases, “*The Peak of Perfection in Handmade Chocolates*®”, “*America’s Chocolatier*®” as well as all other trademarks, service marks, symbols, slogans, emblems, logos and designs used in the Rocky Mountain Chocolate Factory system, are our proprietary rights. We believe all of the foregoing are of material importance to our business. The trademark “Rocky Mountain Chocolate Factory” is registered in the United States and Canada. Applications to register the Rocky Mountain Chocolate Factory trademark have been filed and/or obtained in certain foreign countries.

We have not attempted to obtain patent protection for the proprietary recipes developed by our master candy-maker and instead rely upon our ability to maintain the confidentiality of those recipes.

Environmental Matters

We are not aware of any federal, state, local or international environmental laws or regulations that we expect to materially affect our earnings or competitive position or result in material capital expenditures. However, we cannot predict the effect of possible future environmental legislation or regulations on our operations. During FY 2024, we had no material environmental compliance-related capital expenditures, and no such material expenditures are anticipated in FY 2025.

Seasonal Factors

Our sales and earnings are seasonal, with significantly higher sales and earnings occurring during key holidays, such as Christmas, Easter and Valentine’s Day, and the U.S. summer vacation season than at other times of the year, which may cause fluctuations in our quarterly results of operations. In addition, quarterly results have been, and in the future are likely to be, affected by the timing of new store openings, the sale of franchises and the timing of purchases by customers outside our network of franchised locations. Because of the seasonality of our business, results for any quarter are not necessarily indicative of the results that may be achieved in other quarters or for a full fiscal year.

Regulation

Our two current Company-owned and other franchised Rocky Mountain Chocolate Factory stores are subject to licensing and regulation by the health, sanitation, safety, building and fire agencies in the state or municipality where located. Difficulties or failures in obtaining the required licensing or approvals could delay or prevent the opening of new stores. New stores must also comply with landlord and developer criteria.

Many states have laws regulating franchise operations, including registration and disclosure requirements in the offer and sale of franchises. We are also subject to the Federal Trade Commission regulations relating to disclosure requirements in the sale of franchises and ongoing disclosure obligations.

Additionally, certain states have enacted and others may enact laws and regulations governing the termination or non-renewal of franchises and other aspects of the franchise relationship that are intended to protect franchisees, including among other things, limitation on the duration and scope of non-competition provisions applicable to franchisees. Although these laws and regulations, and related court decisions, may limit our ability to terminate franchises and alter franchise agreements, we do not believe that such laws or decisions will have a material adverse effect on our franchise operations. However, the laws applicable to franchise operations and relationships continue to develop, and we are unable to predict the effect on our intended operations of additional requirements or restrictions that may be enacted or of court decisions that may be adverse to franchisors.

Federal and state environmental regulations have not had a material impact on our operations but more stringent and varied requirements of local governmental bodies with respect to zoning, land use and environmental factors could delay the construction of new stores, increase our capital expenditures and thereby decrease our earnings and negatively impact our competitive position.

[Table of Contents](#)

Companies engaged in the production, packaging and distribution of food products are subject to extensive regulation by various governmental agencies. A finding of failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of all or a portion of our facilities for an indeterminate period of time. Our product labeling is subject to and complies with the Nutrition Labeling and Education Act of 1990 and the Food Allergen Labeling and Consumer Protection Act of 2004.

We provide a limited amount of trucking services to third parties, to fill available space on our trucks. Our trucking operations are subject to various federal and state regulations, including regulations of the Federal Highway Administration and other federal and state agencies applicable to motor carriers, safety requirements of the Department of Transportation relating to interstate transportation and federal, state and Canadian provincial regulations governing matters such as vehicle weight and dimensions.

We believe that we are operating in substantial compliance with all applicable laws and regulations.

Human Capital Resources

As of February 29, 2024, we employed approximately 160 people, including 135 full-time employees. Most employees, with the exception of store management, production management and corporate management, are paid on an hourly basis. We also employ some individuals on a temporary basis during peak periods of store and factory operations. We seek to ensure that participatory management processes, mutual respect and professionalism and high-performance expectations for the employees exist throughout the organization. We believe that we provide working conditions, wages and benefits that compare favorably with those of our competitors. Our employees are not covered by a collective bargaining agreement. We consider our employee relations to be good.

Our franchisees are independent business owners, their employees are not our employees and therefore are not included in our employee count.

Labor and Supply Chain

As a result of recent macroeconomic inflationary trends and disruptions to the global supply chain, we have experienced and expect to continue experiencing higher raw material, labor, and freight costs. We have seen labor and logistics challenges, which we believe have contributed to lower production facility, retail, and e-commerce sales of our products due to the availability of material, labor, and freight. In addition, we could experience additional lost sales opportunities if our products are not available for purchase as a result of continued disruptions in our supply chain relating to an inability to obtain ingredients or packaging, labor challenges at our logistics providers or our production facility, or if we or our franchisees experience delays in stocking our products. See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of recent business developments.

Our principal executive offices are located at 265 Turner Drive, Durango, Colorado 81303, and our telephone number is (970) 259-0554. We have retail store locations throughout the United States and the Philippines. Our website address is www.rmcf.com. Information contained on or accessible through our websites is neither a part of this Annual Report nor incorporated by reference herein.

Ethics and Governance

We have adopted the Rocky Mountain Chocolate Factory Code of Conduct, which qualifies as a code of ethics under Item 406 of Regulation S-K. The code applies to all of our employees, officers, including our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions, and directors. Our Code of Conduct is available free of charge on our website at <https://ir.rmcf.com/corporate-governance/governance-documents>. We will disclose any waiver we grant to an executive officer or director under our code of ethics, or certain amendments to the Code of Conduct, on our website.

[Table of Contents](#)

In addition, we have adopted Code of Ethics for Senior Financial Officers, charters for each of the Board's four standing committees and the Whistleblower/Complaint Procedures for Accounting and Auditing Matters. All of these materials are available on our web site at <https://ir.rmcf.com/corporate-governance/governance-documents>.

Available Information

The Internet address of our website is www.rmcf.com. Additional websites specific to our franchise opportunities and investor relations are www.sweetfranchise.com and <https://ir.rmcf.com>, respectively.

We file or furnish annual, quarterly and current reports, proxy statements and other information with the United States Securities and Exchange Commission ("SEC"). We make available free of charge, through our Internet website, our Annual Report, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The SEC also maintains a website that contains these reports, proxy and information statements and other information that can be accessed, free of charge, at www.sec.gov. The contents of our websites are not incorporated into, and should not be considered a part of, this Annual Report.

ITEM 1A. RISK FACTORS

Our business, results of operations and financial position are subject to various risks, including those discussed below, which may affect the value of our common stock. The following risk factors, which we believe represent the most significant factors that may make an investment in our common stock risky, may cause our actual results to differ materially from those projected in any forward-looking statement. You should carefully consider these factors, as well as the other information contained in this Annual Report, including the information set forth in "Cautionary Note Regarding Forward-Looking Statements" and "Management's Discussion and Analysis of Results of Operations and Financial Position," when evaluating an investment in our common stock.

Risks Specific to Our Company and the Industry in Which We Operate

Our Sales To Specialty Market Customers, Customers Outside Our System Of Franchised Stores, Are Concentrated Among A Small Number Of Customers.

The Company has historically sold its product to relatively few customers outside its network of franchised and licensed locations (Specialty Market customers).

During FY 2024 our sales to Specialty Market customers were approximately \$2.7 million or 10% of our total revenue.

The Divestiture Of Our U-Swirl Business May Have Material Adverse Effects On Our Financial Condition, Results Of Operations Or Cash Flows.

In May 2023, subsequent to our fiscal year-end, we announced that we had completed the sale of substantially all of the assets of U-Swirl, our wholly-owned subsidiary and frozen yogurt business. The consummation of the sale of the U-Swirl business involves risks, including retention of uncertain contingent liabilities related to the divested business and risks associated with the collection of notes receivable contemplated in the sale, any of which could result in a material adverse effect to our financial condition, results of operations or cash flows. We cannot be certain that we will be successful in managing these or any other significant risks that we encounter as a result of divesting the U-Swirl business.

Our Growth Is Dependent Upon Attracting And Retaining Qualified Franchisees And Their Ability To Operate Their Franchised Stores Successfully.

Our continued growth and success are dependent in part upon our ability to attract, retain and contract with qualified franchisees. Our growth is dependent upon the ability of franchisees to operate their stores successfully, promote and develop our store concepts, and maintain our reputation for an enjoyable in-store experience and high-quality products. Although we have established criteria to evaluate prospective franchisees and have been successful in attracting franchisees, there can be no assurance that franchisees will be able to operate successfully in their franchise areas in a manner consistent with our concepts and standards. As a result, we may realize a reduction in number of units in operation or fail to achieve our opening targets.

Increases In Costs Could Adversely Affect Our Operations.

Inflationary factors such as increases in the costs of ingredients, energy and labor directly affect our operations. Most of our leases provide for cost-of-living adjustments and require us to pay taxes, insurance and maintenance expenses, all of which are subject to inflation. Additionally, our future lease costs for new facilities may reflect potentially escalating costs of real estate and construction. There is no assurance that we will be able to pass on our increased costs to our customers or that our customers will continue to purchase at historical levels in the event that we pass along cost increases in the form of higher prices. If we are unable to pass along cost increases we may realize a decrease in gross margin on products we sell and produce.

Price Increases May Not Be Sufficient To Offset Cost Increases And Maintain Profitability Or May Result In Sales Volume Declines Associated With Pricing Elasticity.

We may be able to pass some or all raw materials, energy and other input cost increases to customers by increasing the selling prices of our products, however, higher product prices may also result in a reduction in sales volume and/or consumption. If we are not able to increase our selling prices sufficiently, or in a timely manner, to offset increased raw material, energy or other input costs, including packaging, direct labor, overhead and employee benefits, or if our sales volume decreases significantly, there could be a negative impact on our financial condition and results of operations.

Our Expansion Plans Are Dependent On The Availability Of Suitable Sites For Franchised Stores At Reasonable Occupancy Costs.

Our expansion plans are critically dependent on our ability to obtain suitable sites for franchised stores at reasonable occupancy costs for our franchised stores in high foot traffic retail environments. There is no assurance that we will be able to obtain suitable locations for our franchised stores in this environment at a cost that will allow such stores to be economically viable.

Same Store Sales Have Fluctuated and Will Continue to Fluctuate.

Our same store sales, defined as year-over-year sales for a store that has been open for at least one year, have fluctuated in the past on an annual and quarterly basis and are expected to continue to fluctuate in the future. Sustained declines in same store sales or significant same store sales declines in any single period could have a material adverse effect on our results of operations. Same store sales declined during FY 2021 and established the large negative percentage changes reflected above, primarily as a result of nearly all of the franchise stores being directly and negatively impacted by public health measures taken in response to COVID-19, with nearly all locations experiencing reduced operations as a result of, among other things, modified business hours and store and mall closures. Same store sales increased during FY 2022 and established the large positive percentage changes reflected above, primarily as a result of nearly all of the franchise stores being directly and positively impacted by a resurgence in consumer demand following the relaxing of many public health measures taken in response to COVID-19. If same store sales decline, we may experience a decrease in demand for products we sell and a decrease in revenue from royalty and marketing fees.

Higher Labor Costs, Increased Competition For Qualified Team Members And Ensuring Adequate Staffing Increases The Cost Of Doing Business. Additionally, Changes In Employment And Labor Laws, Including Health Care Legislation And Minimum Wage Increases, Could Increase Costs For Our System-Wide Operations.

Our success depends in part on our and our franchisees' ability to recruit, motivate, train and retain a qualified workforce to work in our stores in an intensely competitive environment. We and our franchisees have experienced, and could continue to experience, a shortage of labor for stores positions due to job market trends and conditions, which could decrease the pool of available qualified talent for key functions. Our ability to attract and retain hourly employees in our stores and factory has been impacted by these trends and conditions, and we expect staffing and labor challenges to continue into 2025. Increased costs associated with recruiting, motivating and retaining qualified employees to work in the Company-owned stores, franchised stores and our production facility have had, and may in the future have, a negative impact on our Company-owned store and production margins and the margins of franchised stores. Competition for qualified drivers for both our stores and supply-chain function also continues to increase as

more companies compete for drivers or enter the delivery space, including third party aggregators. Additionally, economic actions, such as boycotts, protests, work stoppages or campaigns by labor organizations, could adversely affect us (including our ability to recruit and retain talent) or our franchisees and suppliers. Social media may be used to foster negative perceptions of employment with our Company in particular or in our industry generally, and to promote strikes or boycotts.

We are also subject to federal, state and foreign laws governing such matters as minimum wage requirements, overtime compensation, benefits, working conditions, citizenship requirements and discrimination and family and medical leave and employee related litigation. Labor costs and labor-related benefits are primary components in the cost of operation. Labor shortages, increased employee turnover and health care mandates could increase our system-wide labor costs.

A significant number of hourly personnel are paid at rates at or above the federal and state minimum wage requirements. Accordingly, the enactment of additional state or local minimum wage increases above federal wage rates or regulations related to exempt employees has increased and could continue to increase labor costs for our domestic system-wide operations. A significant increase in the federal minimum wage requirement could adversely impact our financial condition and results of operations.

The Seasonality Of Our Sales And New Store Openings Can Have A Significant Impact On Our Financial Results From Quarter To Quarter.

Our sales and earnings are seasonal, with significantly higher sales and earnings occurring during key holidays and summer vacation season than at other times of the year, which causes fluctuations in our quarterly results of operations. In addition, quarterly results have been, and in the future are likely to be, affected by the timing of new store openings and the sale of franchises. Because of the seasonality of our business and the impact of new store openings and sales of franchises, results for any quarter are not necessarily indicative of the results that may be achieved in other quarters or for a full fiscal year.

The Retailing Of Confectionery Products Is Highly Competitive And Many Of Our Competitors Have Competitive Advantages Over Us.

The retailing of confectionery products is highly competitive. We and our franchisees compete with numerous businesses that offer similar products. Many of these competitors have greater name recognition and financial, marketing and other resources than we do. In addition, there is intense competition among retailers for real estate sites, store personnel and qualified franchisees. Competitive market conditions could have a material adverse effect on us and our results of operations and our ability to expand successfully.

Changes In Consumer Tastes And Trends Could Have A Material Adverse Effect On Our Operations.

The sale of our products is affected by changes in consumer tastes and health concerns, including views regarding the consumption of chocolate. Numerous other factors that we cannot control, such as economic conditions, demographic trends, traffic patterns and weather conditions, influence the sale of our products. Changes in any of these factors could have a material adverse effect on us and our results of operations.

We Are Subject To Federal, State And Local Regulations.

We are subject to regulation by the Federal Trade Commission and must comply with certain state laws governing the offer, sale and termination of franchises and the refusal to renew franchises. Many state laws also regulate substantive aspects of the franchisor-franchisee relationship by, for example, requiring the franchisor to deal with its franchisees in good faith, prohibiting interference with the right of free association among franchisees and regulating discrimination among franchisees in charges, royalties or fees. Franchise laws continue to develop and change, and changes in such laws could impose additional costs and burdens on franchisors. Our failure to obtain approvals to sell franchises and the adoption of new franchise laws, or changes in existing laws, could have a material adverse effect on us and our results of operations.

Each of our Company-owned and franchised stores is subject to licensing and regulation by the health, sanitation, safety, building and fire agencies in the state or municipality where located. Difficulties or failures in obtaining required licenses or approvals from such agencies could delay or prevent the opening of a new store. We and our

[Table of Contents](#)

franchisees are also subject to laws governing our relationships with employees, including minimum wage requirements, overtime, working and safety conditions and citizenship requirements. Because a significant number of our employees are paid at rates related to the state minimum wage, increases in the minimum wage would increase our labor costs. The failure to obtain required licenses or approvals, or an increase in the minimum wage rate, employee benefits costs (including costs associated with mandated health insurance coverage) or other costs associated with employees, could have a material adverse effect on us and our results of operations.

Companies engaged in the production, packaging and distribution of food products are subject to extensive regulation by various governmental agencies. A finding of failure to comply with one or more regulations could result in the imposition of sanctions, including the closing of all or a portion of our facilities for an indeterminate period of time, and could have a material adverse effect on us and our results of operations.

Information Technology System Failures, Breaches Of Our Network Security Or Inability To Upgrade Or Expand Our Technological Capabilities Could Interrupt Our Operations And Adversely Affect Our Business.

We and our franchisees rely on our computer systems and network infrastructure across our operations, including point-of-sale (POS) processing at our stores. Our and our franchisees' operations depend upon our and our franchisees' ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external cybersecurity breaches, viruses and other disruptive problems. Any damage or failure of our computer systems or network infrastructure that causes an interruption in our operations could have a material adverse effect on our business and subject us or our franchisees to litigation or to actions by regulatory authorities. Furthermore, the importance of such information technology systems and networks increased in FY 2021 and continued into FY 2022, FY 2023 and FY 2024 due to many of our employees working remotely as a result of the COVID-19 pandemic.

A party who is able to compromise the security measures on our networks or the security of our infrastructure could, among other things, misappropriate our proprietary information and the personal information of our customers and employees, cause interruptions or malfunctions in our or our franchisee's operations, cause delays or interruptions to our ability to operate, cause us to breach our legal, regulatory or contractual obligations, create an inability to access or rely upon critical business records or cause other disruptions in our operations. These breaches may result from human errors, equipment failure, fraud, or malice on the part of employees or third parties.

We expend financial resources to protect against such threats and may be required to further expend financial resources to alleviate problems caused by physical, electronic, and cyber security breaches. As techniques used to breach security are growing in frequency and sophistication and are generally not recognized until launched against a target, regardless of our expenditures and protection efforts, we may not be able to implement security measures in a timely manner or, if and when implemented, these measures could be circumvented. Any breaches that may occur could expose us to an increased risk of lawsuits, loss of existing or potential future customers, harm to our reputation and increases in our security costs, which could have a material adverse effect on our financial performance and operating results.

In the event of a breach resulting in loss of data, such as personally identifiable information or other such data protected by data privacy or other laws, we may be liable for damages, fines and penalties for such losses under applicable regulatory frameworks despite not handling the data. Further, the regulatory framework around data custody, data privacy and breaches varies by jurisdiction and is an evolving area of law. We may not be able to limit our liability or damages in the event of such a loss.

We are also continuing to expand, upgrade and develop our information technology capabilities, including our point-of-sale systems, as well as the adoption of cloud services for e-mail, intranet, and file storage. If we are unable to successfully upgrade or expand our technological capabilities, we may not be able to take advantage of market opportunities, manage our costs and transactional data effectively, satisfy customer requirements, execute our business plan or respond to competitive pressures. Additionally, unforeseen problems with our point-of-sale system may affect our operational abilities and internal controls and we may incur additional costs in connection with such upgrades and expansion.

If We, Our Business Partners, Or Our Franchisees Are Unable To Protect Our Customers' Data, We Could Be Exposed To Data Loss, Litigation, Liability And Reputational Damage.

In connection with credit and debit card sales, we and our franchisees transmit confidential credit and debit card information by way of secure private retail networks. A number of retailers have experienced actual or potential security breaches in which credit and debit card information may have been stolen. Although we and our franchisees use private networks, third parties may have the technology or know-how to breach the security of the customer information transmitted in connection with credit and debit card sales, and our and our franchisees' security measures and those of our and our franchisees' technology vendors may not effectively prohibit others from obtaining improper access to this information. If a person were able to circumvent these security measures, he or she could destroy or steal valuable information or disrupt our and our franchisees' operations. Any security breach could expose us and our franchisees to risks of data loss and liability and could seriously disrupt our and our franchisees' operations and any resulting negative publicity could significantly harm our reputation. We may also be subject to lawsuits or other proceedings in the future relating to these types of incidents. Proceedings related to the theft of credit and debit card information may be brought by payment card providers, banks, and credit unions that issue cards, cardholders (either individually or as part of a class action lawsuit), and federal and state regulators. Any such proceedings could harm our reputation, distract our management team members from running our business and cause us to incur significant unplanned liabilities, losses and expenses.

We also sell and accept for payment gift cards, and our customer loyalty program provides rewards that can be redeemed for purchases. Like credit and debit cards, gift cards, and rewards earned by our customers are vulnerable to theft, whether physical or electronic. We believe that, due to their electronic nature, rewards earned through our customer loyalty program are primarily vulnerable to hacking. Customers affected by any loss of data or funds could litigate against us, and security breaches or even unsuccessful attempts at hacking could harm our reputation, and guarding against or responding to hacks could require significant time and resources.

We also receive and maintain certain personal information about our customers, including information received through our marketing programs, franchisees and business partners. Our collection, storage, handling, use, disclosure and security of this information is regulated by U.S. federal, state and local and foreign laws and regulations. If our security and information systems are compromised or our employees fail to comply with these laws and regulations and this information is obtained by unauthorized persons or used inappropriately, it could adversely affect our reputation, as well as the results of operations, and could result in litigation against us or the imposition of penalties. In addition, our ability to accept credit and debit cards as payment in our stores and online depends on us maintaining our compliance status with standards set by the PCI Security Standards Council. These standards, set by a consortium of the major credit card companies, require certain levels of system security and procedures to protect our customers' credit and debit card information as well as other personal information. Privacy and information security laws and regulations change over time, and compliance with those changes may result in cost increases due to necessary system and process changes.

We Are Subject To Periodic Litigation, Which Could Result In Unexpected Expenses Of Time And Resources.

From time to time, we are called upon to defend ourselves against lawsuits relating to our business. Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of any such proceedings. An unfavorable outcome in any current or future legal proceedings could have an adverse impact on our business, and financial results. In addition, any significant litigation in the future, regardless of its merits, could divert management's attention from our operations and result in substantial legal fees. Any litigation could result in substantial costs and a diversion of management's attention and resources that are needed to successfully run our business.

Changes In Health Benefit Claims And Healthcare Reform Legislation Could Have A Material Adverse Effect On Our Operations.

We accrue for costs to provide self-insured benefits for our employee health benefits program. We accrue for self-insured health benefits based on historical claims experience and we maintain insurance coverage to prevent financial losses from catastrophic health benefit claims. We monitor pending and enacted legislation in an effort to evaluate the effects of such legislation upon our business. Our financial position or results of operations could be materially adversely impacted should we experience a material increase in claims costs or a change in healthcare legislation that impacts our business.

Our Expansion Into New Markets May Present Increased Risks Due To Our Unfamiliarity With Those Areas And Our Target Customers' Unfamiliarity With Our Brands.

Consumers in any new markets we enter will not be familiar with our brands, and we will need to build brand awareness in those markets through significant investments in advertising and promotional activity. We may find it more difficult in new markets to secure desirable locations and to hire, motivate and keep qualified employees.

Issues Or Concerns Related To The Quality And Safety Of Our Products, Ingredients Or Packaging Could Cause A Product Recall And/Or Result In Harm To The Company's Reputation, Negatively Impacting Our Results Of Operations.

In order to sell our products, we need to maintain a good reputation with our customers and consumers. Issues related to the quality and safety of our products, ingredients or packaging could jeopardize our Company's image and reputation. Negative publicity related to these types of concerns, or related to product contamination or product tampering, whether valid or not, could decrease demand for our products or cause production and delivery disruptions. We may need to recall products if any of our products become unfit for consumption. In addition, we could potentially be subject to litigation or government actions, which could result in payments of fines or damages. Costs associated with these potential actions could negatively affect our results of operations.

Our Financial Results May Be Adversely Impacted By The Failure To Successfully Execute Or Integrate Acquisitions, Divestitures And Joint Ventures.

From time to time, we may evaluate potential acquisitions, divestitures or joint ventures that align with our strategic objectives. The success of such activity depends, in part, upon our ability to identify suitable buyers, sellers or business partners; perform effective assessments prior to contract execution; negotiate contract terms; and, if applicable, obtain government approval. These activities may present certain financial, managerial, staffing and talent, and operational risks, including diversion of management's attention from existing core businesses; difficulties integrating or separating businesses from existing operations; and challenges presented by acquisitions or joint ventures which may not achieve sales levels and profitability that justify the investments made. If the acquisitions, divestitures or joint ventures are not successfully implemented or completed, there could be a negative impact on our results of operations.

Provisions In Our Organizational Documents, As Well As Provisions Of Delaware Law, Could Make It More Difficult Or Costly For A Third Party To Acquire Us, Even If Doing So Would Benefit Our Stockholders, And Could Limit Attempts To Make Changes In Our Management.

Our amended and restated certificate of incorporation and bylaws, as well as Delaware law, contain provisions that could make it more difficult for a third party to acquire us without the consent of our Board of Directors. These provisions include the following:

- Authorize the issuance of "blank check" preferred stock, which is preferred stock with voting or other rights or preferences that could impede a takeover attempt and that the Board of Directors can create and issue without prior stockholder approval;
- Establish advance notice requirements for submitting nominations for election to the Board of Directors and for proposing matters that can be acted upon by stockholders at a meeting;
- Prohibit stockholder actions by written consent, which means all stockholder actions must be taken at a meeting of our stockholders; and
- Require super-majority voting to amend some provisions in our certificate of incorporation and to amend our bylaws.

Although we believe all of these provisions will make a higher third-party bid more likely by requiring potential acquirers to negotiate with the Board of Directors, these provisions will apply even if an initial offer may be considered beneficial by some stockholders and therefore could delay and/or prevent a deemed beneficial offer from being considered. These provisions could also discourage proxy contests and make it more difficult for our stockholders to elect directors and take other corporate actions, which may prevent a change of control or changes in our management that a stockholder might consider favorable. In addition, Section 203 of the Delaware General Corporation Law may discourage, delay, or prevent a change in control of us. Any delay or prevention of a change of control or change in

[Table of Contents](#)

management that stockholders might otherwise consider to be favorable could cause the market price of our common stock to decline.

Our Common Stock Price May Be Volatile Or May Decline Regardless Of Our Operating Performance.

Volatility in the market price of our common stock may prevent you from being able to sell your shares at or above the price you paid for such shares. Many factors, which are outside our control, may cause the market price of our common stock to fluctuate, including those described elsewhere in this “Risk Factors” section and this Annual Report, as well as the following:

- Our operating and financial performance and prospects;
- Our quarterly or annual earnings or those of other companies in our industry compared to market expectations;
- Conditions that impact demand at our stores and for our products;
- Future announcements concerning our business or our competitors’ businesses;
- The public’s reaction to our press releases, other public announcements and filings with the SEC;
- The size of our public float, and the trading volume of our common stock;
- Coverage by or changes in financial estimates by securities analysts or failure to meet their expectations;
- Market and industry perception of our success, or lack thereof, in pursuing our growth strategy;
- Strategic actions by us or our competitors, such as acquisitions or restructurings;
- Changes in laws or regulations which adversely affect our industry or us;
- Changes in accounting standards, policies, guidance, interpretations or principles;
- Changes in senior management or key personnel;
- Issuances, exchanges or sales, or expected issuances, exchanges or sales of our capital stock;
- Changes in our dividend policy;
- Adverse resolution of new or pending litigation against us; and
- Changes in general market, economic and political conditions in the United States and global economies or financial markets, including those resulting from natural disasters, terrorist attacks, pandemics, public health crises, acts of war and responses to such events.

As a result, volatility in the market price of our common stock may prevent investors from being able to sell their common stock at or above the price they paid for such shares. These broad market and industry factors may materially reduce the market price of our common stock, regardless of our operating performance. In addition, price volatility may be greater if the public float and trading volume of our common stock is low. As a result, you may suffer a loss on your investment.

Our Auditor’s Opinion on Our Audited Consolidated Financial Statements for the Year Ended February 29, 2024, included in this Annual Report, Contains an Explanatory Paragraph Relating to our Ability to Continue as a Going Concern.

During the year ended February 29, 2024, we incurred a net loss of \$4.2 million and used cash in operating activities of \$2.4 million. In addition, at February 29, 2024, we were in violation of a debt covenant for our \$1.25 million outstanding line of credit where the lender can demand repayment. These factors raise substantial doubts about our ability to continue as a going concern within one year of the date that the consolidated financial statements included

[Table of Contents](#)

in this Annual Report are issued. Our auditor's opinion on our audited consolidated financial statements for the year ended February 29, 2024 includes an explanatory paragraph stating that our losses and negative cash flows from operations and uncertainty in generating sufficient cash to meet our operating obligations raise substantial doubt about our ability to continue as a going concern. While we are considering a variety of funding sources and transactions that could raise capital, there can be no assurances that we will be successful in these efforts or will be able to resolve our liquidity issues or eliminate our operating losses. If we are unable to obtain sufficient funding, we would need to significantly reduce our operating plans and curtail some or all of our strategic plans. Accordingly, our business, prospects, financial condition, and results of operations will be materially and adversely affected, and we may be unable to continue as a going concern. If we are unable to continue as a going concern, we may have to liquidate our assets and may receive less than the value at which those assets are carried on our audited consolidated financial statements, and it is likely that investors will lose all or a part of their investment. If we seek additional financing to fund our business activities in the future and there remains substantial doubt about our ability to continue as a going concern, investors or other financing sources may be unwilling to provide additional funding on commercially reasonable terms or at all.

Our Inability to Meet a Financial Covenant Contained in our Revolving Credit Facility May Adversely Affect our Liquidity, Financial Condition and Results of Operations.

Pursuant to a credit agreement, as amended (the "Credit Agreement"), with Wells Fargo Bank N.A. (the "Lender"), we have a \$4.0 million credit line for general corporate and working capital purposes, of which \$2.75 million was available for borrowing (subject to certain borrowing-based limitations) as of February 29, 2024 (the "Credit Line"). The Credit Line is secured by substantially all of our assets, except retail store assets. Interest on borrowings is at the Secured Overnight Financing Rate plus 2.37% (7.69% at February 29, 2024 and 6.92% at February 28, 2023). Additionally, the Credit Line is subject to various financial ratio and leverage covenants.

As of February 29, 2024, we were not in compliance with the requirement under the Credit Agreement to maintain a ratio of total current assets to total current liabilities of at least 1.5 to 1. Our current ratio as of February 29, 2024 was 1.19 to 1. In the past, we have requested, and the Lender has granted, waivers of our compliance with this requirement. We have requested a waiver from the Lender, but we have not yet received approval. There can be no assurance that the Lender will grant us a waiver for our current noncompliance or waivers for future noncompliance.

As a result of our noncompliance, under the terms of the Credit Agreement, the Lender has the option, but not the obligation, to immediately demand repayment of all funds drawn down under the Credit Line. As of the date of this Annual Report, we do not have enough cash on hand to satisfy our obligations under the Credit Line if the Lender exercised its option to demand repayment. If the Lender exercises its option and demands repayment at some time in the future, however, we may not have sufficient funds available to make the payments required. If we are unable to repay amounts owed, the Lender may be entitled to foreclose on and sell substantially all of our assets, which secure our borrowings under the Credit Agreement which would have an adverse effect on our liquidity, financial condition and results of operations.

In addition, the Lender retains the right to act on covenant violations that occur after the date of delivery of any waiver. If the Lender were to decline to grant us a waiver and instead demand repayment in the future, we may need to seek alternative financing to pay these obligations as we may not have sufficient facilities or sufficient cash on hand at that time to satisfy these obligations.

Risks Related to the Economy

Global Or Regional Health Pandemics Or Epidemics Could Negatively Impact Our Business Operations, Financial Performance And Results Of Operations.

Our business and financial results could be negatively impacted by pandemics or epidemics. The severity, magnitude and duration of global or regional pandemics or epidemics are uncertain and hard to predict. COVID-19 significantly impacted economic activity and markets around the world, and resulted in broader supply, transportation and labor disruptions resulting in inflation and generally higher operating costs in our business. Relatedly, commodity and transportation costs have become more volatile and generally increased since the COVID-19 pandemic, as have supply chain disruptions, and transportation and labor shortages. Additionally, government or regulatory responses to pandemics could negatively impact our business. Mandatory lockdowns or other restrictions on operations in some

[Table of Contents](#)

countries temporarily disrupted our ability to distribute our products in some markets. Resumption, continuation or expansion of these disruptions could materially adversely impact our operations and results.

These and other impacts of global or regional health pandemics or epidemics could have the effect of heightening many of the other risks described in the risk factors presented in this filing, including but not limited to those relating to our reputation, brands, consumer preferences, supply chain, product sales, pricing actions, results of operations or financial condition. We might not be able to predict or respond to all impacts on a timely basis to prevent near- or long-term adverse impacts to our results. The ultimate impact of these disruptions also depends on events beyond our knowledge or control, including the duration and severity of other pandemics or epidemics and actions taken by parties other than us to respond to them. Any of these disruptions could have a negative impact on our business operations, financial performance, results of operations and stock price, and this impact could be material.

General Economic Conditions Could Have A Material Adverse Effect On Our Business, Results Of Operations And Liquidity Or Our Franchisees, With Adverse Consequences To Us.

Consumer purchases of discretionary items, including our products, often decline during weak economic periods where disposable income is adversely affected. Our performance is subject to factors that affect worldwide economic conditions, including employment, consumer debt, reductions in net worth based on severe market declines, residential real estate and mortgage markets, taxation, fuel and energy prices, interest rates, consumer confidence, public health, the value of the U.S. dollar versus foreign currencies and other macroeconomic factors. These factors may cause consumers to purchase products from lower priced competitors or to defer purchases of discretionary products altogether.

Economic weakness could have a material effect on our results of operations, liquidity and capital resources. It could also impact our ability to fund growth and/or result in us becoming more reliant on external financing, the availability and terms of which may be uncertain. In addition, a weak economic environment may exacerbate the other risks noted below.

We rely in large part on our franchisees and the manner in which they operate their stores to develop and promote our business. It is possible that additional franchisees could file for bankruptcy, become delinquent in their payments to us, or simply shut down which could have a significant adverse impact on our business due to loss of factory sales and loss or delay in payments of royalties, contributions to our marketing fund and other fees. Additionally, the availability of credit to our small business franchisees may be curtailed due to tighter credit conditions in the marketplace, and as a result could delay or preclude franchisees from making required store upgrades.

Although we have developed, and continue to develop, evolving criteria to evaluate and screen prospective developers and franchisees, we cannot be certain that the developers and franchisees we select will have the business acumen or financial resources necessary to open and operate successful franchises in their franchise areas, and state franchise laws may limit our ability to terminate or modify these franchise arrangements. Moreover, franchisees may not successfully operate stores in a manner consistent with our standards and requirements, or may not hire and train qualified managers and other store personnel. The failure of developers and franchisees to open and operate franchises successfully could have a material adverse effect on us, our reputation, our brand and our ability to attract prospective franchisees and could materially adversely affect our business, financial condition, results of operations and cash flows.

We Currently, And May In The Future, Have Assets Held At Financial Institutions That May Exceed The Insurance Coverage Offered By The Federal Deposit Insurance Corporation ("FDIC"), The Loss Of Which Would Have A Severe Negative Affect On Our Operations And Liquidity.

We may maintain our cash assets at financial institutions in the U.S. in amounts that may be in excess of the FDIC insurance limit of \$250,000. In the event of a failure or liquidity issues at any of the financial institutions where we maintain our deposits or other assets, we may incur a loss to the extent such loss exceeds the FDIC insurance limitation, which could have a material adverse effect upon our liquidity, financial condition and our results of operations. Similarly, if our customers or partners experience liquidity issues as a result of financial institution defaults or non-performance where they hold cash assets, their ability to pay us may become impaired and could have a material adverse effect on our results of operations, including the collection of accounts receivable and cash flows.

Risks Related to Our Franchisees

The Financial Performance Of Our Franchisees Can Negatively Impact Our Business.

Our financial results are dependent in part upon the operational and financial success of our franchisees. Franchisees purchase product from us and we receive royalties, franchise fees, contributions to our marketing fund, and other fees from our franchisees. We have established operational standards and guidelines for our franchisees; however, we have limited control over how our franchisees' businesses are run. While we are responsible for ensuring the success of our entire system of stores and for taking a longer-term view with respect to system improvements, our franchisees have individual business strategies and objectives, which might conflict with our interests. Our franchisees may not be able to secure adequate financing to open or continue operating their Rocky Mountain Chocolate Factory stores. If they incur too much debt or if economic or sales trends deteriorate such that they are unable to repay existing debt, our franchisees could experience financial distress or even bankruptcy. If a significant number of franchisees become financially distressed, it could harm our operating results through reduced royalty revenues and the impact on our profitability could be greater than the percentage decrease in the royalty revenues. This would reduce our royalty revenues and could negatively impact margins, since we may not be able to reduce fixed costs which we continue to incur.

We Have Limited Control With Respect To The Operations Of Our Franchisees, Which Could Have A Negative Impact On Our Business.

Franchisees are independent business operators and are not our employees, and we do not exercise control over the day-to-day operations of their stores. We provide training and support to franchisees, and set and monitor operational standards, but the quality of franchised stores may be diminished by any number of factors beyond our control. Consequently, franchisees may not successfully operate stores in a manner consistent with our standards and requirements, or may not hire and train qualified managers and other store personnel. If franchisees do not operate to our expectations, our image and reputation, and the image and reputation of other franchisees, may suffer materially and system-wide sales could decline significantly, which would reduce our royalty revenues, and the impact on profitability could be greater than the percentage decrease in royalties and fees.

A Significant Shift By Franchisees From Company-Manufactured Products To Products Produced By Third Parties Could Adversely Affect Our Operations.

In FY 2024, approximately one-half of the revenues of Rocky Mountain Chocolate Factory stores were generated by products produced at our Durango production facility, and one-half of products made in individual stores using our recipes and ingredients purchased from us or approved suppliers and with a small amount of products such as ice cream, coffee and other sundries purchased from approved suppliers. Franchisees' sales of products produced by us generate higher revenues to us than sales of store-made or other products. We have seen a significant increase in system-wide sales of store-made and other products, which has led to a decrease in purchases from us and has had an adverse effect on our revenues. If this trend continues, it could further adversely affect our total revenues and results of operations. Such a decrease could result from franchisees' decisions to sell more store-made products or products purchased from approved third party suppliers.

Risks Related to Our Supply Chain

Increase In Ingredient And Other Operating Costs, Including Those Caused By Weather And Food Safety, Could Adversely Affect Our Results Of Operations.

Our Company-owned and franchised stores could also be harmed by supply chain interruptions including those caused by factors beyond our control or the control of our suppliers. However, prolonged disruption in the supply of products from or to our manufacturing facility due to weather, natural disasters, food safety incidents, regulatory compliance, labor dispute or interruption of service by carriers could increase costs, limit the availability of ingredients critical to our store operations and have a significant impact on results. Increasing weather volatility or other long-term changes in global weather patterns could have a significant impact on the price or availability of some of our ingredients, energy and other materials throughout our supply chain. In particular, adverse weather or cocoa beans or nuts shortages could disrupt the supply of key ingredients to our and our franchisees' stores. Insolvency of key suppliers could also cause similar business interruptions and negatively impact our business.

Disruption To Our Manufacturing Facility Or Supply Chain Could Impair Our Ability To Produce Or Deliver Finished Products, Resulting In A Negative Impact On Our Results Of Operations.

All of our manufacturing operations are located in Durango, Colorado. Disruption to our manufacturing facility or to our supply chain could result from a number of factors, including natural disasters, pandemics, outbreak of disease, weather, fire or explosion, terrorism or other acts of violence, labor strikes or other labor activities, unavailability of raw or packaging materials, and operational and/or financial instability of key suppliers and other vendors or service providers. We believe that we take adequate precautions to mitigate the impact of possible disruptions. We have strategies and plans in place to manage disruptive events if they were to occur. However, if we are unable, or find that it is not financially feasible, to effectively plan for or mitigate the potential impacts of such disruptive events on our manufacturing facility or supply chain, our financial condition and results of operations could be negatively impacted.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 1C. CYBERSECURITY

Our Board of Directors is responsible for exercising oversight of management's identification and management of, and planning for, risks from cybersecurity threats.

We are developing processes, that seek to assess, identify, and manage material risks from cybersecurity threats to the IT systems and information that we use or will use, transmit, receive, and maintain. The processes for assessing, identifying, and managing material risks from cybersecurity threats include our efforts to identify the relevant assets that could be affected, determine possible threat sources and threat events, assess threats based on their potential likelihood and impact, and identify controls that are in place or necessary to manage and/or mitigate such risks.

We have not experienced any material cybersecurity incidents, and the expenses incurred from any security incidents have been immaterial. However, as discussed under "Risk Factors" in Part I, Item 1A of this Annual Report, cybersecurity threats pose multiple and potentially material risks to us, including potentially to our results of operations and financial condition. We rely extensively on information technology systems and could face cybersecurity risk. As cybersecurity threats become more frequent, sophisticated, and coordinated, it is reasonably likely that we may expend greater resources to continue to modify and enhance protective measures against such security risks

ITEM 2. PROPERTIES

Our production operations and corporate headquarters are located at 265 Turner Drive, Durango, Colorado 81303, which is a 53,000 square foot manufacturing facility that we own. During FY 2024, our manufacturing operations produced approximately 1.61 million pounds of chocolate products, which was a decrease of approximately 4.7% from the approximately 1.69 million pounds produced in FY 2023. In addition to our production facility, we own a two-acre parcel adjacent to our production facility.

As of February 29, 2024, the Company had obligations for one non-cancelable lease for our Flagship Store having an expiration date of January 31, 2026, which contains an optional ten-year renewal right. We do not deem this store lease to be material in relation to our overall operations.

For information as to the amount of our rental obligations under leases on both Company-owned and franchised stores, see Note 10 "Leasing Arrangements" to our consolidated financial statements included in Item 8 of this Annual Report.

ITEM 3. LEGAL PROCEEDINGS

Item 1. Legal Proceedings

We are not aware of any pending legal actions that would, if determined adversely to us, have a material adverse effect on our business and operations.

We may, from time to time, become involved in disputes and proceedings arising in the ordinary course of business. In addition, as a public company, we are also potentially susceptible to litigation, such as asserting violations of

[Table of Contents](#)

securities laws. Any such claims, with or without merit, if not resolved, could be time-consuming and result in costly litigation. There can be no assurance that an adverse result in any future proceeding would not have a potentially material adverse effect on our business, results of operations, and financial condition.

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable.

PART II.

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our common stock is listed on the Nasdaq Global Market tier of the Nasdaq Stock Market LLC under the symbol "RMCF."

Holders

On May 31, 2024, there were approximately 442 record holders of our common stock. This figure does not include an estimate of the number of beneficial holders whose shares are held of record by banks, broker or other nominees.

Dividends

Although we have previously paid cash dividends on our common stock, we have no present intention of paying a cash dividend on our common stock. Any determination to pay dividends to holders of our common stock will be at the discretion of our board of directors and will depend upon many factors, including our financial condition, results of operations, projections, liquidity, earnings, legal requirements, restrictions in our existing and any future debt and other factors that our board of directors deems relevant.

Unregistered sales of equity securities

In connection with the appointment of Scott Ouellet as Senior Vice President, Manufacturing and Supply Chain, the Compensation Committee of the Board of Directors approved an inducement award, in accordance with Nasdaq Listing Rule 5635(c)(4), to Mr. Ouellet, granted on September 18, 2023, consisting of an aggregate of 19,591 restricted stock units ("RSUs"). The RSUs were granted as an inducement material to Mr. Ouellet's acceptance of employment as Senior Vice President, Manufacturing and Supply Chain, and were granted outside of the Company's 2007 Equity Incentive Plan (as amended and restated).

The issuance of the above securities was deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act as a transaction by an issuer not involving any public offering.

ITEM 6. RESERVED

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Management's Discussion and Analysis of Financial Condition and Results of Operations (this "MD&A") is intended to assist in an understanding of our financial condition and should be read in conjunction with our Consolidated Financial Statements and accompanying Notes included in Item 8 of this Annual Report. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs, and involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed elsewhere in this Annual Report, particularly in Item 1A. "Risk Factors."

Overview

Rocky Mountain Chocolate Factory, Inc., a Delaware corporation, and its subsidiaries (including its operating subsidiary with the same name, Rocky Mountain Chocolate Factory, Inc., a Colorado corporation ("RMCF") (referred to as the "Company," "we," "us," or "our") is an international franchisor, confectionery producer and retail operator. Founded in 1981, we are headquartered in Durango, Colorado and produce an extensive line of premium chocolate products and other confectionery products ("Durango Products"). Our revenues and profitability are derived principally from our franchised/licensed system of retail stores that feature chocolate and other confectionary products including gourmet caramel apples. We also sell our confectionary products in select locations outside of our system of retail stores and license the use of our brand with certain consumer products. As of February 29, 2024, there was 2 Company-owned, 115 licensee-owned and 152 franchised Rocky Mountain Chocolate Factory stores operating in 36 states and the Philippines.

Recent Developments

On November 10, 2023, our board of directors adopted stock ownership guidelines for our non-employee directors and executive officers. Under the guidelines, non-employee directors are required to own certain eligible securities ("Eligible Shares") of the Company worth three (3) times the cash portion of their annual directors' base fees paid in cash, not including any retainers for service as the Board Chair or as a Board Committee Chair. Our Chief Executive Officer is required to own Eligible Shares worth three (3) times their base salary. Other executive officers of the Company are required to own Eligible Shares worth one (1) times their base salary. Non-employee directors elected prior to November 16, 2021 will have five (5) years from November 16, 2021 to meet the holding requirements. Non-employee directors elected after November 16, 2021 and up to November 10, 2023, will have five (5) years from the date of his or her election to meet the holding requirements. Executive officers serving as of November 10, 2023 will have five (5) years from that date to meet the minimum ownership requirement. All directors and executive officers who are elected or appointed after November 10, 2023 will have five (5) years from the time they are elected or appointed to meet the minimum ownership requirement.

On May 1, 2023, subsequent to the end of FY 2023, the Company completed the sale of substantially all of the assets of its wholly-owned subsidiary and frozen yogurt business, U-Swirl International, Inc. The aggregate sale price of U-Swirl was \$2.75 million, consisting of (i) \$1.75 million in cash and (ii) \$1.0 million evidenced by a three-year secured promissory note. The business divestiture of the U-Swirl segment was preceded by a separate sale of the Company's three owned U-Swirl locations on February 24, 2023. The consolidated financial statements present the historical financial results of the former U-Swirl segment as discontinued operations for all periods presented. See Note 17 of the Notes to Consolidated Financial Statements included in Item 8, "Financial Statements and Supplementary Data", of this Annual Report for information on this divestiture.

With the sale of U-Swirl, we continue to focus on our confectionery business to further enhance our competitive position and operating margin, simplify our business model, and deliver sustainable value to our stockholders.

Current Trends Affecting Our Business and Outlook

As a result of recent macroeconomic inflationary trends and disruptions to the global supply chain, we have experienced and expect to continue experiencing higher raw material, labor, and freight costs. We have seen labor and logistics challenges, which we believe have contributed to lower factory, retail and e-commerce sales of our products due to the availability of material, labor and freight. In addition, we could experience additional lost sale opportunities

[Table of Contents](#)

if our products are not available for purchase as a result of continued disruptions in our supply chain relating to an inability to obtain ingredients or packaging, labor challenges at our logistics providers or our production facility, or if we or our franchisees experience delays in stocking our products.

During FY 2023, the Company incurred substantial costs associated with a stockholder's contested solicitation of proxies in connection with our 2022 annual meeting of stockholders. During FY 2023, the Company incurred approximately \$4.1 million of costs associated with the contested solicitation of proxies, however there were no such comparable costs in FY 2024. The Company also incurred \$1.2 million of severance and retirement related costs for certain of our executives in FY 2024, compared to \$1.1 million in FY 2023.

We are subject to seasonal fluctuations in sales because of key holidays and the location of our franchisees, which have traditionally been located in resort or tourist locations, and the nature of the products we sell, which are highly seasonal. Historically, the strongest sales of our products have occurred during key holidays and summer vacation seasons. Additionally, quarterly results have been, and in the future are likely to be, affected by the timing of new store openings and sales of franchises. Because of the seasonality of our business and the impact of new store openings and sales of franchises, results for any quarter are not necessarily indicative of results that may be achieved in other quarters or for a full fiscal year.

The most important factors in continued growth in our earnings are our ability to increase the sales of premium chocolate products produced in our Durango production facility, the ability to produce more efficiently, supporting our franchisees in increasing the frequency and average value of customer transactions, ongoing online revenue growth, and franchise store growth.

Our ability to successfully achieve expansion of our franchise systems depends on many factors not within our control including the availability of suitable sites for new store establishment and the availability of qualified franchisees to support such expansion.

Efforts to reverse the decline in same store pounds purchased from our production facility by franchised stores and to increase total Durango production depend on many factors, including new store openings, competition, the receptivity of our franchise system to our product introductions and promotional programs.

Results of Continuing Operations

Fiscal 2024 Compared To Fiscal 2023

Results Summary

Basic loss per share decreased from a loss from continuing operations of \$(0.88) per share in FY 2023 to a loss from continuing operations of \$(0.77) per share in FY 2024. Revenues decreased by 8.2% from \$30.4 million for FY 2023 to \$28.0 million for FY 2024. Operating loss was \$4.9 million in FY 2023 compared to an operating loss of \$4.9 million in FY 2024. Loss from continuing operations decreased from a loss of \$5.5 million in FY 2023 to a loss of \$4.9 million in FY 2024.

REVENUES

(\$'s in thousands)	For the Year Ended		\$	%
	February 29 or 28, 2024	2023		
Durango product and retail sales	\$ 22,022.3	\$ 24,456.9	(2,434.6)	(10.0)%
Franchise fees	167.8	204.7	(36.9)	(18.0)%
Royalty and marketing fees	5,760.6	5,770.8	(10.2)	(0.2)%
Total	<u>\$ 27,950.7</u>	<u>\$ 30,432.4</u>	<u>\$ (2,481.7)</u>	<u>(8.2)%</u>

Durango Product and Retail Sales

The decrease in total sales for FY 2024 compared to FY 2023 was primarily due to a 10%, or \$2.4 million, decrease in sales of product to our network of franchised and licensed retail stores resulting from disruptions in our consumer

[Table of Contents](#)

packaged product availability to our franchise system due to a relocation of our packaging line to Salt Lake City, Utah in October as part of our plan to address labor shortages in the Durango area

In FY 2024, same store pounds purchased by franchisees and licensees declined slightly compared to the prior fiscal year. We continue to add new products and focus our existing product lines in an effort to increase same store pounds purchased by existing locations.

Royalties, Marketing Fees and Franchise Fees

Royalty and marketing fees were approximately unchanged during FY 2024 compared to FY 2023. The slight decrease in franchise fee revenue during FY 2024 compared to FY 2023 was primarily the result of store closures offset by the acceleration of unrecognized franchise fee revenue.

COSTS AND EXPENSES

Cost of Sales

(\$'s in thousands)	For the Year Ended February 29 or 28,		\$ Change	% Change
	2024	2023		
Total cost of sales	\$ 20,655.6	\$ 20,455.4	\$ 200.2	1.0 %
Franchise costs				
	2,582.4	1,825.8	756.6	41.4 %
Sales and marketing	2,131.7	2,060.2	71.5	3.5 %
General and administrative	6,673.9	10,325.7	(3,651.8)	(35.4)%
Retail operating	671.5	537.5	134.0	24.9 %
Total	<u>\$ 32,715.1</u>	<u>\$ 35,204.6</u>	<u>\$ (2,489.5)</u>	<u>(7.1)%</u>

(\$'s in thousands)	For the Year Ended February 29 or 28,		\$ Change	% Change
	2024	2023		
Total gross margin	\$ 1,366.7	\$ 4,001.5	\$ (2,634.8)	(65.8)%
Gross margin percentage	6.2 %	16.4 %	(10.2)%	(62.1)%

Adjusted Gross Margin (a non-GAAP measure) (\$'s in thousands)	For the Year Ended February 29 or 28,		\$ Change	% Change
	2024	2023		
Total gross margin	\$ 1,366.7	\$ 4,001.5	\$ (2,634.8)	(65.8)%
Plus: depreciation and amortization	749.6	646.4	103.2	16.0 %
Total Adjusted Gross Margin (non-GAAP measure)	<u>\$ 2,116.3</u>	<u>\$ 4,647.9</u>	<u>\$ (2,531.6)</u>	<u>(54.5)%</u>

Total Adjusted Gross Margin (non-GAAP measure)	<u>9.6 %</u>	<u>19.0 %</u>	<u>(9.4)%</u>	<u>(49.4)%</u>
--	--------------	---------------	---------------	----------------

Non-GAAP Measures

In addition to the results provided in accordance with U.S. GAAP, we provide certain non-GAAP measures, which present results on an adjusted basis. These are supplemental measures of performance that are not required by or presented in accordance with U.S. GAAP. Adjusted gross margin is a non-GAAP measure. Adjusted gross margin is equal to the sum of our total gross margin plus depreciation and amortization calculated in accordance with GAAP. We believe adjusted gross margin is helpful in understanding our past performance as a supplement to gross margin, and other performance measures calculated in conformity with GAAP. We believe that adjusted gross margin is useful to investors because they provide a measure of operating performance and our ability to generate cash that is unaffected by non-cash accounting measures. Additionally, we use adjusted gross margin rather than gross margin to make incremental pricing decisions. Adjusted gross margin has limitations as analytical tools because they exclude the impact of depreciation and amortization expense and you should not consider it in isolation or as a substitute for any measure reported under GAAP. Our use of capital assets makes depreciation and amortization expense a necessary

[Table of Contents](#)

element of our costs and our ability to generate income. Due to these limitations, we use adjusted gross margin as measures of performance only in conjunction with GAAP measures of performance such as gross margin.

Cost of Sales and Gross Margin

Total gross margin decreased to 6.2% in FY 2024 compared to a gross margin of 16.4% during FY 2023, due primarily to an increase in overhead costs, a sharp increase in the cost of cocoa as a raw material as well as other inflationary pressures we were unable to capture through price increases, and a reduction in production volume. Additionally, production volume decreased and expense incurred increased as a result of the Company undertaking actions to relocated its consumer packaging operations to Salt Lake City, Utah in response to limited labor ability in the Durango labor pool, which lead to delays in order fulfillment going into our busy holiday sales season.

Franchise Costs

The increase in franchise costs in FY 2024 compared to FY 2023 was due primarily to investments in human capital and the ongoing brand update and store redesign expense. As a percentage of total royalty and marketing fees and franchise fee revenue, franchise costs increased to 43.6% in FY 2024 from 30.6% in FY 2023. This increase as a percentage of royalty, marketing and franchise fees is primarily a result of higher royalty fees partially offset by higher costs.

Sales and Marketing

The increase in sales and marketing costs during FY 2024 compared to FY 2023 was due primarily to an increase in equity compensation costs and contract labor associated with the retirement of our former Senior Vice President of Sales and Marketing, and an increase in advertising costs.

General and Administrative

The decrease in general and administrative costs during FY 2024, compared to FY 2023, was due primarily to costs associated with a stockholder's contested solicitation of proxies in connection with our 2023 annual meeting of stockholders. During FY 2024, the Company did not incur material costs associated with the contested solicitation of proxies, compared with \$4.1 million of costs associated with a contested solicitation of proxies during FY 2023. The Company also incurred increased professional fees related to legal support for our Board of Directors and legal costs associated with compensation agreements for our former Chief Executive Officer and Chief Financial Officer and legal and professional costs associated with the search for, and appointment of, a new Chief Executive Officer and a new Chief Financial Officer. Additionally, due to a stockholder's contested solicitation of proxies in connection with our 2021 annual meeting of stockholders, the Company had become contingently liable for certain change in control severance payments to our former Senior Vice President of Sales and Marketing if a triggering termination was to occur. As a result of our former Senior Vice President of Sales and Marketing's retirement in September 2022, the Company incurred \$1.1 million of associated severance costs. As a percentage of total revenues, general and administrative expenses decreased to 23.9% during FY 2024, compared to 33.9% during FY 2023.

Retail Operating Expenses

Retail operating expenses increased 24.9% during FY 2024 compared to FY 2023. This increase is primarily the result of the Company's new Corpus Christi, TX location. In November 2022 we sold a Company-owned store located in Peoria, Illinois, to a franchisee. The result is that as of February 29, 2024, we operated two Company-owned locations.

Depreciation and Amortization

Depreciation and amortization, exclusive of depreciation and amortization included in cost of sales was \$0.1 million during FY 2024, relatively unchanged from \$0.1 million during FY 2023. Depreciation and amortization included in cost of sales increased 16.0% from \$0.6 million during FY 2023 to \$0.7 million during FY 2024. This increase was the result of investment in production equipment.

Other Income (Expense)

[Table of Contents](#)

Other income was \$26,400 during FY 2024, compared to other income of \$16,500 during FY 2023. This represents interest income of \$79,836 during FY 2024 compared to \$26,921 during FY 2023, and interest expense of \$53,397 during FY 2024 compared to \$10,431 during FY 2023.

Income Tax Expense

During FY 2024, we did not incur any income tax expense on a loss from continuing operations before income taxes of \$4.9 million compared to an income tax expense of \$0.6 million on a loss from continuing operations before income taxes of \$4.9 million during FY 2023. The FY 2023 expense was the result of recording a full valuation allowance on our deferred income tax assets. See Note 13 to the financial statements for a description of income taxes, deferred tax assets, and associated reserves.

Liquidity and Capital Resources

As of February 29, 2024, working capital was \$1.5 million compared with \$6.2 million as of February 28, 2023. The decrease in working capital was due primarily to a strategic reduction of inventory on hand commensurate with the current product assortments actively marketed by us and our franchisees, and continued capital investment in the Durango production facility. We have historically generated excess operating cash flow.

Cash and cash equivalent balances decreased from \$4.7 million as of February 28, 2023 to \$2.1 million as of February 29, 2024 primarily as a result of cash used by operating and investing activities. Our current ratio was 1.19 to 1.0 on February 29, 2024 compared to 2.24 to 1.0 on February 28, 2023. We monitor current and anticipated future levels of cash and cash equivalents in relation to anticipated operating, financing and investing requirements.

During FY 2024, we had a consolidated net loss of \$4.2 million, less net loss from discontinued operations of \$0.7 million. Operating activities used cash of \$2.4 million, with the principal adjustment to reconcile net income to net cash provided by operating activities being depreciation and amortization of \$0.9 million, provision for obsolete inventory of \$0.2 million and stock compensation expense of \$0.4 million. During FY 2023, we had a consolidated net loss of \$5.7 million. Operating activities used cash of \$2.1 million, with the principal adjustment to reconcile net income to net cash provided by operating activities being expense associated with establishing a full reserve of deferred tax assets of \$0.7 million, depreciation and amortization of \$0.8 million, provision for obsolete inventory of \$0.7 million and stock compensation expense of \$0.7 million.

During FY 2024, investing activities used cash of \$1.45 million, primarily due to the purchases of property and equipment of \$3.0 million, partially offset by investing cash flow from discontinued operations (the result of the sale of U-Swirl assets) of \$1.4 million. In comparison, investing activities used cash of \$0.8 million during FY 2023 primarily due to the purchases of property and equipment of \$1.0 million, partially offset by investing cash flow from discontinued operations of \$0.2 million.

There were \$1.25 million cash flows from financing activities during FY 2024 compared to no cash flows from financing activities during the prior year. The Company drew down \$1.25 million on its revolving line of credit during FY 2024 as discussed further below.

The conditions above raise substantial doubt regarding our ability to continue as a going concern for a period of at least one year from the date of issuance of these financial statements. In addition, our independent registered public accounting firm, in their report on the Company's February 29, 2024, audited financial statements, raised substantial doubt about the Company's ability to continue as a going concern.

Revolving Line of Credit

Pursuant to a credit agreement, as amended (the "Credit Agreement"), with Wells Fargo Bank N.A. (the "Lender"), we have a \$4.0 million credit line for general corporate and working capital purposes, of which \$2.75 million was available for borrowing (subject to certain borrowing-based limitations) as of February 29, 2024 (the "Credit Line"). The Credit Line is secured by substantially all of our assets, except retail store assets. Interest on borrowings is at the Secured Overnight Financing Rate plus 2.37% (7.69% at February 29, 2024 and 6.92% at February 28, 2023). Additionally, the Credit Line is subject to various financial ratio and leverage covenants. Per the Credit Agreement, the maturity date is September 30, 2024.

[Table of Contents](#)

As of February 29, 2024 we were not in compliance with the requirement under the Credit Agreement to maintain a ratio of total current assets to total current liabilities of at least 1.5 to 1. Our current ratio as of February 29, 2024 was 1.19 to 1. We have requested a waiver from the Lender and received approval as of the date of this Annual Report. We were in compliance, however, with all other aspects of the Credit Agreement.

As a result of our noncompliance, under the terms of the Credit Agreement, the Lender has the option, but not the obligation, to immediately demand repayment of all funds drawn down under the Credit Line. As of the date of this Annual Report, we do not have enough cash on hand to satisfy our obligations under the Credit Line if the Lender exercised its option to demand repayment. If the Lender exercises its option and demands repayment at some time in the future, however, we may not have sufficient funds available to make the payments required. If we are unable to repay amounts owed, the Lender may be entitled to foreclose on and sell substantially all of our assets, which secure our borrowings under the Credit Agreement.

In addition, the Lender retains the right to act on covenant violations that occur after the date of delivery of any waiver. If the Lender were to decline to grant us a waiver and instead demand repayment in the future, we may need to seek alternative financing to pay these obligations as the Company may not have sufficient facilities or sufficient cash on hand at that time to satisfy these obligations.

The Company is exploring various means of strengthening its liquidity position and ensuring compliance with its debt financing covenants, which may include the obtaining of waivers from the Lender and/or amending our Credit Line facility. We are also exploring supplemental debt facilities for other operational activities which could give us the ability to repay the Credit Line as needed.

Contractual Obligations

The table below presents significant contractual obligations of the Company at February 29, 2024.

(Amounts in thousands)

Contractual Obligations	Total	Less than 1 year	2-3 Years	4-5 years	More Than 5 years
Operating leases	\$ 1,874,640	\$ 514,169	\$ 781,133	\$ 238,208	\$ 341,130
Purchase contracts	269,808	269,808	-	-	-
Total	\$ 2,144,448	\$ 783,977	\$ 781,133	\$ 238,208	\$ 341,130

The Company made an average of \$1.7 million per year in capital expenditures during FY 2022 to FY 2024. For FY 2025 the Company anticipates making similar levels of capital expenditures. The planned increase is the result of expected investment in an updated Enterprise Resource Planning (ERP) management system, and machinery and equipment to replace equipment that has reached the end of its useful life.

Impact of Inflation

Inflationary factors such as increases in the costs of ingredients and labor directly affect the Company's operations. Most of the Company's leases provide for cost-of-living adjustments and require it to pay taxes, insurance and maintenance expenses, all of which are subject to inflation. Additionally, the Company's future lease cost for new facilities may include potentially escalating costs of real estate and construction. There is no assurance that the Company will be able to pass on increased costs to its customers.

Depreciation expense is based on the historical cost to the Company of its fixed assets, and is therefore potentially less than it would be if it were based on the current replacement cost. While property and equipment acquired in prior years will ultimately have to be replaced at higher prices, it is expected that replacement will be a gradual process over many years.

Critical Accounting Estimates

[Table of Contents](#)

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of our consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and the related disclosures. Estimates and assumptions include, but are not limited to, the carrying value of accounts and notes receivable from franchisees, inventories, the useful lives of fixed assets, goodwill, and other intangible assets, income taxes, contingencies and litigation. We base our estimates on analyses, which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates. The Company did not identify any critical estimates used in the preparation of our consolidated financial statements for the year ended February 29, 2024.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, we are not required to provide the information required by this Item.

[Table of Contents](#)

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO FINANCIAL STATEMENTS

	Page
Report of Independent Registered Public Accounting Firm (CohnReznick, LLP, New York, NY, PCAOB ID No. 596)	35
Report of Independent Registered Public Accounting Firm (Plante & Moran, PLLC, Cleveland, Ohio, PCAOB No. 166)	
Consolidated Statements of Operations	37
Consolidated Balance Sheets	38
Consolidated Statements of Changes in Stockholders' Equity	39
Consolidated Statements of Cash Flows	40
Notes to Consolidated Financial Statements	41

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Rocky Mountain Chocolate Factory, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Rocky Mountain Chocolate Factory, Inc. (the “Company”) as of February 29, 2024, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for the fiscal year then ended, and the related notes and financial statement schedule listed in the Index at Item 15(a) (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of February 29, 2024, and the results of its operations and its cash flows for the fiscal year then ended, in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company's ability to continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As disclosed in Note 1 to the financial statements, the Company has incurred recurring losses and negative cash flows from operations in recent years and is dependent on debt financing to fund its operations, all of which raise substantial doubt about the Company's ability to continue as a going concern. Management's evaluation of the events and conditions and management's plans regarding these matters are described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provides a reasonable basis for our opinion.

Critical Audit Matters

Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ CohnReznick LLP

We have served as the Company's auditor since 2023.

New York, New York
June 13, 2024

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Rocky Mountain Chocolate Factory, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Rocky Mountain Chocolate Factory, Inc. (the “Company”) as of February 28, 2023, the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the years in the two-year period ended February 28, 2023, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of February 28, 2023, and the results of its operations and its cash flows for each of the years in the two-year period ended February 28, 2023, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

The Company's management is responsible for these financial statements. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ PLANTE & MORAN, PLLC

We served as the Company's auditor from 2004 to 2023.

Cleveland, Ohio
May 30, 2023

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

	FOR THE YEARS ENDED FEBRUARY 29 or 28,		
	2024	2023	2022
Revenues			
Sales	\$ 22,022,310	\$ 24,456,910	\$ 23,534,470
Franchise and royalty fees	5,928,377	5,975,442	5,954,078
Total Revenue	27,950,687	30,432,352	29,488,548
Costs and Expenses			
Cost of sales	20,655,629	20,455,373	18,610,739
Franchise costs	2,582,371	1,825,783	1,914,944
Sales and marketing	2,131,734	2,060,215	1,474,807
General and administrative	6,673,929	10,325,633	7,456,314
Retail operating	671,487	537,482	606,889
Depreciation and amortization, exclusive of depreciation and amortization expense of \$749,606, \$646,394, and \$620,798, respectively, included in cost of sales	137,693	118,869	119,377
Total costs and expenses	32,852,843	35,323,355	30,183,070
Loss from Operations	(4,902,156)	(4,891,003)	(694,522)
Other Income (Expense)			
Interest expense	(53,397)	(10,431)	-
Interest income	79,836	26,921	10,870
Gain on insurance recovery	-	-	167,123
Other income, net	26,439	16,490	177,993
Loss Before Income Taxes	(4,875,717)	(4,874,513)	(516,529)
Income Tax Provision (Benefit)	-	613,843	(16,812)
Loss from Continuing Operations	(4,875,717)	(5,488,356)	(499,717)
Earnings (loss) from discontinued operations, net of tax	703,834	(192,422)	158,020
Net Loss	<u>\$ (4,171,883)</u>	<u>\$ (5,680,778)</u>	<u>\$ (341,697)</u>
Basic Loss per Common Share			
Loss from continuing operations	\$ (0.77)	\$ (0.88)	\$ (0.08)
Earnings (loss) from discontinued operations	0.11	(0.03)	0.02
Net loss	<u>\$ (0.66)</u>	<u>\$ (0.91)</u>	<u>\$ (0.06)</u>
Diluted Loss per Common Share			
Loss from continuing operations	\$ (0.77)	\$ (0.88)	\$ (0.08)
Earnings (loss) from discontinued operations	0.11	(0.03)	0.02
Net loss	<u>\$ (0.66)</u>	<u>\$ (0.91)</u>	<u>\$ (0.06)</u>
Weighted Average Common Shares Outstanding - Basic	6,294,411	6,226,279	6,140,687
Dilutive Effect of Employee Stock Awards	-	-	-
Weighted Average Common Shares Outstanding - Diluted	6,294,411	6,226,279	6,140,687

The accompanying notes are an integral part of these consolidated financial statements.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

AS OF FEBRUARY 29 or 28,
2024 2023

Assets			
Current Assets			
Cash and cash equivalents	\$	2,082,014	\$ 4,717,068
Accounts receivable, less allowance for credit losses of \$331,902 and \$666,315, respectively		2,183,685	2,055,694
Notes receivable, current portion, less current portion of the allowance for credit losses of \$29,886 and \$35,173, respectively		489,245	23,698
Refundable income taxes		45,969	344,885
Inventories		4,358,401	3,639,780
Other		443,336	340,847
Current assets held for sale		-	83,004
Total current assets		9,602,650	11,204,976
Property and Equipment, Net		7,757,655	5,710,739
Other Assets			
Notes receivable, less current portion and allowance for credit losses of \$0 and \$38,778, respectively		695,432	94,076
Goodwill		575,608	575,608
Intangible assets, net		237,897	265,927
Lease right of use asset		1,693,970	2,355,601
Other		14,006	14,054
Long-term assets held for sale		-	1,765,846
Total other assets		3,216,913	5,071,112
Total Assets	\$	20,577,218	\$ 21,986,827
Liabilities and Stockholders' Equity			
Current Liabilities			
Accounts payable	\$	3,409,892	\$ 2,189,760
Line of credit		1,250,000	-
Accrued salaries and wages		1,832,851	978,606
Gift card liabilities		624,335	592,932
Other accrued expenses		300,862	162,346
Contract liabilities		150,494	161,137
Lease liability		503,362	746,506
Current liabilities held for sale		-	178,939
Total current liabilities		8,071,796	5,010,226
Lease Liability, Less Current Portion		1,191,109	1,640,017
Contract Liabilities, Less Current Portion		678,154	782,278
Long-term liabilities - held for sale		-	184,142
Total Liabilities		9,941,059	7,616,663
Commitments and Contingencies			
Stockholders' Equity			
Preferred stock, \$.001 par value per share; 250,000 authorized; 0 shares issued and outstanding		-	-
Common stock, \$.001 par value, 46,000,000 shares authorized, 6,310,543 shares and 6,257,137 shares issued and outstanding, respectively		6,306	6,257
Additional paid-in capital		9,895,704	9,457,875
Retained earnings		734,149	4,906,032
Total stockholders' equity		10,636,159	14,370,164
Total Liabilities and Stockholders' Equity	\$	20,577,218	\$ 21,986,827

The accompanying notes are an integral part of these consolidated financial statements.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Retained Earnings	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balances as of February 28, 2021	—	\$ -	6,074,293	\$ 6,074	\$ 7,971,712	\$ 10,989,783	\$ 18,967,569
Issuance of common stock, vesting of restricted stock units and other, net of shares withheld	—	—	9,000	9	46,601	—	46,610
Equity compensation, restricted stock units, net of shares withheld	—	—	103,063	103	788,617	—	788,720
Net loss attributable to RMCF stockholders	—	—	—	—	—	(341,697)	(341,697)
Redemption of outstanding preferred stock purchase rights	—	—	—	—	—	(61,276)	(61,276)
Balances as of February 28, 2022	—	\$ -	6,186,356	\$ 6,186	\$ 8,806,930	\$ 10,586,810	\$ 19,399,926
Equity compensation, restricted stock units, net of shares withheld	—	—	70,781	71	650,945	—	651,016
Net loss attributable to RMCF stockholders	—	—	—	—	—	(5,680,778)	(5,680,778)
Balances as of February 28, 2023	—	\$ -	6,257,137	\$ 6,257	\$ 9,457,875	\$ 4,906,032	\$ 14,370,164
Equity compensation, restricted stock units, net of shares withheld	—	—	48,890	49	437,829	—	437,878
Net loss attributable to RMCF stockholders	—	—	—	—	—	(4,171,883)	(4,171,883)
Balances as of February 29, 2024	—	\$ -	6,306,027	\$ 6,306	\$ 9,895,704	\$ 734,149	\$ 10,636,159

The accompanying notes are an integral part of these consolidated financial statements.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	FOR THE YEARS ENDED FEBRUARY 29 or 28,		
	2024	2023	2022
Cash Flows From Operating Activities			
Net Loss	\$ (4,171,883)	\$ (5,680,778)	\$ (341,697)
Less: Net Income (Loss) from discontinued operations, net of tax	703,834	(192,422)	158,020
Net Loss from continuing operations	(4,875,717)	(5,488,356)	(499,717)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	887,299	765,263	740,175
Provision for obsolete inventory	188,786	732,499	384,473
Provision for loss (recovery) on accounts and notes receivable	(402,117)	(277,000)	-
Asset impairment and store closure losses	—	84,183	-
Loss (gain) on sale or disposal of property and equipment	(37,002)	11,958	(159,129)
Expense recorded for stock compensation	437,829	651,016	1,073,115
Deferred income taxes	—	722,163	(267,576)
Changes in operating assets and liabilities:			
Accounts receivable	227,053	82,050	46,311
Refundable income taxes	298,916	391,643	37,999
Inventories	(878,771)	(70,069)	(581,433)
Other current assets	(101,466)	(7,246)	(122,647)
Accounts payable	974,769	661,111	200,557
Accrued liabilities	999,483	(1,163,216)	1,332,993
Contract liabilities	(114,767)	5,384	26,321
Net cash (used in) provided by operating activities of continuing operations	(2,395,705)	(2,898,617)	2,211,442
Net cash provided by (used in) operating activities of discontinued operations	(39,242)	796,126	646,712
Net cash (used in) provided by operating activities	(2,434,947)	(2,102,491)	2,858,154
Cash Flows from Investing Activities			
Addition to notes receivable	(135,955)	(64,621)	-
Proceeds received on notes receivable	163,989	62,411	109,809
Proceeds from insurance recovery	-	-	206,336
Proceeds from the sale or distribution of assets	112,131	27,289	2,693
Purchases of property and equipment	(3,017,473)	(1,000,015)	(941,327)
Other	9,463	10,000	(10,000)
Net cash used in investing activities of continuing operations	(2,867,845)	(964,936)	(632,489)
Net cash provided by investing activities of discontinued operations	1,417,738	197,121	27,491
Net cash used in investing activities	(1,450,107)	(767,815)	(604,998)
Cash Flows from Financing Activities			
Repurchase of common stock through net settlement of restricted stock units	-	-	(237,785)
Proceeds from line of credit	1,250,000	-	-
Dividends paid and redemption of outstanding preferred stock purchase rights	-	-	(61,276)
Net cash (used in) provided by financing activities of discontinued operations	-	-	-
Net cash provided by (used in) financing activities	1,250,000	-	(299,061)
Net Increase (Decrease) in Cash and Cash Equivalents	(2,635,054)	(2,870,306)	1,954,095
Cash and Cash Equivalents, Beginning of Year	4,717,068	7,587,374	5,633,279
Cash and Cash Equivalents, End of Year	\$ 2,082,014	\$ 4,717,068	\$ 7,587,374

The accompanying notes are an integral part of these consolidated financial statements.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 - NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations

The accompanying consolidated financial statements include the accounts of Rocky Mountain Chocolate Factory, Inc., a Delaware corporation, its wholly-owned subsidiaries, Rocky Mountain Chocolate Factory, Inc. (a Colorado corporation), Aspen Leaf Yogurt, LLC (“ALY”), U-Swirl International, Inc. (dissolved in October 2023) (“U-Swirl”), and U-Swirl, Inc. (“SWRL”) (collectively, the “Company”, “we”, “RMCF”).

The Company is an international franchisor, confectionery manufacturer and retail operator. Founded in 1981, the Company is headquartered in Durango, Colorado and manufactures an extensive line of premium chocolate candies and other confectionery products (“Durango Products”). The Company also sells its candy in select locations outside of its system of retail stores.

On February 24, 2023 the Company entered into an agreement to sell its three Company-owned U-Swirl locations. Separately, on May 1, 2023, subsequent to the 2023 fiscal year end, the Company entered into an agreement to sell its franchise rights and intangible assets related to U-Swirl and associated brands. As a result, the activities of the Company’s U-Swirl subsidiary that have historically been reported in the U-Swirl segment have been reported as discontinued operations. See Note 17 – Discontinued Operations in the Notes to Consolidated Financial Statements for additional information regarding the Company’s discontinued operations, including net sales, operating earnings and total assets by segment. The Company’s financial statements reflect continuing operations only, unless otherwise noted.

The Company’s revenues are currently derived from three principal sources: sales to franchisees and others of chocolates and other confectionery products manufactured by the Company; the collection of initial franchise fees and royalties from franchisees’ sales; sales at Company-owned stores of chocolates and other confectionery products including gourmet caramel apples; and marketing fees.

The Company does not have a material amount of financial assets or liabilities that are required under U.S. GAAP to be measured on a recurring basis at fair value. The Company is not a party to any material derivative financial instruments. The Company does not have a material amount of non-financial assets or non-financial liabilities that are required under U.S. GAAP to be measured at fair value on a recurring basis. The Company has not elected to use the fair value measurement option, as permitted under U.S. GAAP, for any assets or liabilities for which fair value measurement is not presently required. The Company believes the fair values of cash equivalents, accounts and notes receivable, accounts payable and line of credit approximate their carrying amounts due to their short duration.

The following table summarizes the number of stores operating under the Rocky Mountain Chocolate Factory brand at February 29, 2024:

	Stores Open at 2/28/2023	Opened	Closed	Sold	Stores Open at 2/29/2024
Rocky Mountain Chocolate Factory					
Company-owned stores	1	1	-	-	2
Franchise stores - Domestic stores and kiosks	153	5	(9)	-	149
International license stores	4	-	(1)	-	3
Cold Stone Creamery - co-branded	101	4	(1)	-	104
U-Swirl - co-branded	10	1	-	-	11
Total	<u>269</u>				<u>269</u>

Liquidity and Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. In accordance with ASC 205-40, Going Concern, the Company’s management has evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the Company’s ability to

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

continue as a going concern within one year after the date the accompanying financial statements were issued. During the year ended February 29, 2024, the Company incurred a net loss of \$4.2 million and used cash in operating activities of \$2.4 million. Additionally, the Company was not in compliance with the requirement under a credit agreement, as amended (the "Credit Agreement"), with Wells Fargo Bank N.A. (the "Lender") to maintain a ratio of total current assets to total current liabilities of at least 1.5 to 1. The Company's current ratio as of February 29, 2024 was 1.19 to 1. The Company requested and received a waiver from the Lender as of the date the financial statements were available to be issued. The Credit Agreement is set to expire on September 30, 2024. These factors raise substantial doubts about the Company's ability to continue as a going concern within one year of the date that these consolidated financial statements are issued. The accompanying consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

The Company's ability to continue as a going concern is dependent on its ability to continue to implement its business plan. The Company is exploring various means of strengthening its liquidity position and ensuring compliance with its debt financing covenants, which may include the obtaining of waivers from the Lender and/or, amending its Credit Line facility. The Company is also exploring supplemental debt facilities for other operational activities. During the next twelve months the Company intends to sell an unused parcel of land near its headquarters, cut overhead for manufacturing, and increase profits and gross margins through increasing chocolate price sales to its franchising system and Specialty Market customers. In addition, the Company intends to benefit from busy season of holiday product sales and add a CFO to its management teams during the next twelve months. In the event the Company is unable to generate profits, positive cash flow, and implement its business plan, it may have to curtail its business further and no longer continue as a going concern.

Basis of Presentation and Consolidation

The accompanying consolidated financial statements, which include the accounts of the Company and its subsidiaries, have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the estimate of the reserve for uncollectible accounts, revenue recognition, reserve for inventory obsolescence, and inputs for assessing goodwill impairment. The Company bases its estimates on historical experience and also on assumptions that the Company believes are reasonable. The Company assesses these estimates on a regular basis; however, actual results could materially differ from these estimates.

Cash Equivalents

The Company considers all highly liquid instruments purchased with an original maturity of three months or less to be cash equivalents. The Company continually monitors its positions with, and the credit quality of, the financial institutions with which it invests. As of the balance sheet date, and periodically throughout the year, the Company has maintained balances in various operating accounts in excess of federally insured limits.

Accounts and Notes Receivable

Accounts receivable represent amounts due from customers in the ordinary course of business and are recorded at the invoiced amount and do not bear interest. Notes receivable generally reflect the sale of assets. Accounts and notes receivable are stated at the net amount expected to be collected, using an estimate of current expected credit losses to determine the allowance for expected credit losses. The Company evaluates the collectability of its accounts and notes receivable and determines the appropriate allowance for expected credit losses based on a combination of factors,

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

including the aging of the receivables and historical collection trends. When the Company is aware of a customer's inability to meet its financial obligation, the Company may individually evaluate the related receivable to determine the allowance for expected credit losses. The Company uses specific criteria to determine uncollectible receivables to be written off, including bankruptcy filings, the referral of customer accounts to outside parties for collection, and the length that accounts remain past due. As of February 29, 2024, the Company had \$2,183,685 of accounts receivable outstanding, inclusive of an allowance for credit losses of \$331,902. As of February 29, 2023, the Company had \$2,055,694 of accounts receivable outstanding, inclusive of an allowance for credit losses of \$666,315.

On February 29, 2024, the Company had total notes receivable of \$1,184,677, of which \$1,000,000 relates to the U-Swirl note. The U-Swirl note is a three-year secured promissory note in the aggregate original principal amount of \$1,000,000. Payment is due May 1, 2026. The remaining balance of notes receivable includes \$214,563 of notes receivable outstanding and an allowance for credit losses of \$29,886 associated with these notes, compared to \$191,725 of notes receivable outstanding and an allowance for credit losses of \$73,951 on February 28, 2023. The notes require monthly payments and bear interest rates ranging from 4.5% to 7.0%. The notes mature through December 2027 and all of the notes receivable are secured by the assets of the location. The Company may experience the failure of its wholesale customers, including its franchisees, to whom it extends credit to pay amounts owed to the Company on time, or at all.

Inventories

Inventories are stated at the lower of cost or net realizable value, which is adjusted for obsolete, damaged and excess inventories to the lower of cost or net realizable value based on actual differences. The inventory value is determined through analysis of items held in inventory, and, if the recorded value is higher than the net realizable value, the Company records an expense to reduce inventory to its actual net realizable value. The process by which the Company performs its analysis is conducted on an item by item basis and takes into account, among other relevant factors, net realizable value, sales history and future sales potential. Cost is determined using the first-in, first-out method.

Property and Equipment and Other Assets

Property and equipment are recorded at cost. Depreciation and amortization are computed using the straight-line method based upon the estimated useful life of the asset, which ranges from five to thirty-nine years. Leasehold improvements are amortized on the straight-line method over the lives of the respective leases or the service lives of the improvements, whichever is shorter.

The Company reviews its long-lived assets through analysis of estimated fair value, including identifiable intangible assets, whenever events or changes indicate the carrying amount of such assets may not be recoverable.

Income Taxes

The Company provides for income taxes pursuant to the asset and liability method. The asset and liability method requires recognition of deferred income taxes based on temporary differences between financial reporting and income tax basis of assets and liabilities, using current enacted income tax rates and regulations. These differences will result in taxable income or deductions in future years when the reported amount of the asset or liability is recovered or settled, respectively. Considerable judgment is required in determining when these events may occur and whether recovery of an asset, including the utilization of a net operating loss or other carryforward prior to its expiration, is more likely than not. The Company has recorded a deferred tax asset related to historical U-Swirl losses and has determined that these losses are restricted due to a limitation on the deductibility of future losses in accordance with Section 382 of the Internal Revenue Code as a result of the foreclosure transaction. The Company's temporary differences are listed in Note 13.

Gift Card Breakage

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company and its franchisees sell gift cards that are redeemable for product in stores. The Company manages the gift card program, and therefore collects all funds from the activation of gift cards and reimburses franchisees for the redemption of gift cards in their stores. A liability for unredeemed gift cards is included in current liabilities in our balance sheets.

There are no expiration dates on the Company's gift cards, and the Company does not charge any service fees. While the Company's franchisees continue to honor all gift cards presented for payment, the Company may determine the likelihood of redemption to be remote for certain cards due to long periods of inactivity. The Company recognizes breakage from gift cards when the gift card is redeemed by the customer or the Company determines the likelihood of the gift card being redeemed by the customer is remote ("gift card breakage"). The determination of the gift card breakage rate is based upon Company-specific historical redemption patterns. Accrued gift card liability was \$624,335 and \$592,932 at February 29, 2024 and February 28, 2023, respectively. The Company recognized breakage of \$40,218 and \$59,754 during FY 2024 and FY 2023, respectively.

Goodwill

Goodwill arose primarily from two transaction types. The first type was the purchase of various retail stores, either individually or as a group, for which the purchase price was in excess of the fair value of the assets acquired. The second type was from business acquisitions, where the fair value of the consideration given for acquisition exceeded the fair value of the identified assets net of liabilities.

The Company performs a goodwill impairment test on an annual basis, generally the first day of its fourth quarter, or more frequently when events or circumstances indicate that the carrying value of a reporting unit more likely than not exceeds its fair value. The recoverability of goodwill is evaluated through a comparison of the fair value of each of the Company's reporting units with its carrying value. To the extent that a reporting unit's carrying value exceeds the implied fair value of its goodwill, an impairment loss is recognized. The Company's goodwill is further described in Note 7 to the financial statements.

During FY 2023, the Company recorded \$84,183 of impairment of goodwill associated with its retail segment, and included within general and administrative expense on the Consolidated Statements of Operations. There were no similar impairment charges during FY 2024 or FY 2022.

Intangible Assets

Intangible assets represent non-physical assets that create future economic value and are primarily composed of packaging design, store design, trademarks and non-competition agreements. Intangible assets are amortized on a straight line basis over periods ranging from 5 years to 20 years based on the expected future economic value of the intangible asset. Intangible assets are recorded at their cost. The Company performs intangible asset impairment testing on an annual basis or more frequently when events or circumstances indicate that the carrying value of a reporting unit more likely than not exceeds its fair value. The Company's intangible assets are further described in Note 7 to the financial statements.

Insurance and Self-Insurance Reserves

The Company uses a combination of insurance and self-insurance plans to provide for the potential liabilities for workers' compensation, general liability, property insurance, director and officers' liability insurance, vehicle liability and employee health care benefits. Liabilities associated with the risks that are retained by the Company are estimated, in part, by considering historical claims experience, demographic factors, severity factors and other assumptions. While the Company believes that its assumptions are appropriate, the estimated accruals for these liabilities could be significantly affected if future occurrences and claims differ from these assumptions and historical trends.

Sales

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company has performance obligations to sell products to franchisees and other customers, and revenue is recognized at a point in time. Control is transferred when the order has been shipped to a customer, utilizing a third party, or at the time of delivery when shipped on the Company's trucks. Revenue is measured based on the amount of consideration that is expected to be received by the Company for providing goods or services under a contract with a customer. Sales of products to franchisees and other customers are made at standard prices, without any bargain sales of equipment or supplies. Sales of products at retail stores are recognized at the time of sale.

Rebates

Rebates received from purveyors that supply products to the Company's franchisees are included in franchise royalties and fees. Product rebates are recognized in the period in which they are earned. Rebates related to Company-owned locations are offset against operating costs.

Shipping Fees

Shipping fees charged to customers by the Company's trucking department are reported as sales. Shipping costs incurred by the Company for inventory are reported as cost of sales or inventory.

Franchise and Royalty Fees

The Company recognizes franchise fees over the term of the associated franchise agreement, which is generally a period of 10 years. In addition to the initial franchise fee, the Company also recognizes a marketing and promotion fee of one percent (1%) of franchised stores' gross retail sales and a royalty fee based on gross retail sales. The Company recognizes no royalty on franchised stores' retail sales of products purchased from the Company's manufacturing facility and recognizes a ten percent (10%) royalty on all other sales of product made in store and sold at franchise locations.

Use of Estimates

In preparing consolidated financial statements in conformity with accounting principles generally accepted in the United States of America, management is required to make estimates and assumptions that affect the reported amounts of assets, liabilities, and the disclosure of contingent assets and liabilities, at the date of the consolidated financial statements, and revenues and expenses during the reporting period. Actual results could differ from those estimates.

Stock-Based Compensation

In FY 2021, stockholders approved an amendment and restatement of the 2007 Equity Incentive Plan (as amended and restated, the "2007 Plan"). The 2007 Plan allows awards of stock options, stock appreciation rights, stock awards, restricted stock and stock units, performance shares and performance units, and other stock- or cash-based awards. Stock-based compensation expense related to stock awards is measured based on the fair value of the awards granted and recognized as an expense over the requisite service period.

The fair value of each RSU award is based on the fair value of the underlying common stock as of the grant date. Stock-based compensation expense is recognized on a straight-line basis over the requisite service period, generally five to six years.

The Company accounts for forfeitures as they occur.

Related Party Transactions

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

On December 14, 2022 the Company entered into a Settlement Agreement and Release (the “Settlement Agreement”), by and among the Company, Bradley L. Radoff, an individual (“Radoff”), Andrew T. Berger, an individual, AB Value Partners, LP (“AB Value Partners”), AB Value Management LLC (“AB Value Management” and, together with AB Value Partners, “AB Value” and, together with Radoff, “ABV-Radoff”), and Mary Bradley, an individual, pertaining to, among other things, the dismissal of all pending lawsuits between the parties.

Pursuant to the Settlement Agreement, the Company and ABV-Radoff agreed to a “Standstill Period” commencing on the effective date of the agreement and ending on the date that is forty-five (45) days prior to the beginning of the Company’s advance notice period for the nomination of directors at the Company’s 2025 annual meeting of stockholders. During the Standstill Period, ABV-Radoff agreed, subject to certain exceptions, other than in Rule 144 open market broker sale transactions where the identity of the purchaser is not known and in underwritten widely dispersed public offerings, not to sell, offer, or agree to sell directly or indirectly, through swap or hedging transactions or otherwise, the securities of the Company or any rights decoupled from the underlying securities of the Company held by ABV-Radoff to any person or entity other than the Company or an affiliate of ABV-Radoff (a “Third Party”) that, to the ABV-Radoff’s knowledge would result in such Third Party, together with its Affiliates and Associates (as such terms are defined in the Settlement Agreement), owning, controlling, or otherwise having beneficial ownership or other ownership interest in the aggregate of more than 4.9% of the Company’s common stock outstanding at such time, or would increase the beneficial ownership or other ownership interest of any Third Party who, together with its Affiliates and Associates, has a beneficial ownership or other ownership interest in the aggregate of more than 4.9% of the shares Common Stock outstanding at such time (such restrictions collectively, the “Lock-Up Restriction”).

On August 3, 2023, the Board of Directors of the Company authorized and approved the issuance of a limited waiver (the “Limited Waiver”) of the Lock-Up Restriction with regard to a sale by ABV-Radoff of up to 200,000 shares of Common Stock to Global Value Investment Corp. (“GVIC”) to be consummated by August 7, 2023. Jeffrey Geygan, the Company’s Chairman of the Board and current Interim CEO of the Company, is the chief executive officer and a principal of GVIC. Other than as waived by the Limited Waiver, the Settlement Agreement remains in full force and effect and the rights and obligations under the Settlement Agreement of each of the parties remain unchanged.

Earnings Per Share

Basic earnings per share is computed as net earnings divided by the weighted average number of common shares outstanding during each year. Diluted earnings per share reflects the potential dilution that could occur from common shares issuable through stock options and restricted stock units.

The weighted-average number of shares outstanding used in the computation of diluted earnings per share does not include outstanding common shares issuable if their effect would be anti-dilutive. During the year ended February 29, 2024, 960,677 shares of common stock that were issuable upon exercise of warrants, 160,958 shares of common stock that were issuable upon the vesting of restricted stock units, and 17,698 shares of common stock that were issuable upon the exercise of options were excluded from the computation of diluted earnings per share because their effect would have been anti-dilutive. During the year ended February 28, 2023, 960,677 shares of common stock that were issuable upon exercise of warrants, 137,294 shares of common stock that were issuable upon the vesting of restricted stock units, and 36,144 shares of common stock that were issuable upon the exercise of options were excluded from the computation of diluted earnings per share because their effect would have been anti-dilutive. During the year ended February 28, 2022, 960,677 shares of common stock reserved for issuance upon the exercise of warrants and 147,422 shares of common stock that were issuable upon the vesting of restricted stock units were excluded from the computation of diluted earnings per share because their effect would have been anti-dilutive.

Advertising and Promotional Expenses

The Company expenses advertising costs as incurred. Total advertising expenses amounted to \$701,214, \$577,984, and \$210,103 for the fiscal years ended February 29 or 28, 2024, 2023 and 2022, respectively.

Fair Value of Financial Instruments

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company's financial instruments consist of cash and cash equivalents, trade and notes receivables, accounts payables, and its line of credit. The fair value of all instruments approximates the carrying value, because of the relatively short maturity of these instruments. All of the Company's financial instruments are classified as level 1 and level 2 assets within the fair value hierarchy. The Company does not have any financial instruments classified as level 3 assets.

Recently Adopted Accounting Pronouncements

Except for the recent accounting pronouncements described below, other recent accounting pronouncements are not expected to have a material impact on the Company's consolidated financial statements.

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. ASU 2016-13 significantly changes the impairment model for most financial assets and certain other instruments. ASU 2016-13 will require immediate recognition of estimated credit losses expected to occur over the remaining life of many financial assets, which will generally result in earlier recognition of allowances for credit losses on loans and other financial instruments and affect the carrying value of accounts receivable. The Company adopted ASU 2016-13 effective March 1, 2023. The adoption of ASU 2016-13 did not have a material impact on the Company's consolidated financial statements.

New Accounting Pronouncements Not Yet Adopted

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures ("ASU 2023-07"). ASU 2023-07 enhances the disclosures required for operating segments in the Company's annual and interim consolidated financial statements. The disclosures required under ASU 2023-07 are also required for public entities with a single reportable segment. The updates in this ASU are effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is currently evaluating the impact of the new standard on its consolidated financial statements.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures ("ASU 2023-09"). ASU 2023-09 requires disaggregated information about a reporting entity's effective tax rate reconciliation as well as information on income taxes paid. The updates in this ASU are effective for annual periods beginning after December 15, 2024. Early adoption is permitted. The Company is currently evaluating the impact of the new standard on its consolidated financial statements.

Subsequent Events

Management evaluated all activity of the Company through the issue date of the financial statements and concluded that no subsequent events have occurred that would require recognition or disclosure in the financial statements.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE 2 - SUPPLEMENTAL CASH FLOW INFORMATION

For the three years ended February 29 or 28:

Cash paid (received) for:	2024	2023	2022
Interest	\$ 25,127	\$ 25,000	\$ 5,202
Income taxes	(298,895)	(547,763)	240,890
Supplemental disclosure of non-cash investing activities:			
Sale of assets in exchange for note receivable	\$ 1,000,000	\$ -	\$ -

NOTE 3 – REVENUE FROM CONTRACTS WITH CUSTOMERS

The Company recognizes revenue from contracts with its customers in accordance with Accounting Standards Codification® (“ASC”) 606, which provides that revenues are recognized when control of promised goods or services is transferred to a customer in an amount that reflects the consideration expected to be received for those goods or services. The Company generally receives a fee associated with the franchise agreement or license agreement (collectively “Customer Contracts”) at the time that the Customer Contract is entered. These Customer Contracts have a term of up to 20 years, however the majority of Customer Contracts have a term of 10 years. During the term of the Customer Contract, the Company is obligated to many performance obligations that the Company has not determined are distinct. The resulting treatment of revenue from Customer Contracts is that the revenue is recognized proportionately over the life of the Customer Contract.

Initial Franchise Fees, License Fees, Transfer Fees and Renewal Fees

The initial franchise services are not distinct from the continuing rights or services offered during the term of the franchise agreement, and are treated as a single performance obligation. Initial franchise fees are being recognized as the Company satisfies the performance obligation over the term of the franchise agreement, which is generally 10 years.

The following table summarizes contract liabilities as of February 29, 2024 and February 28, 2023:

	Twelve Months Ended February 29 or 28:	
	2024	2023
Contract liabilities at the beginning of the year:	\$ 943,415	\$ 962,572
Revenue recognized	(167,767)	(204,657)
Contract fees received	53,000	185,500
Contract liabilities at the end of the year:	<u>\$ 828,648</u>	<u>\$ 943,415</u>

At February 29, 2024, annual revenue expected to be recognized in the future, related to performance obligations that are not yet fully satisfied, are estimated to be the following:

2025	\$ 150,494
2026	135,223
2027	112,137
2028	103,775
2029	66,653
Thereafter	260,366
Total	<u>\$ 828,648</u>

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Gift Cards

The Company's franchisees sell gift cards, which do not have expiration dates or non-usage fees. The proceeds from the sale of gift cards by the franchisees are accumulated by the Company and paid out to the franchisees upon customer redemption. ASC 606 requires the use of the "proportionate" method for recognizing breakage. The Company recognizes breakage from gift cards when the gift card is redeemed by the customer or the Company determines the likelihood of the gift card being redeemed by the customer is remote ("gift card breakage"). The determination of the gift card breakage rate is based upon Company-specific historical redemption patterns. The Company recognized breakage of \$40,218 and \$59,754 during FY 2024 and FY 2023, respectively

Durango Product Sales of Confectionary Items, Retail Sales and Royalty and Marketing Fees

Confectionary items sold to the Company's franchisees, others and its Company-owned stores' sales are recognized at the time of the underlying sale, based on the terms of the sale and when ownership of the inventory is transferred, and are presented net of sales taxes and discounts. Royalties and marketing fees from franchised or licensed locations, which are based on a percent of sales are recognized at the time the sales occur.

NOTE 4 – DISAGGREGATION OF REVENUE

The following table presents disaggregated revenue by the method of recognition and segment:

For the Year Ended February 29, 2024

Revenues recognized over time:

	Franchising	Manufacturing	Retail	Total
Franchise fees	\$ 167,767	-	\$ -	\$ 167,767

Revenues recognized at a point in time:

Durango Product sales	\$ -	\$ 20,703,409	\$ -	\$ 20,703,409
Retail sales	-	-	1,318,901	1,318,901
Royalty and marketing fees	5,760,610	-	-	5,760,610
Total revenues recognized over time and point in time	<u>\$ 5,928,377</u>	<u>\$ 20,703,409</u>	<u>\$ 1,318,901</u>	<u>\$ 27,950,687</u>

For the Year Ended February 28, 2023

Revenues recognized over time:

	Franchising	Manufacturing	Retail	Total
Franchise fees	\$ 204,657	\$ -	\$ -	\$ 204,657

Revenues recognized at a point in time:

Durango Product sales	\$ -	\$ 23,372,133	\$ -	\$ 23,372,133
Retail sales	-	-	1,084,777	1,084,777
Royalty and marketing fees	5,770,785	-	-	5,770,785
Total revenues recognized over time and point in time	<u>\$ 5,975,442</u>	<u>\$ 23,372,133</u>	<u>\$ 1,084,777</u>	<u>\$ 30,432,352</u>

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

For the Year Ended February 28, 2022

Revenues recognized over time:

	Franchising	Manufacturing	Retail	Total
Franchise fees	\$ 179,678	\$ -	\$ -	\$ 179,678

Revenues recognized at a point in time:

Durango Product sales	\$ -	\$ 22,374,175	\$ -	\$ 22,374,175
Retail sales	-	-	1,160,295	1,160,295
Royalty and marketing fees	5,774,400	-	-	5,774,400
Total revenues recognized over time and point in time	<u>\$ 5,954,078</u>	<u>\$ 22,374,175</u>	<u>\$ 1,160,295</u>	<u>\$ 29,488,548</u>

NOTE 5 - INVENTORIES

Inventories consist of the following at February 29 or 28:

	2024	2023
Ingredients and supplies	\$ 2,037,727	\$ 2,481,510
Finished candy	2,509,460	1,567,887
Reserve for slow moving inventory	(188,786)	(409,617)
Total inventories	<u>\$ 4,358,401</u>	<u>\$ 3,639,780</u>

NOTE 6 – PROPERTY AND EQUIPMENT, NET

Property and equipment consists of the following at February 29 or 28:

	2024	2023
Land	\$ 513,618	\$ 513,618
Building	5,108,950	5,151,886
Machinery and equipment	12,508,888	10,152,211
Furniture and fixtures	590,679	512,172
Leasehold improvements	138,515	134,010
Transportation equipment	325,979	476,376
	19,186,629	16,940,273
Less accumulated depreciation	(11,428,974)	(11,229,534)
Property and equipment, net	<u>\$ 7,757,655</u>	<u>\$ 5,710,739</u>

Depreciation expense related to property and equipment totaled \$859,269, \$736,358, and \$710,804, during the fiscal years ended February 29 or 28, 2024, 2023 and 2022, respectively.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE 7 – GOODWILL AND INTANGIBLE ASSETS

Goodwill and intangible assets consist of the following at February 29 or 28:

Intangible assets subject to amortization	Amortization Period (in Years)	2024		2023	
		Gross Carrying Value	Accumulated Amortization	Gross Carrying Value	Accumulated Amortization
Store design	10	\$ 394,826	\$ 277,344	\$ 394,826	\$ 259,314
Trademark/Non-competition agreements	5 - 20	259,339	138,924	259,339	128,924
Total		654,165	416,268	654,165	388,238
Goodwill and intangible assets not subject to amortization					
Goodwill					
Retail		\$ 360,972		\$ 360,972	
Franchising		97,318		97,318	
Manufacturing		97,318		97,318	
Trademark		20,000		20,000	
Total		575,608		575,608	
Total Goodwill and Intangible Assets		\$ 1,229,773	\$ 416,268	\$ 1,229,773	\$ 388,238

There was no change to goodwill during the fiscal year ended February 29, 2024. Changes to goodwill during the fiscal year ended February 28, 2023 consisted of the following:

	Retail Segment
Balance as of February 28, 2022	\$ 515,065
Impairment losses	(84,183)
Goodwill written off related to sales of Company-owned stores	(69,910)
Balance as of February 29, 2023	\$ 360,972

Amortization expense related to intangible assets totaled \$28,030, \$28,905, and \$29,371 during the fiscal years ended February 29 or 28, 2024, 2023 and 2022, respectively.

At February 29, 2024, annual amortization of intangible assets, based upon the Company's existing intangible assets and current useful lives, is estimated to be the following:

2025	\$ 27,405
2026	27,405
2027	27,405
2028	27,405
2029	27,405
Thereafter	100,872
Total	\$ 237,897

NOTE 8 –NOTES PAYABLE AND REVOLVING CREDIT LINE

Revolving Credit Line

As of February 29, 2024, the Company had a \$4.0 million credit line for general corporate and working capital purposes, of which \$2.75 million was available for borrowing (subject to certain borrowing base limitations). The Company drew down \$1.25 million on the credit line during the year ended February 29, 2024. Per the Credit

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Agreement, the maturity date is September 30, 2024, at which point the full amount outstanding is due. The credit line is secured by substantially all of the Company's assets, except retail store assets. Interest on borrowings is at the Secured Overnight Financing Rate plus 2.37% (7.69% at February 29, 2024 and 6.92% at February 28, 2023). Additionally, the line of credit is subject to various financial ratio and leverage covenants.

As of February 29, 2024, the Company was not in compliance with the requirement under the Credit Agreement to maintain a ratio of total assets to total current liabilities of at least 1.5 to 1. The Company's current ratio as of February 29, 2024 was 1.19 to 1. The Company has received a waiver from the Lender as of the date of issuance of these financial statements. The Company is in compliance, however, with all other aspects of the Credit Agreement. Refer to Note 1 for further information.

NOTE 9 - STOCK COMPENSATION PLANS

In FY 2021, stockholders approved an amendment and restatement of the 2007 Equity Incentive Plan (as amended and restated, the "2007 Plan"). The 2007 Plan allows awards of stock options, stock appreciation rights, stock awards, restricted stock and stock units, performance shares and performance units, and other stock- or cash-based awards. As of February 29, 2024, total shares authorized under the 2007 Plan was 985,340, and 183,974 shares were available for issuance.

Information with respect to restricted stock unit awards outstanding under the 2007 Plan at February 29, 2024, and changes for the three years then ended was as follows:

	Twelve Months Ended		
	2024	February 29 or 28: 2023	2022
Outstanding non-vested restricted stock units at beginning of year:			
Granted	154,131	105,978	209,450
Vested	(48,890)	(70,782)	(127,130)
Cancelled/forfeited	(101,428)	(10,157)	(2,400)
Outstanding non-vested restricted stock units as of February 29 or 28:	<u>160,958</u>	<u>154,131</u>	<u>105,978</u>
Weighted average grant date fair value	\$ 5.59	\$ 5.23	\$ 9.33
Weighted average remaining vesting period (in years)	1.94	1.73	2.26

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company also issued 19,591 restricted stock units outside of the 2007 Plan, of which 7,393 had service vesting conditions and 12,198 had performance vesting conditions, further discussed below. The grant date fair value of the non plan awards was \$4.86 per share.

Information with respect to stock option awards outstanding under the 2007 Plan at February 29, 2024, and changes for the three years then ended was as follows:

	Twelve Months Ended		
	2024	February 29 or 28: 2023	2022
Outstanding stock options at beginning of year:	36,144	-	-
Granted	-	36,144	-
Exercised	-	-	-
Cancelled/forfeited	(18,446)	-	-
Outstanding stock options as of February 29 or 28:	17,698	36,144	-
Weighted average exercise price	\$ 6.49	\$ 6.49	n/a
Weighted average remaining contractual term (in years)	8.26	9.26	n/a

During the year ended February 29, 2024, the Company issued a total of 157,145 restricted stock units, inclusive of the 2007 Plan and non plan awards, of which 95,151 restricted stock units are subject to vesting based on the achievement of company performance goals and 61,994 restricted stock units that vest over time. These issuances were made to certain of the Company's executives. These restricted stock units were issued with an aggregate grant date fair value of \$877,838 or \$5.59 per share. The performance-based restricted stock units will vest following the end of the Company's fiscal year ending February 2026 with respect to the target number of performance-based restricted stock units if the Company achieves metrics related to return on equity, Specialty Market gross margin, average unit volume, and social media engagement lifetime value during the performance period, subject to continued service through the end of the performance period. The performance-based restricted stock units may vest from 75% to 110% of target units based upon actual performance. The time-based restricted stock units vest 33% annually on the anniversary date of the award until August 11, 2026.

During the year ended February 28, 2023, the Company issued 36,144 stock options and issued 94,892 performance-based restricted stock units subject to vesting based on the achievement of performance goals. These issuances were made to certain of the Company's executives. The stock options were issued with an aggregate grant date fair value of \$77,267 or \$2.14 per share. The performance-based restricted stock units were issued with an aggregate grant date fair value of \$298,582 or \$6.29 per share, based upon a target issuance of 47,446 shares of common stock. The stock options granted vest with respect to one-third of the shares on the last day of the Company's current fiscal year ending February 29, 2024, and vest as to remaining shares in equal quarterly increments on the last day of each quarter until the final vesting on February 28, 2025. The performance-based restricted stock units will vest following the end of the Company's fiscal year ending February 2025 with respect to the target number of performance-based restricted stock units if the Company achieves an annualized total shareholder return of 12.5% during the performance period, subject to continued service through the end of the performance period. The Compensation Committee of the Board of Directors has discretion to determine the number of performance-based restricted stock units between 0-200% of the target number that will vest based on achievement of performance below or above the target performance goal.

The Company recognized \$437,829 and \$651,016 of stock-based compensation expense during the years ended February 29 and 28, 2024 and 2023, respectively. Compensation costs related to stock-based compensation are generally amortized over the vesting period of the stock awards. Refer to Note 16 for further discussion of the equity impact of the prior CEO termination.

Except as noted above, restricted stock units generally vest in equal annual installments over a period of five to six years. During the year ended February 29 and 28, 2024 and 2023, restricted stock units vested and issued as 48,890 and 70,781 shares of common stock, respectively. Total unrecognized compensation expense of non-vested,

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

non-forfeited restricted stock units and stock options granted as of February 29, 2024 was \$408,275, which is expected to be recognized over the weighted-average period of 1.9 years. Total unrecognized compensation expense of non-forfeited, performance vesting, restricted stock units as of February 28, 2023 was \$628,966, which is expected to be recognized over the weighted-average period of 1.7 years.

NOTE 10 – LEASING ARRANGEMENTS

The Company conducts its retail operations in facilities leased under non-cancelable operating leases of up to ten years. Certain leases contain renewal options for between five and ten additional years at increased monthly rentals. Some of the leases provide for contingent rentals based on sales in excess of predetermined base levels.

The Company acts as primary lessee of some franchised store premises, which the Company then subleases to franchisees, but the majority of existing franchised locations are leased by the franchisee directly.

In some instances, the Company has leased space for its Company-owned locations that are now occupied by franchisees. When the Company-owned location was sold or transferred, the store was subleased to the franchisee who is responsible for the monthly rent and other obligations under the lease.

The Company also leases trucking equipment and warehouse space in support of its production operations. Expense associated with trucking and warehouse leases is included in cost of sales on the consolidated statements of operations.

The Company accounts for payments related to lease liabilities on a straight-line basis over the lease term. During the years ended February 29 or 28, 2024 and 2023, lease expense recognized in the consolidated statements of operations was \$599,853 and \$565,046, respectively.

The lease liability reflects the present value of the Company's estimated future minimum lease payments over the life of its leases. This includes known escalations and renewal option periods reasonably assured of being exercised. Typically, renewal options are considered reasonably assured of being exercised if the sales performance of the location remains strong. Therefore, the right of use asset and lease liability include an assumption on renewal options that have not yet been exercised by the Company and are not currently a future obligation. The Company has separated non-lease components from lease components in the recognition of the Asset and Liability except in instances where such costs were not practical to separate. To the extent that occupancy costs, such as site maintenance, are included in the asset and liability, the impact is immaterial. For franchised locations, the related occupancy costs including property taxes, insurance and site maintenance are generally required to be paid by the franchisees as part of the franchise arrangement. In addition, the Company is the lessee under non-store related leases such as storage facilities and trucking equipment. For leases where the implicit rate is not readily determinable, the Company uses an incremental borrowing rate to calculate the lease liability that represents an estimate of the interest rate the Company would incur to borrow on a collateralized basis over the term of a lease. The weighted average discount rate used for operating leases was 3.9%, 3.4%, and 3.1% as of February 29 or 28, 2024, 2023 and 2022, respectively. The total estimated future minimum lease payments is \$1.9 million as of February 29, 2024.

[Table of Contents](#)ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

As of February 29, 2024, maturities of lease liabilities for the Company's operating leases were as follows:

FYE 25	\$	514,169
FYE 26		496,466
FYE 27		284,667
FYE 28		135,010
FYE 29		103,198
Thereafter		341,130
Total	\$	1,874,640
Less: Imputed interest		(180,169)
Present value of lease liabilities:	\$	<u>1,694,471</u>

The weighted average lease term at February 29 or 28, 2024, 2023, and 2022 was 5.8 years, 5.5 years and 6.7 years, respectively.

The following is a schedule of cash paid for lease liabilities for the three years ended February 29 or 28:

	2024	2023	2022
Cash paid for amounts included in the measurement of lease liabilities	543,543	572,079	563,264

During the years ended February 29 or 28, 2024, 2023, and 2022 the Company entered into new leases representing a future lease liability of \$56,012, \$1,472,667, and \$588,475, respectively.

The Company did not have any leases categorized as finance leases as of February 29, 2024 or February 28, 2023.

NOTE 11 – COMMITMENTS AND CONTINGENCIES

Purchase contracts

The Company frequently enters into purchase contracts of between six to eighteen months for chocolate and certain nuts. These contracts permit the Company to purchase the specified commodity at a fixed price on an as-needed basis during the term of the contract. Because prices for these products may fluctuate, the Company may benefit if prices rise during the terms of these contracts, but it may be required to pay above-market prices if prices fall and it is unable to renegotiate the terms of the contract. As of February 29, 2024, the Company was contracted for approximately \$270,000 of raw materials under such agreements. The Company has designated these contracts as normal under the normal purchase and sale exception under the accounting standards for derivatives. These contracts are not entered into for speculative purposes.

Litigation

From time to time, the Company is involved in litigation relating to claims arising out of its operations. The Company records accruals for outstanding legal matters when it believes it is probable that a loss will be incurred and the amount can be reasonably estimated. At February 29, 2024, the Company was not a party to any legal proceedings that were expected, individually or in the aggregate, to have a material adverse effect on its business, financial condition or operating results.

NOTE 12 – STOCKHOLDERS' EQUITY

Redemption of Preferred Stock Purchase Rights

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

On October 2, 2021, the Board of Directors approved the redemption of all the outstanding preferred stock purchase rights (the “Rights”) granted pursuant to the Rights Agreement, dated March 1, 2015, between the Company and Computershare Trust Company, N.A., as Rights Agent (as amended, the “Rights Agreement”), commonly referred to as a “poison pill.” Immediately upon the action of the Board of Directors to approve the redemption of the Rights, the right to exercise the Rights terminated, which effectively terminated the Rights Agreement. Pursuant to the Rights Agreement, the Rights were redeemed at a redemption price of \$0.01 per Right. As a result, the Company paid an aggregate amount of \$61,276 to stockholders in October 2021 to redeem the Rights.

Warrants

In connection with a terminated supplier agreement with a former customer of the Company, the Company issued a warrant (the “Warrant”) to purchase up to 960,677 shares of the Company’s common stock (the “Warrant Shares”) at an exercise price of \$8.76 per share. The Warrant Shares were to vest in annual tranches in varying amounts following each contract year under the terminated supplier agreement, and was subject to, and only upon, achievement of certain revenue thresholds on an annual or cumulative five-year basis in connection with its performance under the terminated supplier agreement. The Warrant was to expire six months after the final and conclusive determination of revenue thresholds for the fifth contract year and the cumulative revenue determination in accordance with the terms of the Warrant.

On November 1, 2022, the Company sent a formal notice to the customer terminating the agreement. As of February 29, 2024, no Warrant Shares had vested and, subsequent to the termination by the Company of supplier agreement, the Company has no remaining material obligations under the Warrant.

The Company determined that the grant date fair value of the Warrant was de minimis and did not record any amount in consideration of the warrants. The Company utilized a Monte Carlo model for purposes of determining the grant date fair value.

NOTE 13 - INCOME TAXES

Income tax expense (benefit) is comprised of the following for the years ended February 29 or 28:

	2024	2023	2022
Current			
Federal	\$ -	\$ (116,792)	\$ 204,058
State	-	8,472	46,704
Total Current	-	(108,320)	250,762
Deferred			
Federal	-	621,841	(231,430)
State	-	100,322	(36,144)
Total Deferred	-	722,163	(267,574)
Total	<u>\$ -</u>	<u>\$ 613,843</u>	<u>\$ (16,812)</u>

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

A reconciliation of the statutory federal income tax rate and the effective rate as a percentage of pretax income is as follows for the years ended February 29 or 28:

	2024	2023	2022
Statutory rate	21.0 %	21.0 %	21.0 %
State income taxes, net of federal benefit	0.0 %	2.9 %	3.8 %
Work opportunity tax credits	0.0 %	0.0 %	(1.2)%
Equity compensation tax expense	0.0 %	(0.7)%	(8.2)%
Compensation and benefits permanent differences	(0.2)%	(3.2)%	(1.9)%
Other	1.6 %	0.7 %	0.1 %
Valuation allowance	(22.4)%	(33.3)%	0.0 %
Impact of CARES act	0.0 %	0.0 %	(10.3)%
Effective tax rate	(0.0)%	(12.6)%	3.3 %

During FY 2024, the Company's effective tax rate was zero. This was primarily the result of losses reported in the year, no income taxes due, and full valuation allowance against deferred tax assets.

During FY 2023 the Company's effective tax rate resulted in recognition of income tax expense despite incurring a pretax loss. During FY 2023 income tax expense was primarily the result of expense associated with an increase in reserves for deferred tax assets. Management evaluated recent losses before income taxes and determined that it is no longer more likely than not that our deferred income taxes are fully realizable. Because of this determination, the Company reserved for approximately \$1.6 million of deferred tax assets. As of February 28, 2023, the Company has a full valuation allowance against its deferred tax assets.

During FY 2022 the low effective income tax rate was primarily the result of permanent differences between the Company's expenses as valued for financial reporting purposes versus for income tax purposes. These differences were primarily valuation of restricted stock units and the period of recognition for employee retention credits. During FY 2021 the Company's effective tax rate resulted in recognition of an income tax benefit as a result of a pretax loss being recognized for the year.

The components of deferred income taxes as of February 29 or 28 are as follows:

	2024	2023
Deferred Tax Assets		
Allowance for doubtful accounts and notes	\$ 169,615	\$ 182,031
Inventories	30,849	100,725
Accrued compensation	437,972	158,652
Loss provisions and deferred income	303,600	340,652
Self-insurance accrual	27,893	24,098
Interest & other	17,239	—
Restructuring charges	99,069	98,693
Right of use liabilities	479,732	—
Accumulated net losses	3,576,640	1,669,288
Valuation allowance	(3,106,393)	(1,721,306)
Net deferred tax assets	\$ 2,036,216	\$ 852,833
Deferred Tax Liabilities		
Depreciation and amortization	(1,450,441)	(771,593)
Right of use assets	(479,609)	—
Prepaid expenses	(106,166)	(81,240)
Deferred Tax Liabilities	(2,036,216)	(852,833)
Net deferred tax assets	\$ -	\$ -

[Table of Contents](#)ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table summarizes deferred income tax valuation allowances as of February 29 or 28:

	2024	2023
Valuation allowance at beginning of period	\$ 1,721,306	\$ 98,693
Tax expense realized by valuation allowance	1,385,087	1,622,613
Valuation allowance at end of period	\$ 3,106,393	\$ 1,721,306

The Company files income tax returns in the U.S. federal and various state taxing jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal and state tax examinations in its major tax jurisdictions for periods before FY 2019.

Realization of the Company's deferred tax assets is dependent upon the Company generating sufficient taxable income, in the appropriate tax jurisdictions, in future years, to obtain benefit from the reversal of net deductible temporary differences. The amount of deferred tax assets considered realizable is subject to adjustment in future periods if estimates of future taxable income are changed. A valuation allowance to reduce the carrying amount of deferred income tax assets is established when it is more likely than not that we will not realize some portion or all of the tax benefit of our deferred income tax assets. The Company evaluates, on a quarterly basis, whether it is more likely than not that our deferred income tax assets are realizable based upon recent past financial performance, tax reporting positions, and expectations of future taxable income. The determination of deferred tax assets is subject to estimates and assumptions. The Company periodically evaluates our deferred tax assets to determine if our assumptions and estimates should change. As of February 29, 2024 and February 28, 2023, the Company had a full valuation allowance against its deferred tax assets.

The Company accounts for uncertainty in income taxes by recognizing the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The Company measures the tax benefits recognized in the consolidated financial statements from such a position based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The application of income tax law is inherently complex. As such, the Company is required to make judgments regarding income tax exposures. Interpretations of and guidance surrounding income tax law and regulations change over time and may result in changes to the Company's judgments which can materially affect amounts recognized in the balance sheets and statements of operations. The result of the assessment of the Company's tax positions did not have an impact on the consolidated financial statements for the years ended February 29 or 28, 2024 or 2023. The Company does not have any significant unrecognized tax benefits and does not anticipate a significant increase or decrease in unrecognized tax benefits within the next twelve months. Amounts are recognized for income tax related interest and penalties as a component of general and administrative expense in the statement of income and are immaterial for the years ended February 29 or 28, 2024 and 2023.

The Company's subsidiaries, SWRL, along with U-Swirl had a history of net operating losses prior to the company's acquisition of them and thus the Company has a related net operating loss carry forward. In accordance with Section 382 of the Internal Revenue Code, deductibility of SWRL's and U-Swirl's Federal net operating loss carryovers may be subject to annual limitation in the event of a change in control. The Company has performed a preliminary evaluation as to whether a change in control has taken place, and has concluded that there was a change of control with respect to the net operating losses of U-Swirl when the Company acquired its controlling ownership interest. The initial limitations will continue to limit deductibility of SWRL's and U-Swirl's net operating loss carryovers, but the annual loss limitation will be deductible to RMCF and U-Swirl International Inc. upon the filing of joint tax returns in FY 2017 and future years.

The Company estimates that the potential future tax deductions of U-Swirl's Federal net operating losses, limited by section 382, to be approximately \$1,811,000 with a resulting deferred tax asset of approximately \$445,000. U-Swirl's Federal net operating loss carryovers will expire at various dates beginning in 2026.

Income tax provision (benefit) allocated to continuing operations and discontinued operations for the years ended February 29 or 28, 2024, 2023 and 2022 was as follows:

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

	2024	2023	2022
Continuing operations	\$ -	\$ 613,843	\$ (16,812)
Discontinued operations	-	618,308	52,194
Total tax provision (benefit)	\$ -	\$ 1,232,151	\$ 35,382

NOTE 14 - EMPLOYEE BENEFIT PLAN

The Company has a 401(k) plan called the Rocky Mountain Chocolate Factory, Inc. 401(k) Plan. Eligible participants are permitted to make contributions up to statutory limits. The Company makes a matching contribution, which vests ratably over a 3-year period, and is 25% of the employee's contribution up to a maximum of 1.5% of the employee's compensation. During the years ended February 29 or 28, 2024, 2023 and 2022, the Company's contribution was approximately \$62,000, \$68,000, and \$67,000, respectively, to the plan.

NOTE 15 - OPERATING SEGMENTS

The Company classifies its business interests into three reportable segments: Rocky Mountain Chocolate Factory, Inc. Franchising, Manufacturing, Retail Stores, and Unallocated, which is the basis upon which the Company's chief operating decision maker, the chief executive officer, evaluates the Company's performance. The accounting policies of the segments are the same as those described in the summary of significant accounting policies in Note 1 to these consolidated financial statements. The Company evaluates performance and allocates resources based on operating contribution, which excludes unallocated corporate general and administrative costs and income tax expense or benefit. The Company's reportable segments are strategic businesses that utilize common merchandising, distribution, and marketing functions, as well as common information systems and corporate administration. All inter-segment sales prices are market based. Each segment is managed separately because of the differences in required infrastructure and the differences in products and services:

FY 2024	Franchising	Manufacturing	Retail	Unallocated	Total
Total revenues	\$ 5,928,870	\$ 21,832,674	\$ 1,318,901	\$ -	\$ 29,080,445
Intersegment revenues	(493)	(1,129,265)	-	-	(1,129,758)
Revenue from external customers	5,928,377	20,703,409	1,318,901	-	27,950,687
Segment profit (loss)	1,758,953	149,191	144,842	(6,928,703)	(4,875,717)
Total assets	1,255,165	11,989,238	510,189	6,822,626	20,577,218
Capital expenditures	134,635	2,297,046	41,801	543,991	3,017,473
Total depreciation & amortization	\$ 31,618	\$ 755,502	\$ 7,684	\$ 92,495	\$ 887,299

FY 2023	Franchising	Manufacturing	Retail	Unallocated	Total
Total revenues	\$ 5,980,945	\$ 24,628,317	\$ 1,084,777	\$ -	\$ 31,694,039
Intersegment revenues	(5,503)	(1,256,184)	-	-	(1,261,687)
Revenue from external customers	5,975,442	23,372,133	1,084,777	-	30,432,352
Segment profit (loss)	2,601,485	2,832,307	130,880	(10,439,185)	(4,874,513)
Total assets	1,245,331	9,792,491	442,977	10,506,028	21,986,827
Capital expenditures	17,129	899,219	5,413	78,254	1,000,015
Total depreciation & amortization	\$ 34,301	\$ 652,405	\$ 5,845	\$ 72,712	\$ 765,263

FY 2022	Franchising	Manufacturing	Retail	Unallocated	Total
Total revenues	\$ 5,959,624	\$ 23,442,371	\$ 1,160,295	\$ -	\$ 30,562,290
Intersegment revenues	(5,546)	(1,068,196)	-	-	(1,073,742)
Revenue from external customers	5,954,078	22,374,175	1,160,295	-	29,488,548
Segment profit (loss)	2,862,263	3,863,460	75,962	(7,318,214)	(516,529)
Total assets	1,160,343	10,023,716	625,850	15,070,852	26,880,761
Capital expenditures	1,832	797,178	3,688	138,629	941,327
Total depreciation & amortization	\$ 36,625	\$ 627,071	\$ 5,635	\$ 70,844	\$ 740,175

NOTE 16 – CONTESTED SOLICITATION OF PROXIES AND EMPLOYEE AGREEMENTS

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Contested Solicitation of Proxies

During FY 2023 and FY 2022, the Company incurred substantial costs associated with a contested solicitation of proxies in connection with its 2022 and 2021 annual meeting of stockholders. During FY 2023, the Company incurred approximately \$4.1 million of costs associated with the contested solicitation of proxies, compared with \$1.7 million of costs incurred during FY 2022, compared with no material costs incurred during FY 2024. These costs are recognized as general and administrative expense in the Consolidated Statement of Operations.

Employment Agreement Payments

The Company incurred charges as discussed below in relation to certain of its executives.

Robert J. Sarlls Separation Agreement

Effective January 27, 2024, the Company terminated the services of its CEO and entered into a separation agreement which specified that, due to the involuntary termination, certain cash payments would be made. These severance payments and the Company's share of associated payroll taxes in the amount of approximately \$660,000 will occur over a 15-month period. The Company accrued a total of approximately \$692,000 for all cash payments to be made to the CEO pursuant to the separation agreement.

In addition, all unvested RSU awards and stock options were cancelled upon effectiveness of the separation agreement. Stock options in the amount of 11,528 were cancelled as the employee had not met the service vesting condition as of the date of the separation agreement. Vested stock options in the amount of 16,140 could be exercised during the post termination exercise period as specified in the original option agreement. These shares had not yet been exercised as of February 29, 2024.

Service-based RSU awards in the amount of 27,130 shares were cancelled pursuant to the separation agreement as the employee had not met the required service conditions as of the date of the separation agreement. Performance-based awards for 46,630 shares were also cancelled as the required performance and service conditions had not been met as of the date of termination. Because the required performance conditions had not yet been met and the requisite service had not been provided by the employee, the Company reversed all previously recorded stock-based compensation in the amount of \$69,000 in accordance with ASC 718.

Gregory L. Pope, Sr. Retirement Agreement

On May 8, 2023, the Company announced that Gregory L. Pope, Sr., Senior Vice President – Franchise Development, retired effective as of May 3, 2023 (the "Retirement Date"). In connection with his retirement, the Company and Mr. Pope entered into a retirement agreement and general release (the "Retirement Agreement") that provides (i) Mr. Pope will provide consulting services to the Company, as an independent contractor, until December 31, 2023, for a monthly consulting fee of \$22,000, (ii) a retirement bonus of 26 equal bi-weekly payments of \$12,500 (less tax withholding) payable beginning November 2023, (iii) for accelerated vesting of 8,332 non-vested restricted stock units as of the Retirement Date, (iv) payment of the cost of Mr. Pope's COBRA premiums for up to 18 months, and (v) reimbursement of Mr. Pope's legal fees incurred in connection with the Retirement Agreement (not to exceed \$7,500). In addition, the Retirement Agreement includes covenants related to cooperation, non solicitation, and employment, as well as customary release of claims and non-disparagement provisions in favor of the Company, and a non-disparagement provision in favor of Mr. Pope.

In connection with Mr. Dudley's retirement in FY 2023, Mr. Dudley and the Company entered into a Separation Agreement and General Release (the "Separation Agreement"), dated September 30, 2022 (the "Effective Date"). Under the Separation Agreement, Mr. Dudley retired from the Company on the Effective Date and will be entitled, subject to the terms and conditions therein, to the following payments and separation benefits: (i) a cash separation payment amount in accordance with Mr. Dudley's employment agreement; (ii) acceleration of vesting of Mr. Dudley's 12,499 unvested restricted stock units as of the Effective Date; (iii) an additional cash severance payment of \$70,000;

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

and (iv) Mr. Dudley has agreed to provide consulting services to the Company through December 31, 2022, to the extent requested by the Company, for which he will receive a cash payment of \$56,250. In addition, the Separation Agreement includes covenants related to cooperation, solicitation, and employment, as well as the customary release of claims and non-disparagement provisions in favor of the Company.

During FY 2022 Bryan J. Merryman agreed to voluntarily step down as President and Chief Executive Officer (“CEO”) of the Company upon the hiring of a new President and CEO for the Company. On May 5, 2022 the Company concluded its search for a new CEO with the announcement that Robert Sarlls will succeed Mr. Merryman as the Company’s CEO beginning on May 9, 2022.

In connection therewith, the Company and Mr. Merryman entered into a letter agreement dated November 8, 2021 (the “Letter Agreement”), effective November 3, 2021 (the “Effective Date”), amending that certain Second Restated Employment Agreement, dated as of February 26, 2019, by and between the Company and Mr. Merryman (the “Current Employment agreement”). Pursuant to the Letter Agreement, among other things, Mr. Merryman agreed to (i) continue as Chief Financial Officer of the Company, and (ii) until the Company hires a new President and CEO, as the interim President and CEO of the Company. Except as specifically set forth in the Letter Agreement, all the terms and provisions of the Current Employment Agreement remain unmodified and in full force and effect. In addition, on November 3, 2021, the Compensation Committee of the Board of Directors recommended, and the Board of Directors unanimously approved, the acceleration of vesting of approximately 66,667 unvested restricted stock units previously granted to Mr. Merryman, such that the restricted stock units are fully vested as of November 3, 2021 (the “RSU Acceleration”). On July 7, 2022 Mr. Merryman retired from the Company and all of the Company’s obligations under the Letter Agreement and the Current Employment Agreement were satisfied.

As a result of the above agreements, the Company incurred the following costs during the fiscal years ended February 29 or 28, 2024, 2023 and 2022:

	2024	2023	2022
Severance compensation:	\$ 692,295	\$ 928,938	\$ 1,344,813
Accelerated restricted stock unit compensation expense:	74,956	95,156	525,000
Reversal of previously recorded restricted stock unit compensation expense:	(69,032)	—	—
Consulting Services and Retirement Bonus:	501,000	56,250	-
Total	<u>\$ 1,199,219</u>	<u>\$ 1,080,344</u>	<u>\$ 1,869,813</u>

These costs are recognized as general and administrative expense in the Consolidated Statement of Operations.

NOTE 17 – DISCONTINUED OPERATIONS

On February 24, 2023 and May 1, 2023, the Company entered into agreements to sell: 1) all operating assets and inventory associated with the Company’s three U-Swirl Company-owned locations, and 2) all franchise rights and intangible assets associated with the franchise operations of U-Swirl, respectively. The May 1, 2023 sale was completed pursuant to an Asset Purchase Agreement (the “Asset Purchase Agreement”), dated May 1, 2023, by and among the Company, as guarantor, U Swirl as seller, LLC (“Purchaser”), a related company of Fosters Freeze, Inc., a California corporation. Pursuant to the Asset Purchase Agreement, on the Closing Date, Purchaser paid to U-Swirl \$2.75 million, consisting of approximately (i) \$1.75 million in cash and (ii) \$1.0 million evidenced by a three-year secured promissory note in the aggregate original principal amount of \$1.0 million. As a result of these asset sales, the activities of the Company’s subsidiary, U-Swirl, which were previously recorded to the U-Swirl operating segment are reported as discontinued operations in the consolidated statement of operations, consolidated balance sheet and consolidated statement of cash flows for all periods presented. The majority of the assets and liabilities of U-Swirl met the accounting criteria to be classified as held for sale and were aggregated and reported on separate lines of the respective statements.

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

On October 31, 2023, the Company filed a certificate of dissolution with the Secretary of State of the State of Nevada with respect to U-Swirl. As a result, U-Swirl is effectively fully dissolved and no longer in legal existence.

The following table discloses the results of operations of the businesses reported as discontinued operations for the years ended February 29 or 28, 2024, 2023 and 2022, respectively:

	FOR THE YEARS ENDED FEBRUARY 29 or 28,		
	2024	2023	2022
Total Revenue	\$ 212,242	\$ 3,128,368	\$ 2,854,031
Cost of sales	-	654,353	556,933
Operating Expenses	143,198	2,048,129	2,087,021
Gain on disposal of assets	(634,790)	-	-
Other expense, net	-	-	(137)
Earnings from discontinued operations before income taxes	703,834	425,886	210,214
Income tax provision	-	618,308	52,194
Earnings (loss) from discontinued operations, net of tax	<u>\$ 703,834</u>	<u>\$ (192,422)</u>	<u>\$ 158,020</u>

The following table reflects the summary of assets and liabilities held for sale for U-Swirl as of February 29 or 28, 2024 and 2023, respectively:

	AS OF FEBRUARY 29 or 28,	
	2024	2023
Accounts and notes receivable, net	\$ -	\$ 75,914
Inventory, net	-	6,067
Other	-	1,023
Current assets held for sale	-	83,004
Property and equipment, net	-	-
Franchise rights, net	-	1,708,336
Intangible assets, net	-	48,095
Deferred income taxes	-	-
Other	-	9,415
Long-term assets held for sale	-	1,765,846
Total Assets Held for Sale	<u>-</u>	<u>1,848,850</u>
Accounts payable	-	125,802
Accrued compensation	-	11,205
Accrued liabilities	-	11,981
Contract liabilities	-	29,951
Current liabilities held for sale	-	178,939
Contract liabilities, less current portion	-	184,142
Long term liabilities held for sale	-	184,142
Total Liabilities Held for Sale	<u>\$ -</u>	<u>\$ 363,081</u>

[Table of Contents](#)

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table summarizes the gain recognized during the year ended February 29, 2024 related to the sale of assets on May 1, 2023, as described above:

Cash proceeds from the sale of assets	\$	1,757,738
Notes receivable		1,000,000
Total consideration received		2,757,738
Assets and liabilities transferred		
Franchise rights		1,703,325
Inventory		6,067
Liabilities		(229,431)
Net assets transferred		1,479,961
Costs associated with the sale of assets		642,987
Gain on disposal of assets	\$	634,790

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures and Changes in Internal Control Over Financial Reporting

Disclosure Controls and Procedures — The Company maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), that are designed to ensure that material information relating to the Company is made known to the officers who certify the Company's financial reports and to other members of senior management and the Board of Directors. These disclosure controls and procedures are designed to ensure that information required to be disclosed in the Company's reports that are filed or submitted under the Exchange Act, are recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in the reports that the Company files or submits under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Management, under the supervision and with the participation of our Interim Chief Executive Officer and Chief Financial Officer, has conducted an evaluation (pursuant to Rule 13a-15(b) of the Exchange Act), as of February 29, 2024, of the Company's disclosure controls and procedures. Based on that evaluation, our Interim Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of February 29, 2024.

Management's Annual Report on Internal Control over Financial Reporting — Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act). The Company's internal control over financial reporting is a process designed under supervision of the Company's principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and preparation of the Company's consolidated financial statements for external purposes in accordance with generally accepted accounting principles. Management, with the participation of our Interim Chief Executive Officer, has evaluated the effectiveness, as of February 29, 2024, of the Company's internal control over financial reporting. In making this evaluation, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in its publication Internal Control-Integrated Framework (2013). Based on that evaluation, management concluded that the Company's internal control over financial reporting was effective as of February 29, 2024.

Under the applicable SEC rules, we are not required to include an attestation report of our independent registered public accounting firm, CohnReznick LLP, on the Company's internal control over financial reporting.

Changes in Internal Control over Financial Reporting — During the year ended February 28, 2023, we identified a material weakness in our internal controls resulting from our finance department not being able to process and account for complex, non-routine transactions in accordance with GAAP. During the year ended February 29, 2024, we retained the assistance of several accounting experts to assist us in the accounting and reporting of complex, non-routine transactions and ensure correct accounting under US GAAP. As of February 29, 2024, management determined that the enhancements to the controls noted above have been in place for a sufficient period of time and has concluded, through testing, that the material weakness identified in the prior year has been remediated.

Except as noted above, our management, including our Interim Chief Executive Officer, confirm that there were no other changes in our company's internal control over financial reporting during the fiscal year ended February 29, 2024 that have materially affected, or are reasonably likely to materially affect, our company's internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

[Table of Contents](#)

During the three months ended February 29, 2024, none of our directors or officers (as defined in Rule 16a-1(f) of the Exchange Act) adopted or terminated a Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (as such terms are defined in Item 408 of Regulation S-K under the Securities Act).

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not Applicable.

PART III.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after February 29, 2024.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after February 29, 2024.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Except for the information below, the information required by this item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after February 29, 2024.

Equity Compensation Plan Information

The following table provides information with respect to the Company's equity compensation plan, as of February 29, 2024, which consists solely of the Company's 2007 Equity Incentive Plan:

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (1)	Weighted-average exercise price of outstanding options, warrants and rights (1)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a)) (2)
Equity compensation plans approved by the Company's stockholders	178,656	\$ 6.49	183,974
Equity compensation plans not approved by the Company's stockholders	-0-	-0-	-0-
Total	178,656	\$ 6.49	183,974

(1)Awards outstanding under the 2007 Equity Incentive Plan as of February 29, 2024 consist of 160,958 unvested restricted stock units and 17,698 outstanding stock options with a weighted-average exercise price of \$6.49.

(2)Represents shares remaining available under the Company's 2007 Equity Incentive Plan. Shares available for future issuances under the 2007 Equity Incentive Plan may be issued in the form of stock options, stock appreciation rights, restricted stock and stock units, performance shares and performance units, and other stock and cash based awards.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after February 29, 2024.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated herein by reference from our Proxy Statement for our 2024 Annual Meeting of Stockholders, to be filed no later than 120 days after February 29, 2024.

[Table of Contents](#)

PART IV.

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a)The following documents are filed as part of this Annual Report:

1.Financial Statements

	Page
Report of Independent Registered Public Accounting Firm (PCAOB ID No. 596)	35
Report of Independent Registered Public Accounting Firm (PCAOB ID No. 166)	
Consolidated Statements of Operations	37
Consolidated Balance Sheets	38
Consolidated Statements of Changes in Stockholders' Equity	39
Consolidated Statements of Cash Flows	40
Notes to Consolidated Financial Statements	41

2.Financial Statement Schedule

Schedule II

Valuation and Qualifying Accounts

	Balance at Beginning of Period	Additions Charged to Costs & Exp.	Deductions	Balance at End of Period
Year Ended February 29, 2024				
Valuation Allowance for Accounts and Notes Receivable	763,905	112,922	515,039	361,788
Year Ended February 28, 2023				
Valuation Allowance for Accounts and Notes Receivable	983,022	(173,600)	45,517	763,905
Year Ended February 28, 2022				
Valuation Allowance for Accounts and Notes Receivable	1,454,140	-	471,118	983,022

[Table of Contents](#)

3.Exhibits

The exhibits listed on the Exhibit Index are filed as part of this Form 10-K.

EXHIBIT INDEX

Exhibit Number	Description	Incorporated by Reference or Filed/Furnished Herewith
2.1	Asset Purchase Agreement, dated May 1, 2023, by and among U-Swirl International, Inc., a Nevada corporation, U Swirl, LLC, a Delaware limited liability company, and Rocky Mountain Chocolate Factory, Inc., a Delaware corporation	Exhibit 2.1 to the Current Report on Form 8-K filed on May 4, 2023 (File No. 001-36865)
3.1	Amended and Restated Certificate of Incorporation of Rocky Mountain Chocolate Factory, Inc., a Delaware corporation	Exhibit 3.1 to the Current Report on Form 8-K12G3 filed on March 2, 2015 (File No. 001-36865)
3.2	Third Amended and Restated Bylaws of Rocky Mountain Chocolate Factory, Inc.	Exhibit 3.1 to the Current Report on Form 8-K filed on September 12, 2023 (File No. 001-36865)
4.1**	Description of Securities	Filed herewith.
10.1**	Form of Employment Agreement (Officers)	Exhibit 10.1 to the Annual Report on Form 10-K for the fiscal year ended February 28, 2007 (File No. 000-14749)
10.2	Form of Franchise Agreement for Rocky Mountain Chocolate Factory	Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended May 31, 2010 (File No. 000-14749)
10.3**	Rocky Mountain Chocolate Factory, Inc. 2007 Equity Incentive Plan (as Amended and Restated)	Exhibit 10.1 to the Current Report on Form 8-K filed on September 18, 2020 (File No. 001-36865)
10.4**	Form of Indemnification Agreement (Directors)	Exhibit 10.7 to the Annual Report on Form 10-K for the fiscal year ended February 28, 2007 (File No. 000-14749)
10.5**	Form of Indemnification Agreement (Officers)	Exhibit 10.8 to the Annual Report on Form 10-K for the fiscal year ended February 28, 2007 (File No. 000-14749)
10.6*	Master License Agreement, dated August 17, 2009, between Kahala Franchise Corp. and Rocky Mountain Chocolate Factory, Inc., a Colorado corporation	Exhibit 10.3 to the Quarterly Report on Form 10-Q of the Registrant for the quarter ended August 31, 2009 (File No. 000-14749)
10.7	Credit Agreement, dated October 13, 2021, between Wells Fargo Bank, National Association and Rocky Mountain Chocolate Factory, Inc.	Exhibit 10.3 to the Current Report on Form 8-K filed on October 6, 2022 (File No. 001-36865)
10.8	First Amendment to Credit Agreement, dated September 26, 2022, between Wells Fargo Bank, National Association and Rocky Mountain Chocolate Factory, Inc.	Exhibit 10.1 to the Current Report on Form 8-K filed on October 6, 2022 (File No. 001-36865)

[Table of Contents](#)

10.9	Second Amendment to Credit Agreement, dated September 20, 2023 by and between Wells Fargo Bank, National Association and Rocky Mountain Chocolate Factory, Inc.	Exhibit 10.1 to the Current Report on Form 8-K filed on October 3, 2023 (File No. 001-36865)
10.9	Revolving Line of Credit Note, dated September 28, 2023, between Wells Fargo Bank, National Association and Rocky Mountain Chocolate Factory, Inc.	Exhibit 10.2 to the Current Report on Form 8-K filed on October 3, 2023 (File No. 001-36865)
10.10†	Settlement and Release Agreement, dated December 14, 2022, between Bradley L. Radoff, Andrew T. Berger, AB Value Management LLC, Mary Bradley and Rocky Mountain Chocolate Factory, Inc.	Exhibit 10.1 to the Current Report on Form 8-K filed on December 16, 2022 (File No. 001-36865)
10.11**	Offer Letter, dated May 3, 2022, between Rocky Mountain Chocolate Factory, Inc. and Robert J. Sarlls.	Exhibit 10.1 to the Current Report on Form 8-K filed on May 6, 2022 (File No. 001-36865)
10.12**	Retirement Agreement and General Release, dated May 3, 2023, between Rocky Mountain Chocolate Factory, Inc., a Delaware Corporation, and Gregory L. Pope	Exhibit 10.1 to the Current Report on Form 8-K filed on May 8, 2023 (File No. 001-36865)
10.13**	Offer Letter, dated July 15, 2022, between Rocky Mountain Chocolate Factory, Inc. and Allen Arroyo	Exhibit 10.1 to the Current Report on Form 8-K filed on July 21, 2022 (File No. 001-36865)
10.14	Secured Promissory Note, dated May 1, 2023, by and between U Swirl, LLC, a Delaware limited liability company, and U-Swirl International, Inc., a Nevada corporation.	Exhibit 10.1 to the Current Report on Form 8-K filed on May 4, 2023 (File No. 001-36865)
10.15	Security Agreement, dated May 1, 2023, by and among U-Swirl International, Inc., a Nevada corporation, Bob Partners X, LLC, a Delaware limited liability company, U Swirl, LLC, a Delaware limited liability company, U Swirl Franchising LLC, a Delaware limited liability company, and U Swirl Gift Card LLC	Exhibit 10.2 to the Current Report on Form 8-K filed on May 4, 2023 (File No. 001-36865)
10.16	Pledge Agreement, dated May 1, 2023, by and among, U Swirl, LLC, a Delaware limited liability company, U-Swirl International, Inc., a Nevada corporation, Bob Partners X, LLC, a Delaware limited liability company, and certain persons named therein	Exhibit 10.3 to the Current Report on Form 8-K filed on May 4, 2023 (File No. 001-36865)
10.18	Waiver and Consent, dated August 3, 2023, to Settlement Agreement and Release	Exhibit 10.1 to the Current Report on Form 8-K filed on August 7, 2023 (File No. 001-36865)
10.19	Covenant Breach Waiver, dated January 22, 2024, issued by Wells Fargo Bank, N.A.,	Exhibit 10.3 to the Current Report on Form 8-K filed on January 26, 2024 (File No. 001-36865)
10.20	Offer Letter, dated March 25, 2024, by and between Rocky Mountain Chocolate Factory, Inc. and Starlette B. Johnson	Exhibit 10.1 to the Current Report on Form 8-K filed on March 28, 2024 (File No. 001-36865)
10.21	Separation Agreement, dated January 27, 2024, by and between Rocky Mountain Chocolate Factory, Inc. and Robert J. Sarlls	Filed herewith.
21.1	Subsidiaries of the Registrant	Filed herewith.
23.1	Consent of Plante & Moran, PLLC Independent Registered Public Accounting Firm	Filed herewith.

[Table of Contents](#)

23.2	Consent of CohnReznick LLP Independent Registered Public Accounting Firm	Filed herewith.
31.1	Certification Pursuant To Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith.
32.1	Certification Pursuant To Section 906 Of The Sarbanes-Oxley Act of 2002	Filed herewith.
97.1	Rocky Mountain Chocolate Factory, Inc. Clawback Policy	Filed herewith.
101.INS	Inline XBRL Instance Document (the Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document) (1)	Filed herewith.
101.SCH	Inline XBRL Taxonomy Extension Schema With Embedded Linkbase Documents	Filed herewith.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and contained in Exhibit 101)	Filed herewith.

* Contains material that has been omitted pursuant to a request for confidential treatment and such material has been filed separately with the SEC.

** Management contract or compensatory plan required to be filed as an exhibit pursuant to Item 15(c) of Form 10-K.

(1) These interactive data files shall not be deemed filed for purposes of Section 11 or 12 of the Securities Act of 1933, as amended, or Section 18 of the Securities Exchange Act of 1937, as amended, or otherwise subject to liability under those sections.

ITEM 16. FORM 10-K SUMMARY

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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: June 13, 2024

/s/ Jeffrey R. Geygan
JEFFREY R. GEYGAN
Interim Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Date: June 13, 2024

/s/ Jeffrey R. Geygan
JEFFREY R. GEYGAN
Interim Chief Executive Officer
(Principal Executive Officer, Principal Financial Officer, and Principal Accounting Officer)

Date: June 13, 2024

/s/ Starlette B. Johnson
STARLETTE B. JOHNSON, Chair of Board

Date: June 13, 2024

/s/ Steven L. Craig
STEVEN L. CRAIG, Director

Date: June 13, 2024

/s/ Mark Riegel
MARK RIEGEL, Director

DESCRIPTION OF CAPITAL STOCK

Rocky Mountain Chocolate Factory, Inc. (the “Company”) is incorporated in the State of Delaware and has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which is our common stock, \$0.001 par value per share (“Common Stock”). The rights of stockholders of the Company are generally governed by Delaware law and the Company’s amended and restated certificate of incorporation (the “Certificate of Incorporation”) and Third Amended and Restated Bylaws (the “Bylaws”). The following is a summary of the material provisions of the Certificate of Incorporation and Bylaws. This summary is not complete and is qualified by reference to the full texts of the Certificate of Incorporation and Bylaws, copies of which are filed with the Securities and Exchange Commission (“SEC”), as well as applicable provisions of the Delaware General Corporation Law (“DGCL”).

General

The authorized capital stock of the Company consists of 46,000,000 shares of Common Stock, and 250,000 shares of preferred stock, \$0.001 par value per share (“Preferred Stock”).

Common Stock

The holders of Common Stock are entitled to one vote per share on all matters to be voted on by the common stockholders, including the election of directors. Except as provided by the terms of any outstanding Preferred Stock, our common stockholders will possess exclusive voting power. The holders of Common Stock are not entitled to cumulative voting in the election of directors. Directors will be elected by a plurality of the votes cast in the election of directors at a duly called meeting at which a quorum is present. The affirmative vote of a majority of the votes cast at a duly called meeting at which a quorum is present shall be sufficient to approve all other matters which may properly come before the meeting, unless more than a majority of the votes cast is required by law or the Certificate of Incorporation.

Subject to preferences of any outstanding shares of Preferred Stock, the holders of Common Stock are entitled to receive ratably any dividends our Board of Directors (“Board of Directors”) may declare out of funds legally available for the payment of dividends. If the Company is liquidated, dissolved or wound up, the holders of Common Stock are entitled to share pro rata in all assets remaining after payment of, or provision for, the Company’s liabilities and liquidation preferences of any outstanding shares of Preferred Stock. Holders of our Common Stock have no preemptive, subscription, redemption, sinking fund or conversion rights. The rights, preferences and privileges of holders of our Common Stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of Preferred Stock which we may designate and issue in the future.

Preferred Stock

The Board of Directors has the authority, subject to limitations prescribed by law, without further action by the stockholders, to issue up to 250,000 shares of Preferred Stock from time to time in one or more series and to establish the number of shares to be included in each such series. The Board of Directors also has the authority to fix the designations, voting powers, preferences, privileges, rights and limitations of any series of Preferred Stock, including dividend rights, conversion rights, voting rights, terms of redemption and liquidation preferences, any or all of which may be greater than the rights of the Common Stock. The Board of Directors, without stockholder approval, can issue Preferred Stock with voting, conversion or other rights that could adversely affect the voting power and other rights of the holders of Common Stock. The issuance of Preferred Stock may decrease the market price of the Company’s Common Stock.

Board of Directors

The Board of Directors is not classified and each of our directors is elected annually. Our Certificate of Incorporation provides that the number of directors may be fixed only by the resolution of the Board of Directors. Subject to the rights of the holders of any outstanding Preferred Stock, any vacancy in the Board of Directors (including a vacancy caused by an increase in the number of directors) may be filled solely by resolution adopted by a majority of our directors then in office, whether or not such majority constitutes less than a quorum, or by a single remaining director. Subject to the rights of holders of any outstanding Preferred Stock to elect directors or to remove directors so elected, a director may be removed only by the affirmative vote of the holders of at least a majority of the voting power of the outstanding capital stock entitled to vote in the election of directors, voting as a single class.

Special Meetings of Stockholders

Subject to the rights of holders of any outstanding Preferred Stock, special meetings of stockholders may be called only (a) pursuant to a resolution approved by a majority of the Board of Directors, (b) by the chair of the Board of Directors, or (c) by holders of at least 25% of all the shares entitled to vote at the meeting, provided that such

holders have continuously held at least 25% of all the shares entitled to vote at the meeting for a period of two years prior to such special meeting.

No Stockholder Action by Written Consent

The Certificate of Incorporation provides that stockholders may not take action by written consent in lieu of a meeting.

Advance Notice Requirements for Stockholder Proposals and Director Nominations

Except as provided in Rule 14a-8 of the Exchange Act and under the "Proxy Access" heading below, a stockholder who intends to propose business or nominate candidates for election as directors at an annual or special meeting of the stockholders of the Company must comply with the notice, informational requirements and procedures set forth in our Certificate of Incorporation and Bylaws. For the notice to be timely in connection with an annual meeting, such notice must be received by the Secretary of the Company at the principal executive offices of the Company not less than 90 nor more than 120 days prior to the one-year anniversary of the preceding year's annual meeting. However, in the event that the next annual meeting of stockholders is convened more than 30 days prior to or delayed by more than 30 days after the one-year anniversary of the date of the prior year's annual meeting, notice by the stockholder to be timely must be received by the Secretary of the Company at the principal executive offices of the Company not later than the close of business on the later of the (i) 90th day before such annual meeting or (ii) 10th day following the date on which public announcement of the date of the next annual meeting of stockholders is first made. To nominate a nominee for election to the Board of Directors at a special meeting at which directors are to be elected, a stockholder's notice must be received by the Secretary of the Company at the principal executive offices of the Company not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

Proxy Access

A qualifying stockholder, or a group of up to 20 such stockholders, owning at least 3% of the Company's outstanding Common Stock throughout the three-year period preceding and including the date of submission of a director nomination notice, and who continues to own at least 3% of the Company's outstanding Common Stock through the date of an annual meeting, may generally be able to nominate and include in the Company's proxy materials for an annual meeting of stockholders, qualifying director nominees constituting up to the greater of one nominee or 25% of the total number of directors of the Company on the last day on which a director nomination notice may be submitted pursuant to the Bylaws; provided that the qualifying stockholder(s) and director nominee(s) satisfy the eligibility, procedural and other requirements specified in the Bylaws, including that notice of a nomination be delivered to the Company not less than 120 days or more than 150 days before the first anniversary of the date that the Company first sent its proxy statement or a notice of availability of proxy materials (whichever is earlier) to stockholders for the prior year's annual meeting.

Amendment to the Certificate of Incorporation and the Bylaws

The Certificate of Incorporation may generally be amended by the affirmative vote of a majority of the holders of the outstanding stock entitled to vote, except with respect to provisions regarding (i) the (a) Board of Directors, (b) stockholder meetings, and (c) the alteration, amendment, or repeal of the Certificate of Incorporation, which may only be amended upon approval of holders of at least 66-2/3% of the voting power of all of the Company's then-outstanding shares then entitled to vote in the election of directors, voting together as a single class, and (ii) the limitation of director liability and indemnification, which may only be amended by the affirmative vote of the holders of at least 80% of the voting power of the Company's then-outstanding shares then entitled to vote in the election of directors, voting together as a single class. The Bylaws may generally be amended by the Board of Directors or by stockholders upon approval of holders of at least 66-2/3% of the voting power of all of the Company's then-outstanding voting stock, voting together as a single class.

Limitations on Business Combinations with Interested Stockholders

We are also subject to Section 203 of the Delaware General Corporation Law which, subject to exceptions, prohibits a Delaware corporation from engaging in any business combination with any "interested stockholder" for a period of three years following the date that a stockholder became an interested stockholder, unless:

- prior to that date, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
 - upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) (a) shares owned by persons who are directors and also officers, and (b) shares owned by employee stock plans in which employee participants do not have the right
-

to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or following that date the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, by the affirmative vote of at least 66-2/3% of the outstanding voting stock that is not owned by the interested stockholder.

The term “interested stockholder” is defined generally as any person who is the owner of 15% or more of the Company’s outstanding voting stock or any person who is an affiliate or associate of the Company and was the owner of 15% or more of the Company’s outstanding voting stock at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder, and the affiliates and associates of such person.

Anti-Takeover Effects of Various Provisions

Certain provisions of the DGCL, our Certificate of Incorporation and our Bylaws summarized above may have an anti-takeover effect and could make the following transactions more difficult: acquisition of the Company by means of a tender offer; acquisition of the Company by means of a proxy contest or otherwise; or removal of the Company’s incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in the best interests of the Company, including transactions that might result in a premium over the market price for shares of our Common Stock.

Transfer Agent

The transfer agent for the Common Stock is Computershare Trust Company, N.A. Its address is c/o Computershare Investor Services, 150 Royall St., Suite 101, Canton, MA 02021 or P.O. Box 43078, Providence, RI 02940-3078 and its telephone number is (800) 962-4284.

Nasdaq Global Market Listing

Our Common Stock is listed on the Nasdaq Global Market under the trading symbol “RMCF.”

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (hereinafter “Agreement”) is hereby entered into effective as of January 27, 2024 between ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. (hereinafter “the Company”) and ROBERT J. SARLLS (hereinafter “Mr. Sarlls”), who are collectively referred to herein as the “Parties.” As set forth in more detail below, by signing this Agreement, Mr. Sarlls understands that he, among other things, is giving up claims (both known and unknown) he might have against the Company, is releasing the Company from all liability, and is agreeing not to file a lawsuit of any kind against the Company. In consideration of the mutual promises contained herein, and other good and valuable consideration as hereinafter recited, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Effective as of January 27, 2024, the Company has involuntarily terminated the employment of Mr. Sarlls without Cause (as defined in the employment agreement between the Company and Mr. Sarlls dated May 3, 2022) (the “Employment Agreement”). In accordance with the Employment Agreement, Mr. Sarlls hereby resigns from the Company’s Board of Directors, and any positions held with any affiliates of the Company, effective as of January 27, 2024.

2. In full and complete settlement of these matters, the Company agrees to provide the following payments and benefits to Mr. Sarlls in accordance with the terms of the Employment Agreement:

(a) Base salary continuation for a period of fifteen (15) months on the Company’s regular payroll schedule, commencing with the first paydate following January 27, 2024 (i.e., February 6, 2024) and ending on April 29, 2025. As of January 27, 2024, Mr. Sarlls’ annual base salary is \$390,000, and therefore, the gross amount of each salary continuation payment will be \$15,000. As set forth in the Employment Agreement, no payments of base salary will be made until April 2, 2024, which is the first paydate occurring after the sixty (60)-day period following January 27, 2024. Payments of base salary that would have been made on the regular payroll schedule during this sixty (60) day period (gross amount of \$60,000) shall be made on April 2, 2024, along with the \$15,000 (gross amount) otherwise payable on that date. The total amount of the base salary continuation payments under this Section 2(a) is \$495,000.

(b) Accrued unused PTO in the gross amount of \$37,500 payable on the February 7, 2024 paydate.

(c) If Mr. Sarlls elects COBRA health coverage continuation, the Company will reimburse Mr. Sarlls for, or pay directly, the premium charged for such coverage, until the earliest to occur of (i) January 27, 2025, (ii) the date on which Mr. Sarlls obtains health insurance coverage from another source, or (iii) the date on which Mr. Sarlls ceases to be eligible for COBRA health coverage continuation.

Mr. Sarlls agrees that he is not otherwise entitled to the payments and benefits described in Sections 2(a), and (c) above unless he signs this Agreement and does not revoke it within the revocation period described in Section 22. Mr. Sarlls further agrees that, except as provided in this Agreement, he is not entitled to any compensation, payments, reimbursement, equity, stock,

options, benefits or remuneration in any form from the Company or any Releasee (as defined below), including but not limited to any portion of the annual cash incentive award for the fiscal year ending February 29, 2024, and that he has forfeited all of his outstanding nonvested equity awards, which are as follows:

i. 11,528 Time-Vested Stock Options granted May 9, 2022. (A total of 27,668 Time-Vested Options were granted on this date, of which 16,140 have vested and remain exercisable in accordance with their terms, subject to the terms of the stock option agreement regarding expiration of unexercised vested stock options following termination of employment.)

ii. 27,130 Time-Vested Restricted Stock Units granted August 11, 2023.

iii. 42,391 Performance-Vested Restricted Stock Units granted August 11, 2023.

3. Mr. Sarlls waives any right to future employment with the Company or any of its parents, subsidiaries, affiliates, or successors. Mr. Sarlls further agrees never to apply for, seek, or pursue employment at, or election or appointment to the board of directors of, the Company or any such related entities, and agrees that the Company or such related entities has no obligation to consider any such application.

4. Mr. Sarlls agrees that upon the separation of his employment with the Company, he will surrender, to the best of his abilities, to the Company every item and every document that is the Company's property (including but not limited to keys, credit cards, records, computers, peripherals, computer files or storage media, notes, memoranda, models, inventory and equipment) or contains Company information, in whatever form. All of these materials are the sole and absolute property of the Company.

5. All reference requests from Mr. Sarlls's prospective employers shall be made in writing addressed to the attention of the Chair of the Company's Board of Directors, and shall include a written authorization signed by Mr. Sarlls for the release of the information. The Company will provide to prospective employers Mr. Sarlls's dates of employment, job title, and last annual compensation. Mr. Sarlls hereby acknowledges that the Confidential and Proprietary Information, Inventions Assignment, Restrictive Covenant and Arbitration Agreement between him and the Company shall remain in effect in accordance with its terms.

6. Mr. Sarlls will cooperate with any reasonable request by the Company in connection with any matter with which he was involved or any existing or potential claim, investigation, administrative proceeding, lawsuit or other legal or business matter that arose during his employment by the Company.

7. Mr. Sarlls agrees that, to the maximum extent permitted by law, and in consideration of the payments and consideration described herein, he will, and hereby does, forever and irrevocably release and discharge the Company, its officers, directors, employees, independent contractors, agents, affiliates, parents, subsidiaries, divisions, predecessors, employee benefit plans, purchasers, assigns, representatives, successors and successors in interest (herein

collectively referred to as "Releasees") from any and all claims, causes of action, damages of any kind, obligations, contracts, promises, expenses, costs, attorneys' fees, compensation, and liabilities, known or unknown, whatsoever which he now has, has had, or may have, whether the same be at law, in equity, or mixed, in any way arising from or relating to any act, occurrence, or transaction on or before the date of this Agreement, including without limitation his employment and separation of employment from the Company. This waiver and release does not apply to any claim that may arise after the date that Mr. Sarlls signs this Agreement. THIS IS A GENERAL RELEASE. Mr. Sarlls expressly acknowledges that this General Release includes, but is not limited to, Mr. Sarlls's intent to release the Company from any claim relating to his employment at the Company, including, but not limited to, tort and contract claims, wrongful discharge claims, pension claims, employee benefit claims, severance benefits, statutory claims, compensation claims, claims for damages, claims under any state, local or federal wage and hour law or wage payment or collection law, and claims of discrimination, retaliation or harassment based on age, race, color, sex, religion, handicap, disability, national origin, ancestry, citizenship, marital status, sexual orientation, genetic information or any other protected basis, or any other claim of employment discrimination, retaliation or harassment under the Age Discrimination In Employment Act (29 U.S.C. §§ 626 et seq., "ADEA"), Title VII of the Civil Rights Acts of 1964 and 1991 as amended (42 U.S.C. §§ 2000e et seq.), the Americans With Disabilities Act (42 U.S.C. §§ 12101 et m.), and any other law, statute, regulation or ordinance of any kind, including those prohibiting employment discrimination or governing employment. The Parties agree that this General Release provision, and the covenant not to sue provision below, survive and remain in full force and effect in the event the Company or any Releasee institutes an action or proceeding against Mr. Sarlls for breach of any provision of this Agreement.

8. Mr. Sarlls represents and agrees that he has not, by himself or on his behalf, instituted, prosecuted, filed, or processed any litigation, claims or proceedings against the Company or any Releasees. Mr. Sarlls agrees, to the maximum extent permitted by law, not to make or file any lawsuits, complaints, or other proceedings against the Company or any Releasee or to join in any such lawsuits, complaints, or other proceedings against the Company or Releasees concerning any matter relating to his employment with the Company or that arose on or prior to the date of this Agreement. Nothing in this Agreement prohibits Mr. Sarlls from filing a charge with any government administrative agency (such as the Equal Employment Opportunity Commission), or from testifying, assisting or participating in an investigation, hearing or proceeding conducted by such agency; however, Mr. Sarlls waives the right to receive any individualized relief, such as reinstatement, backpay, or other damages, in a lawsuit or administrative action brought by Mr. Sarlls or by any government agency on his behalf. Mr. Sarlls agrees that if there is any complaint filed in any court or arbitral forum which seeks reinstatement, damages or other remedies for Mr. Sarlls relating to any claim that is covered by this Agreement, Mr. Sarlls will immediately file a dismissal with prejudice of such claim or remedy.

9. Mr. Sarlls further agrees and covenants that, to the maximum extent permitted by law, he will not and has not, encourage or voluntarily assist or aid in any way others in making or filing any lawsuits, complaints, or other proceedings against the Company, or any other Releasee.

10. Nothing in this Agreement prevents Mr. Sarlls from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Mr. Sarlls has reason to believe is unlawful.

11. Mr. Sarlls acknowledges and declares that he has been fully compensated for all work performed and time he has worked while employed by the Company, and that he is not owed any compensation, wages, salary, payments, bonus, equity interest, remuneration or income from the Company of any kind, including, but not limited to amounts under his Employment Agreement with the Company, except as provided in this Agreement.

12. The Parties further agree that, in entering into this Agreement, the Company is expressly relying on the foregoing representations by Mr. Sarlls, and that Mr. Sarlls is expressly relying on the foregoing representations of the Company. The Parties further agree that the representations made by each party in the proceeding sections are admissions by each party and are admissible, if offered by the Company or Mr. Sarlls, as a sworn statement of fact by the Company or Mr. Sarlls in any proceeding between the Parties.

13. The Parties agree that the above-mentioned consideration is not to be construed as an admission of any wrongdoing or liability on the part of the either Party under any statute or otherwise, but that on the contrary, any such wrongdoing or liability is expressly denied by the Parties.

14. Mr. Sarlls agrees that neither this Agreement nor the negotiations in pursuance thereof shall be construed or interpreted to render Mr. Sarlls a prevailing party for any reason, including but not limited to an award of attorney's fees, expenses or costs under any statute or otherwise.

15. Mr. Sarlls agrees that, to the maximum extent permitted by law, the terms of this Agreement and the negotiations in pursuance thereof are strictly confidential and shall not be disclosed, and have not been disclosed, to any person or entity. Mr. Sarlls may disclose the Agreement to his attorneys, accountants and tax advisors who, as agents and representatives of Mr. Sarlls, also must keep the terms of this Agreement strictly confidential.

16. Mr. Sarlls agrees that, to the maximum extent permitted by law, he will not and has not, by any verbal, written or electronic expression or communication (including use of any social or professional networking websites and/or blogs), or by any deed or act of communication, disparage, criticize, condemn or impugn the Company or Releasees, or their reputation or character, or any of their actions, services, products, writings, policies, practices, procedures or advertisements.

17. Mr. Sarlls agrees that a violation or breach of his duties, obligations or covenants in this Agreement by Mr. Sarlls will support a cause of action for breach of contract, and will entitle the Company to recover damages flowing from such breach, specifically including, but not limited to, the recovery of any payments made to Mr. Sarlls under this Agreement, to stop any payments or obligations owing under this Agreement, to recover the costs and attorneys' fees the Company incurs to recover under this Section 17 and to obtain injunctive, monetary or other relief permitted by law. It is expressly agreed that the non-exclusive damages set forth above in this Section 17 in the event of a breach are not a penalty, but are fair and reasonable in light of the difficulty of proving prejudice to the Company in the event of such a breach.

18. The Parties further agree that this Agreement shall be binding upon and inure to the benefit of the personal representatives, heirs, executors, and administrators of Mr. Sarlls and the heirs, executors, administrators, affiliates, successors, predecessors, subsidiaries, divisions, officers, purchasers, agents, assigns, representatives, directors and employees of the Company, that this Agreement contains and comprises the entire agreement and understanding of the Parties, that there are no additional promises, contracts, terms or conditions between the Parties other than those contained herein, and that this Agreement shall not be modified except in writing signed by each of the Parties hereto.

19. The Parties agree that this Agreement and the rights and obligations hereunder shall be governed by, and construed in accordance with, the laws of the State of Colorado regardless of any principles of conflicts of laws or choice of laws of any jurisdiction. The Parties agree that the state courts of the State of Colorado and, if the jurisdictional prerequisites exist, the United States District Court for the District of Colorado, shall have sole and exclusive jurisdiction and venue to hear and determine any dispute or controversy arising under or concerning this Agreement. Mr. Sarlls and the Company hereby waive trial by jury as to any and all litigation arising out of and/or relating to this Agreement.

20. If any terms of the above provisions of this Agreement are found null, void or inoperative, for any reason, the remaining provisions will remain in full force and effect. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties.

21. Mr. Sarlls understands that he has twenty-one (21) days from the date of his receipt of this Agreement, which was January 31, 2024, to consider his decision to sign it, and that he may unilaterally waive this period at his election. Mr. Sarlls's signature on this Agreement constitutes an express waiver of the twenty-one (21) day period if affixed prior to the expiration of that period. By signing this Agreement, Mr. Sarlls expressly acknowledges that his decision to sign this Agreement was knowing and voluntary and of his own free will. The Parties agree that any revisions or modifications to this Agreement, whether material or immaterial, will not and did not restart this time period.

22. Mr. Sarlls acknowledges that he may revoke this Agreement only as it pertains to claims under the ADEA for up to and including seven (7) days after his execution of this Agreement, and that the aspects of this Agreement regarding his release of claims under the ADEA shall not become effective until the expiration of seven (7) days from the date of his execution of this Agreement. This provision regarding revocation shall have no effect on the validity and enforceability of any other term, condition or provision of this Agreement, which becomes effective when signed. In the event that Mr. Sarlls revokes this Agreement as it pertains to claims under the ADEA, the Parties agree that, in lieu of the payments and benefits set forth in Sections 2(a) and (c) above, the Company will pay to Mr. Sarlls a lump sum of \$5,000.00 (Five Thousand Dollars), less all lawful deductions, the adequacy of which is hereby acknowledged. Mr. Sarlls accordingly agrees that, in the event he revokes this Agreement as it pertains to claims under the ADEA, all other provisions of this Agreement (including without limitation the release provisions in Section 7) are independently supported by adequate consideration and are fully enforceable. Mr. Sarlls expressly agrees that, in order to be effective, his revocation pursuant to this Section 22 must be in writing and must actually be received by Mr. Jeffrey R. Geygan, Chair of the Board of

Directors of the Company, by 5:00 p.m. Mountain Time on or before the seventh day following his execution of this Agreement.

23. The Parties agree that, to the extent that any provision of this Agreement is determined to be in violation of the Older Workers Benefit Protection Act ("OWBPA"), it should be severed from the Agreement or modified to comply with the OWBPA, without affecting the validity or enforceability of any of the other terms or provisions of the Agreement.

24. The Company hereby advises Mr. Sarlls to consult with an attorney prior to executing this Agreement.

25. Mr. Sarlls acknowledges, certifies and agrees: (a) that he has carefully read this Agreement and understands all of its terms; (b) that he had a reasonable amount of time to consider his decision to sign this Agreement; (c) that in executing this Agreement he does not rely and has not relied upon any representation or statement made by any of the Company's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of the Agreement; (d) that he enters into this Agreement voluntarily, of his own free will, without any duress and with knowledge of its meaning and effect; (e) that he is not owed any wages by the Company for work performed, whether as wages or salary, overtime, bonuses or commissions, or for accrued but unused paid time off, and that Mr. Sarlls has been fully compensated for all hours worked; (f) that Mr. Sarlls is not aware of any factual basis for a claim that the Company has defrauded the government of the United States or of any State; (g) that Mr. Sarlls has incurred no work-related injuries; (h) that Mr. Sarlls has received all family or medical leave to which he was entitled under the law; and (i) that Mr. Sarlls has been and hereby is advised to consult with legal counsel of Mr. Sarlls's choice prior to execution and delivery of this Agreement, and that Mr. Sarlls has done so or voluntarily elected not to do so. The Company is expressly relying on the foregoing representations and admissions by Mr. Sarlls, and the Parties agree that such representations are admissible, if offered by the Company, as sworn statements of fact by Mr. Sarlls in any proceeding between the Parties.

26. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. An originally executed version of this Agreement that is scanned as an image file (e.g., Adobe PDF, TIF, JPEG, etc.) and then delivered by one party to the other party via electronic mail as evidence of signature, shall, for all purposes hereof, be deemed an original signature. In addition, an originally executed version of this Agreement that is delivered via facsimile by one party to the other party as evidence of signature shall, for all purposes hereof, be deemed an original.

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

/s/ Robert J. Sarlls
Robert J. Sarlls

02/01/24
Date

ROCKY MOUNTAIN CHOCOLATE
FACTORY, INC.

/s/ Jeffrey R. Geygan
Jeffrey R. Geygan,
Chair, Board of Directors

01/27/24
Date

SUBSIDIARIES OF THE REGISTRANT

<u>Subsidiary</u>	<u>Jurisdiction of Incorporation</u>
Rocky Mountain Chocolate Factory, Inc.	Colorado
U-Swirl, Inc.	Nevada

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in Rocky Mountain Chocolate Factory, Inc.'s Registration Statements on Form S-8 (File Nos. 333-249485, 333-206534, 333-145986, and 333-191729) of our report dated May 30, 2023 relating to the consolidated financial statements as of February 28, 2023 and for each of the years in the two-year period ended February 28, 2023, which appears in this Annual Report on Form 10-K.

/s/ Plante & Moran, PLLC

Cleveland, Ohio
June 13, 2024

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 Nos. 333-249485, 333-206534, 333-145986, and 333-191729) of Rocky Mountain Chocolate Factory, Inc. of our report dated June 13, 2024, with respect to the consolidated financial statements of Rocky Mountain Chocolate Factory, Inc. included in this Annual Report (Form 10-K) for the fiscal year ended February 29, 2024

/s/ CohnReznick LLP

New York, New York
June 13, 2024

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jeffrey R. Geygan, certify that:

(1) I have reviewed this Annual Report on Form 10-K of Rocky Mountain Chocolate Factory, Inc.;

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

(4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

(5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 13, 2024

By: /s/ Jeffrey R. Geygan
Jeffrey R. Geygan, Interim Chief Executive Officer
(Principal Executive Officer and Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Rocky Mountain Chocolate Factory, Inc. (the "Company") on Form 10-K for the fiscal year ended February 29, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey R. Geygan, Interim Chief Executive Officer of the Company certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2)The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 13, 2024

By: /s/ Jeffrey R. Geygan
Jeffrey R. Geygan, Interim Chief Executive Officer (Principal Executive Officer and Principal Financial Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350 and is not being filed for purposes of Section 18 of the Exchange Act, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

CLAWBACK POLICY

The Compensation Committee (the “Compensation Committee”) of the Board of Directors (the “Board”) of Rocky Mountain Chocolate Factory, Inc. (the “Company”) has adopted the following Clawback Policy (the “Policy”) on November 9, 2023, effective as of October 2, 2023 (the “Effective Date”).

1.Purpose. The purpose of this Policy is to provide for the recoupment of certain incentive compensation pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, in the manner required by Section 10D of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), Rule 10D-1 promulgated thereunder, and the Applicable Listing Standards (as defined below) (collectively, the “Dodd-Frank Rules”).

2.Administration. This Policy shall be administered by the Compensation Committee. Any determinations made by the Compensation Committee shall be final and binding on all affected individuals.

3.Definitions. For purposes of this Policy, the following capitalized terms shall have the meanings set forth below.

(a) “**Accounting Restatement**” shall mean an accounting restatement of the Company’s financial statements due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement (i) to correct an error in previously issued financial statements that is material to the previously issued financial statements (*i.e.*, a “Big R” restatement), or (ii) that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period (*i.e.*, a “little r” restatement).

(b) “**Affiliate**” shall mean each entity that directly or indirectly controls, is controlled by, or is under common control with the Company.

(c) “**Applicable Exchange**” shall mean (i) The Nasdaq Stock Market, if the Company’s securities are listed on such national stock exchange, or (ii) the New York Stock Exchange, if the Company’s securities are listed on such national stock exchange.

(d) “**Applicable Listing Standards**” shall mean (i) Nasdaq Listing Rule 5608, if the Company’s securities are listed on The Nasdaq Stock Market, or (ii) Section 303A.14 of the New York Stock Exchange Listed Company Manual, if the Company’s securities are listed on the New York Stock Exchange.

(e) “**Clawback Eligible Incentive Compensation**” shall mean Incentive-Based Compensation Received by a Covered Executive (i) on or after the Effective Date, (ii) after beginning service as a Covered Executive, (iii) if such individual served as a Covered Executive at any time during the performance period for such Incentive-Based Compensation (irrespective of whether such individual continued to serve as a Covered Executive upon or following the Restatement Trigger Date), (iv) while the Company has a class of securities listed on a national

securities exchange or a national securities association, and (v) during the applicable Clawback Period. For the avoidance of doubt, Incentive-Based Compensation Received by a Covered Executive on or after the Effective Date could, by the terms of this Policy, include amounts approved, awarded, or granted prior to such date.

(f)“**Clawback Period**” shall mean, with respect to any Accounting Restatement, the three completed fiscal years of the Company immediately preceding the Restatement Trigger Date and any transition period (that results from a change in the Company’s fiscal year) within or immediately following those three completed fiscal years (except that a transition period between the last day of the Company’s previous fiscal year end and the first day of its new fiscal year that comprises a period of at least nine months shall count as a completed fiscal year).

(g)“**Company Group**” shall mean the Company and its Affiliates.

(h)“**Covered Executive**” shall mean any “executive officer” of the Company as defined under the Dodd-Frank Rules, and, for the avoidance of doubt, includes each individual identified as an executive officer of the Company in accordance with Item 401(b) of Regulation S-K under the Exchange Act.

(i)“**Erroneously Awarded Compensation**” shall mean the amount of Clawback Eligible Incentive Compensation that exceeds the amount of Incentive-Based Compensation that otherwise would have been Received had it been determined based on the restated amounts, computed without regard to any taxes paid. With respect to any compensation plan or program that takes into account Incentive-Based Compensation, the amount contributed to a notional account that exceeds the amount that otherwise would have been contributed had it been determined based on the restated amount, computed without regard to any taxes paid, shall be considered Erroneously Awarded Compensation, along with earnings accrued on that notional amount.

(j)“**Financial Reporting Measures**” shall mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and all other measures that are derived wholly or in part from such measures. Stock price and total shareholder return (and any measures that are derived wholly or in part from stock price or total shareholder return) shall for purposes of this Policy be considered Financial Reporting Measures. For the avoidance of doubt, a measure need not be presented in the Company’s financial statements or included in a filing with the U.S. Securities and Exchange Commission (the “SEC”) in order to be considered a Financial Reporting Measure.

(k)“**Incentive-Based Compensation**” shall mean any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure.

(l)“**Received**” shall mean the deemed receipt of Incentive-Based Compensation. Incentive-Based Compensation shall be deemed received for this purpose in the Company’s fiscal period during which the Financial Reporting Measure specified in the applicable Incentive-Based Compensation award is attained, even if payment or grant of the Incentive-Based Compensation occurs after the end of that period.

(m)“**Restatement Trigger Date**” shall mean the earlier to occur of (i) the date the Board, a committee of the Board, or the officer(s) of the Company authorized to take such action

if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (ii) the date a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement.

4. Recoupment of Erroneously Awarded Compensation. Upon the occurrence of a Restatement Trigger Date, the Company shall recoup Erroneously Awarded Compensation reasonably promptly, in the manner described below. For the avoidance of doubt, the Company's obligation to recover Erroneously Awarded Compensation under this Policy is not dependent on if or when restated financial statements are filed following the Restatement Trigger Date.

(a) **Process.** The Compensation Committee shall use the following process for recoupment:

(i) First, the Compensation Committee will determine the amount of any Erroneously Awarded Compensation for each Covered Executive in connection with such Accounting Restatement. For Incentive-Based Compensation based on (or derived from) stock price or total shareholder return where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in the applicable Accounting Restatement, the amount shall be determined by the Compensation Committee based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or total shareholder return upon which the Incentive-Based Compensation was Received (in which case, the Company shall maintain documentation of such determination of that reasonable estimate and provide such documentation to the Applicable Exchange).

(ii) Second, the Compensation Committee will provide each affected Covered Executive with a written notice stating the amount of the Erroneously Awarded Compensation, a demand for recoupment, and the means of recoupment that the Company will accept.

(b) **Means of Recoupment.** The Compensation Committee shall have discretion to determine the appropriate means of recoupment of Erroneously Awarded Compensation, which may include without limitation: (i) recoupment of cash or shares of Company stock, (ii) forfeiture of unvested cash or equity awards (including those subject to service-based and/or performance-based vesting conditions), (iii) cancellation of outstanding vested cash or equity awards (including those for which service-based and/or performance-based vesting conditions have been satisfied), (iv) to the extent consistent with Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"), offset of other amounts owed to the Covered Executive or forfeiture of deferred compensation, (v) reduction of future compensation, and (vi) any other remedial or recovery action permitted by law. Notwithstanding the foregoing, the Company Group makes no guarantee as to the treatment of such amounts under Section 409A and shall have no liability with respect thereto. For the avoidance of doubt, appropriate means of recoupment may include amounts approved, awarded, or granted prior to the Effective Date. Except as set forth in Section 4(d) below, in no event may the Company Group accept an amount that is less than the amount of Erroneously Awarded Compensation in satisfaction of a Covered Executive's obligations hereunder.

(c) **Failure to Repay.** To the extent that a Covered Executive fails to repay all Erroneously Awarded Compensation to the Company Group when due (as determined in

accordance with Section 4(a) above), the Company shall, or shall cause one or more other members of the Company Group to, take all actions reasonable and appropriate to recoup such Erroneously Awarded Compensation from the applicable Covered Executive. The applicable Covered Executive shall be required to reimburse the Company Group for any and all expenses reasonably incurred (including legal fees) by the Company Group in recouping such Erroneously Awarded Compensation.

(d)**Exceptions.** Notwithstanding anything herein to the contrary, the Company shall not be required to recoup Erroneously Awarded Compensation if one of the following conditions is met and the Compensation Committee determines that recoupment would be impracticable:

(i) The direct expense paid to a third party to assist in enforcing this Policy against a Covered Executive would exceed the amount to be recouped, after the Company has made a reasonable attempt to recoup the applicable Erroneously Awarded Compensation, documented such attempts, and provided such documentation to the Applicable Exchange;

(ii) Recoupment would violate home country law where that law was adopted prior to November 28, 2022, provided that, before determining that it would be impracticable to recoup any amount of Erroneously Awarded Compensation based on violation of home country law, the Company has obtained an opinion of home country counsel, acceptable to the Applicable Exchange, that recoupment would result in such a violation and a copy of the opinion is provided to the Applicable Exchange; or

(iii) Recoupment would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

5. Reporting and Disclosure. The Company shall file all disclosures with respect to this Policy in accordance with the requirements of the Dodd-Frank Rules.

6. Indemnification Prohibition. No member of the Company Group shall be permitted to indemnify any current or former Covered Executive against (i) the loss of any Erroneously Awarded Compensation that is recouped pursuant to the terms of this Policy, or (ii) any claims relating to the Company Group's enforcement of its rights under this Policy. The Company may not pay or reimburse any Covered Executive for the cost of third-party insurance purchased by a Covered Executive to fund potential recoupment obligations under this Policy.

7. Acknowledgment. To the extent required by the Compensation Committee, each Covered Executive shall be required to sign and return to the Company the acknowledgement form attached hereto as Exhibit A pursuant to which such Covered Executive will agree to be bound by the terms of, and comply with, this Policy. For the avoidance of doubt, each Covered Executive will be fully bound by, and must comply with, the Policy, whether or not such Covered Executive has executed and returned such acknowledgment form to the Company.

8. Interpretation. The Compensation Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. The Compensation Committee intends that this Policy be interpreted consistent with the Dodd-Frank Rules.

9. Amendment; Termination. The Compensation Committee may amend or terminate this Policy from time to time in its discretion, including as and when it determines that it is legally required to do so by any federal securities laws, SEC rule or the rules of any national securities exchange or national securities association on which the Company's securities are listed.

10. Other Recoupment Rights. The Compensation Committee intends that this Policy be applied to the fullest extent of the law. The Compensation Committee may require that any employment agreement, equity award, cash incentive award, or any other agreement entered into be conditioned upon the Covered Executive's agreement to abide by the terms of this Policy. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company Group, whether arising under applicable law, regulation or rule, pursuant to the terms of any other policy of the Company Group, pursuant to any employment agreement, equity award, cash incentive award, or other agreement applicable to a Covered Executive, or otherwise (the "Separate Clawback Rights"). Notwithstanding the foregoing, there shall be no duplication of recovery of the same Erroneously Awarded Compensation under this Policy and the Separate Clawback Rights, unless required by applicable law.

11. Successors. This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

Exhibit A

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

CLAWBACK POLICY

ACKNOWLEDGEMENT FORM

By signing below, the undersigned acknowledges and confirms that the undersigned has received and reviewed a copy of the Rocky Mountain Chocolate Factory, Inc. Clawback Policy (the "**Policy**"). Capitalized terms used but not otherwise defined in this Acknowledgement Form (this "**Acknowledgement Form**") shall have the meanings ascribed to such terms in the Policy.

By signing this Acknowledgement Form, the undersigned acknowledges and agrees that the undersigned is and will continue to be subject to the Policy and that the Policy will apply both during and after the undersigned's employment with the Company Group. Further, by signing below, the undersigned agrees to abide by the terms of the Policy, including, without limitation, by returning any Erroneously Awarded Compensation to the Company Group reasonably promptly to the extent required by, and in a manner permitted by, the Policy, as determined by the Compensation Committee of the Company's Board of Directors in its sole discretion.

Sign: _____

Name: [Employee]

Date: _____

