

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Rocky Mountain Chocolate Factory, Inc.

Form: 8-K

Date Filed: 2020-04-16

Corporate Issuer CIK: 1616262

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): April 13, 2020



Rocky Mountain Chocolate Factory, Inc.

(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction
of incorporation)*

001-36865
*(Commission
File Number)*

47-1535633
*(IRS Employer
Identification No.)*

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

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 Par Value per Share	RMCF	Nasdaq Global Market
Preferred Stock Purchase Rights	RMCF	Nasdaq Global Market

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

Emerging growth company

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



Item 1.01. Entry into a Material Definitive Agreement.

The information in Item 2.03 below is incorporated by reference in this Item 1.01.

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

On April 13, 2020, Rocky Mountain Chocolate Factory, Inc. (the "Company") entered into a Loan Agreement and Promissory Note (collectively the "SBA Loan") with 1st SOURCE BANK pursuant to the Paycheck Protection Program (the "PPP") under the recently enacted Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") administered by the U.S. Small Business Administration. The Company received total proceeds of \$1.4 million from the SBA Loan. The SBA Loan is scheduled to mature on April 14, 2022 and has a 1.00% interest rate and is subject to the terms and conditions applicable to loans administered by the U.S. Small Business Administration under the CARES Act. The SBA Loan may be prepaid by the Company at any time prior to maturity with no prepayment penalties.

The SBA Loan contains customary events of default relating to, among other things, payment defaults and breaches of representations and warranties. Subject to certain conditions, the SBA Loan may be forgiven in whole or in part by applying for forgiveness pursuant to the CARES Act and the PPP. The amount of loan proceeds eligible for forgiveness is based on a formula based on a number of factors, including the amount of loan proceeds used by the Company during the eight-week period after the loan origination for certain purposes, including payroll costs, interest on certain mortgage obligations, rent payments on certain leases, and certain qualified utility payments, provided that, among other things, at least 75% of the loan amount is used for eligible payroll costs, the employer maintaining or rehiring employees and maintaining salaries at certain level. In accordance with the requirements of the CARES Act and the PPP, the Company intends to use the proceeds from the SBA Loan primarily for payroll costs. No assurance can be given that the Company will be granted forgiveness of the SBA Loan in whole or in part.

The foregoing description of the SBA Loan is qualified in its entirety by reference to the Loan Agreement and the Promissory Note filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K, which are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No. Description

10.1 [Loan Agreement, dated April 13, 2020, between Rocky Mountain Chocolate Factory, Inc. and 1st SOURCE BANK.](#)

10.2 [Promissory Note Agreement, dated April 13, 2020, between Rocky Mountain Chocolate Factory, Inc. and 1st SOURCE BANK](#)

SIGNATURE

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

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

Date: April 16, 2020

By: /s/ Bryan J. Merryman
Bryan J. Merryman, Chief Executive Officer, Chief Financial Officer and
Chairman of the Board of Directors

LOAN AGREEMENT (Unsecured)
(Paycheck Protection Program)

Document Date: April 9, 2020

Customer (Exact Legal Name):	ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.		
Address:	265 TURNER DR		
City/State/Zip Code:	DURANGO, COLORADO 81303		
Phone: (970) 259-0554	Fax: (970) 382-7368	Email:	

- 1) 1st Source Bank ("Bank") has agreed to lend money to the individual or entity identified above as the "Customer", and may agree to lend additional money to Customer from time-to-time. The principal amount, the interest rate, payment amount, payment due dates, the maturity date and other particulars for each loan shall be set forth in a promissory note, addendum, schedule or other separate document containing such terms (each a "Note"). Customer will make payments when due and payable without offset, defense or counterclaim. All payments will be given tentative credit when received by Bank in Indiana and posted to Customer's account in accordance with standard Bank practices, subject to final collection. All final payments shall be made in immediately available collected funds unless Bank agrees otherwise. All payments shall be applied first to interest, then to principal unless otherwise provided in this Agreement. Interest shall accrue based on a 360- day year and the days actually elapsed.
- 2) Customer represents and warrants that:
 - (a) Customer is a corporation organized and in good standing under the laws of COLORADO, and in good standing in all jurisdictions where qualification is necessary;
 - (b) if applicable, the execution and delivery hereof, and all other agreements or writings by and between Customer and Bank have been duly authorized by appropriate action of Customer's governing body;
 - (c) none of the terms of this Agreement or any other agreements between Customer and Bank are in violation of any agreements Customer may have with any third party;
 - (d) all financial statements, credit applications, and other information Customer has provided to Bank are truthful and accurate, and all financial statements and other information Customer delivers or provides to Bank in the future also will be truthful and accurate; and
 - (e) since the date of the most recent financial statements delivered to Bank, there has been no material adverse change in Customer's financial condition or prospects.
- 3) Customer will, at its own cost and expense as applicable:
 - (a) deliver to Bank from time-to-time its financial statements, in the same form and type as submitted with Customer's loan request. Customer will deliver its full-year annual financial statements each year as soon as available, but in any event not later than one hundred twenty (120) days after the close of each of its fiscal years, together with the opinion or other report of the accountant(s) (if any) retained to compile, review or audit the financial statements. Bank may specify a different form, type or frequency in any addendum, schedule or other separate document that, by its terms, is made a part hereof, or as Bank may reasonably request in any written notice delivered by Bank to Customer;
 - (b) maintain its depository accounts with Bank;
 - (c) promptly advise Bank if Customer's current principals no longer control or operate the business of Customer;
 - (d) promptly advise Bank of the entry of any judgment against Customer;
 - (e) promptly deliver to Bank such other information and documents regarding the loans and the business affairs, operations, financial condition or other properties of Customer as Bank may reasonably request from time-to-time;
 - (f) permit Bank, at all times during business hours, to inspect, audit, check, and make copies of or extracts from, Customer's books, records, correspondence and other data relating to Customer's financial condition; and
 - (g) advise Bank within thirty (30) days of any change of Customer's name, location of principal office or residence or form of business entity.
- 4) Customer will not:
 - (a) enter into any consolidation or merger with, or otherwise acquire all or substantially all of the assets of, any person, or create, purchase or acquire any subsidiary; or
 - (b) allow to occur any material change in the nature of Customer's business as carried on as of the date of this Agreement or in the financial condition or prospects of Customer, which change would have a material adverse effect on Bank's position;

- (c) sell, transfer, or lease assets to any person other than in the ordinary course of Customer's business or as expressly allowed by Bank;
 - (d) make any loans or cash advances to, or any investment in, any person, except for advances made in the ordinary course of Customer's business.
- 5) Other monetary obligations of Customer hereunder include the following:
- (a) if Customer is ten (10) days late in making a payment, then Customer shall pay a delinquency charge equal to five percent (5%) of the amount of the late payment (both principal and interest), and Bank shall assess such delinquency charge on the tenth (10th) calendar day after the payment due date. After a default as defined below has continued for 30 days and as long as the default continues, Bank may by notice of default charge interest at the rate set forth in the applicable Note plus three percent (3%) per annum (the "Default Rate"). If imposed, the Default Rate shall apply retroactively to the date the default began.
 - (b) Customer also shall pay to Bank, or if requested by Bank, directly to the applicable vendor or other third party, any fees, costs, expenses, penalties or interest incurred by Bank in connection with this Agreement or any Note, including without limitation, fees, costs or expense of: (i) filing, registering or recording this Agreement and Bank's interests under this Agreement, or any official filings or registrations, (ii) any transfer or stamp taxes, (iii) inspection, appraisal or monitoring of the Customer's financial condition as Bank may conduct for itself or obtain from a third party in its discretion, (iv) exercising its rights herein or under applicable law to protect its interests by performing obligations of Customer in the event Customer fails to timely perform same, and (v) all attorneys' and other professionals retained by Bank in connection with any of the foregoing, or any exercise of other remedies upon occurrence of a default, whether such fees, costs or expenses are incurred before or after commencement of any bankruptcy case or other insolvency proceeding. All of the foregoing fees, costs or expenses thus incurred or expended by Bank, and any other monies paid by Bank to collect Customer's obligations under any Note or protect its interests shall, at Bank's option, for each instance of fees, cost or expense so incurred or paid by Bank, either be added to the balance of the applicable Note or if more than one Note, then pro-rated among the Notes, and be subject to all of the provisions of this Agreement, or be paid immediately by Customer upon demand by Bank, with interest accruing on the amount so demanded at the Default Rate.
- 6) Customer will be in default if any one or more of the following events takes place:
- (a) Customer fails to make any payment when due under (i) this Agreement, (ii) any Note, (iii) any addendum, schedule or other separate document delivered by Customer or Bank that relates to this Agreement, or (iv) under any other agreement between Customer and Bank;
 - (b) Customer fails to make payment when due or otherwise fails to perform under any agreement for borrowed money, or any obligation of Customer for borrowed money is declared due and payable before its original maturity date;
 - (c) Customer or any guarantor fails to perform any obligation under this Agreement, any guaranty or any other agreement with Bank, provided, however, that, to the extent any such obligation, other than a payment or insurance obligation, can still be performed, such failure continues for more than ten (10) business days after delivery by Bank of a written demand to perform;
 - (d) any representation or warranty made by Customer in this Agreement is false in any material respect when made, or subsequently becomes no longer true (except for representations and warranties that become untrue solely due to the passage of time);
 - (e) Customer, or any guarantor of Customer's obligations to Bank, dies, dissolves, merges with another entity, suspends or terminates his/her/ its usual business, is unable to pay his/her/its debts as they become due, makes an assignment for the benefit of creditors, applies to any court for the appointment of a trustee or a receiver of all or a substantial part of his/her/its assets or commences any proceeding under any bankruptcy, receivership, insolvency, dissolution or liquidation law of any jurisdiction, or any other individual or entity commences such proceedings against Customer or any such guarantor and Customer or such guarantor acquiescence thereto, or denies liability to Bank or seeks to terminate any agreement with Bank;
 - (f) Bank, in good faith, believes that the prospect of payment and performance hereunder has substantially diminished or that there is a material adverse change in the financial condition or operations of Customer or any guarantor; or
 - (g) Customer's principals as of the inception of this Agreement no longer control or operate the business of Customer.
- 7) Upon the occurrence of any of the foregoing events of default and at any time thereafter that any event of default is continuing, Bank may do any or all of the following, cumulatively: (i) declare all or any part of the remaining unpaid indebtedness of Customer to Bank to be immediately due and payable, together with all unpaid interest and any other accrued and unpaid monetary obligations of Customer hereunder; (ii) exercise all rights and remedies provided in this Agreement, under the Uniform Commercial Code as in effect in all pertinent jurisdictions and under any other applicable law, treaty or convention, including without limitation the right to setoff any property of Customer in the possession or control of Bank.

Customer's obligation to repay each Note and all other obligations of Customer hereunder are independent of the obligation of any other individual or entity that has signed this Agreement or other documents as a Customer or a guarantor ("Signer(s)"). It is not necessary for Bank to exercise its rights and remedies in respect of any collateral that may secure this Agreement before collecting from a Signer. Bank may extend the time for payment of any installment, reduce the size of monthly payments, release collateral, release one or more Signers from their obligations, waive any right Bank might have against any Signer, extend, renew or agree to alter this Agreement, all without releasing other Signers from their obligations under this Agreement or any guaranty agreement. Any delay by Bank in exercising any rights or remedies hereunder or under any other instrument executed and delivered by Customer to Bank in connection herewith shall not operate as a waiver thereof and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof, or the exercise of any other right or remedy. Bank's acceptance of late or partial payments, or waiver of any default, shall not establish a custom or course of conduct and the waiver by Bank of any default shall not constitute a waiver of any subsequent defaults, but shall be restricted to the default so waived.

- 8) If any part of this Agreement is determined to be contrary to any law or otherwise defective, then the other provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect. If the effective interest rate, late charges, fees or expenses in connection with any indebtedness hereunder exceeds the maximum lawful amount, then the amount of such item shall be reduced to the maximum lawful amount, and the amount of any excess amount shall be applied to principal, and returned to Customer to the extent the indebtedness has been or is thereby paid in full. This application or refund process shall be Customer's sole remedy for excessive charges.
- 9) No transfer, renewal, extension or assignment of any loan or Note or this Agreement or any interest hereunder or thereunder, or loss, damage, or destruction of any collateral shall release Customer from Customer's obligations hereunder. Customer hereby waives presentment, demand, protest, notice of protest, notice of non-payment or dishonor, notice of sale of any collateral or any part thereof and all benefit of valuation, appraisal, and all exemption laws now in force or hereafter passed, including stay of execution and condemnation.
- 10) This Agreement (which includes each Note and all addenda, schedules or other separate documents that, by their terms, are made a part hereof) constitutes the entire agreement between Customer and Bank. Bank may by written notice to Customer correct any technical error or complete any blank space necessary to cause this Agreement to be accurate and effective. Except to the extent stated in the previous sentence or provided otherwise herein, this Agreement can be modified or amended only by a written document signed by both Customer and Bank. Bank may assign this Agreement at any time. Customer may not assign its rights or delegate its duties under this Agreement without the express prior written consent of Bank.
- 11) With respect to any disputes between the parties, any proceeding by Bank against Customer may be brought by Bank in a court of competent jurisdiction located in the County of St. Joseph, State of Indiana (which court shall have jurisdiction to hear such matters) and Customer hereby irrevocably consents and submits itself to jurisdiction in any such court. Customer consents to service of process by first-class mail or messenger directed to Customer at Customer's address set forth above. Nothing herein affects or limits the rights of Bank to serve legal process in any other manner permitted by law or the rights of Bank to bring any action or proceeding against Customer or its property in courts of any other jurisdiction. Customer waives any bond or surety or security upon such bond or surety that might, but for this waiver, be required of Bank. Due to the complexity, high cost and time involved in commercial litigation before a jury, Customer and Bank each knowingly, voluntarily, irrevocably, and after the opportunity to consult with respective counsel, without coercion, waives any and all rights to trial by jury of any disputes between them and further waives any right to consolidate, by counterclaim or otherwise, any action or proceeding concerning any dispute between them with any other action or proceeding in which there is a trial by jury or in which a jury trial cannot be or has not been waived. Nothing herein shall affect Bank's right before, during or after commencing proceedings for court enforcement of its rights hereunder to exercise self-help remedies, such as repossession or set-off under the Uniform Commercial Code or other applicable law, convention or treaty, including Bank's right to bring an action in any court of competent jurisdiction for the purpose of enforcing any self-help remedies. This Agreement, together with each Note, shall be governed in all respects by the laws of the State of Indiana (without regard to conflict of law principles).
- 12) Any notice or other communication given under this Agreement must be in writing and be delivered to the recipient party. Notices to Customer shall be delivered personally, sent via fax, or mailed (by regular first class mail, or certified or registered mail, or by recognized overnight courier), postage prepaid to Customer at its address or fax number shown at the beginning of this Agreement. Notices to Bank shall be delivered personally or mailed (by regular first class mail, or certified or registered mail, or by recognized overnight courier), postage prepaid to Bank's address for notices: P. O. Box 783, South Bend, IN 46624 for mail, 100 North Michigan Street, South Bend, IN 46601 for overnight courier, in either case to the attention of Credit Notice Desk. The parties may give notice to designate a different address for notices to the party.
- 13) In addition to notices or other formal communications given under this Agreement, Customer authorizes Bank to send communications to it via fax or regular email from time to time. Although email generally is an efficient and effective means of communicating, it is not a secure means of communication. Customer acknowledges that there is risk of improper interception of sensitive, confidential or proprietary information when that information is transmitted via regular email. To mitigate such risk, Bank offers to encrypt information it sends to Customer via email or to communicate such information by secure fax or overnight delivery. Because these more secure means of transmitting information are not as convenient as regular email, Customer prefers to accept those risks rather than pursue less convenient means of communication. Accordingly, Customer (i) acknowledges its acceptance of the risks associated with regular email transmission of confidential information, and (ii) releases Bank from any claim for losses or damages as a consequence of improper interception of confidential information while in route to or from Customer via regular email.
- 14) A fax or other electronic reproduction of this page or any other Note, document, schedule, exhibit or attachment to this Agreement executed in connection with this Agreement with the signature of either party to this Agreement shall be as effective and valid as if such page bore the original signature of such party. This Agreement may be executed and delivered in counterparts and via fax or other electronic means. Customer confirms that if it has received copies of documents for execution from Bank via any means of electronic delivery (including email), that it has made no changes to such documents and the documents are identical in content to the version dispatched by Bank to Customer.
- 15) This Agreement shall be deemed accepted by Bank in South Bend, Indiana, by the Bank's act of funding the first loan made under this Agreement.

Executed by Customer on April 13, 2020.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Bryan Merryman
Bryan Merryman, CEO

1st SOURCE BANK

By: /s/ Nicole Thorson

PROMISSORY NOTE – TERM
(Paycheck Protection Program)

Total Amount of Loan: \$1,429,500.00
Interest Rate: Fixed Rate: 1.00% per annum.
Payment Schedule: Specific Repayment Schedule No principal or interest payments shall be due for the first six (6) months of this Note. Commencing on the seventh (7th) month anniversary of the date Customer executes this Note ("Note Date") and continuing on the same day of each month thereafter, Customer shall make a monthly principal payment on the outstanding principal balance (after application of any loan forgiveness) in an amount that shall fully amortize the outstanding principal balance of the Loan by the Loan Due Date. Accrued interest shall be due and payable with each monthly principal payment. Bank will apply each installment payment first to pay interest accrued to the day Bank received the payment, then to bring principal current, and apply any remaining balance to reduce principal. The Note is payable in full on the Loan Due Date without further demand or action of the Bank.
First Payment Due Date: NOVEMBER 13, 2020 (Bank to Complete)
Loan Due Date: Two (2) years from the Date of Initial Disbursement (specified below) SBA Approval Date: 04/10/2020 SBA Loan Number: 19705971-00

1. This Promissory Note ("Note") is executed and delivered pursuant to the Loan Agreement (Unsecured) dated April 9, 2020 ("Agreement") between ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. ("Customer") and 1st Source Bank ("Bank"). This Note memorializes a "loan" as defined in and made under the Agreement. All terms that are capitalized in this Note which are not otherwise defined in this Note shall have the meanings ascribed in the Agreement. This Note is subject in all respects to, the terms and conditions contained in the Agreement, all of which are incorporated by reference into this Note. These terms and conditions cover, among other things, events and circumstances that constitute a default by Customer, and Bank's rights and remedies in respect of a Customer default.
2. Customer promises to pay to Bank or to Bank's order, at such office as Bank may direct, the unpaid principal balance of this Note and all other sums which become due under the Agreement, with interest commencing on the Date of Initial Disbursement, at the Interest Rate per annum specified herein, according to the Payment Schedule described above. The entire balance due under this Note is due and payable in full on the Loan Due Date.
3. This is a "term" loan and is not a revolving credit arrangement. Customer has no right to receive a re-advance in the future of loan proceeds due to payments or other principal reductions in this Note. If the Total Amount of Loan shown above is not fully disbursed at the Date of Initial Disbursement, then Bank will make no further disbursement after sixty (60) days from the SBA Approval Date or if a default (as defined in the Agreement) exists. If that occurs, then Bank may recompute the amortization and repayment schedules and notify Customer of the recomputed payment schedule.
4. Notwithstanding anything in this Note, the Agreement or any documents evidencing this loan (collectively, "Loan Documents") to the contrary, Customer may prepay this Note. Customer may prepay twenty percent (20%) or less of the unpaid principal balance at any time without notice. If Customer prepays more than twenty percent (20%) and the loan has been sold on the secondary market, Customer must:
 - a. Give Bank written notice;
 - b. Pay all accrued interest; and
 - c. If the prepayment is received less than twenty-one (21) days from the date Bank receives the notice, pay an amount equal to twenty-one (21) days' interest from the date Bank receives the notice, less any interest accrued during the twenty-one (21) days and paid under subparagraph b., above.If Customer does not prepay within thirty (30) days from the date Bank receives the notice, Customer must give Bank a new notice.
5. This loan is being made by Bank to Customer pursuant to the Paycheck Protection Program ("PPP"), which is part of the Coronavirus Aid, Relief, and Economic Security Act ("Act"), and the provisions of the Act and the rules, regulations, and guidance applicable to loans under the PPP, as amended from time to time ("Rules"), are incorporated herein by reference. If a conflict exists between the terms of the Loan Documents and the Act or Rules, the Act or Rules will control and the terms of the Loan Documents will be amended by the effect and operation of the Act or Rules so that the legal effect of the Loan Documents conforms to the provisions of the Act and Rules, and the Loan Documents as amended shall remain in full force and effect in accordance with the Act and Rules. If all or part of any term of the Loan Documents is disallowed or impermissible under the Act or Rules, such term shall be deemed to be stricken from the Loan Documents, and the Loan Documents as amended shall remain in full force and effect in accordance with the Act and Rules. Customer represents and warrants that it will use the loan proceeds in compliance with the Act and Rules and only for permissible costs and expenses under the Act and Rules. Customer represents and warrants that all representations, authorizations, and certifications made by Customer in its application for the loan under the PPP are true, accurate, and correct as of the date hereof.
6. All or part of the loan may be forgiven if Customer satisfies and complies with the terms and conditions for loan forgiveness under the Act and Rules. All loan forgiveness amounts must be calculated in accordance with the Act and Rules. Customer agrees to submit to Bank verifying documentation for loan forgiveness in accordance with the Act and Rules. No loan forgiveness will be available absent submission of the required verifying documentation.

7. Notwithstanding any terms to the contrary in the Loan Documents, (a) Bank shall not collect any fees or costs from Customer relating to this loan; (b) no collateral and no personal guarantee is required in connection with the loan; and (c) Bank and SBA shall have no recourse against any individual shareholder, member or partner of Customer for non-payment of the loan, except to the extent that such shareholder, member, or partner uses the loan proceeds for an unauthorized purpose.
8. Customer may not assign its rights in or delegate its duties under this Note without the prior written consent of Bank. Bank may assign its rights in or delegate its duties under this Note at any time without the consent of or notice to Customer.
9. At the request of Bank, Customer agrees to promptly re-execute this Note and any other Loan Document if the loan was closed using a copy and/or to execute a replacement note and other Loan Documents as Bank may deem necessary or appropriate, in its sole discretion, to comply with the Act or Rules.
10. Customer further represents, warrants, and certifies to Bank: (a) Customer has received a copy of the SBA Authorization (Paycheck Protection Program) regarding the loan; (b) Customer acknowledges that if Customer defaults on the loan, SBA may be required to pay Bank under the SBA Guarantee under the PPP, and SBA may then seek recovery on the loan (to the extent any balance remains after loan forgiveness); (c) Customer will keep books and records in a manner satisfactory to Bank, furnish financial statements as requested by Bank, and allow Bank and SBA to inspect and audit books, records and papers relating to Customer's financial or business condition; and (d) Customer will not, without Bank's consent, change its ownership structure, make any distribution of company assets that would adversely affect its financial condition, or transfer (including pledging) or dispose of any assets, except in the ordinary course of business.
11. When the SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Bank or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Customer may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law. Notwithstanding anything herein to the contrary, this Note is unsecured.

Executed by Customer on April 13, 2020

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Bryan Merryman
Bryan Merryman, CEO

FOR BANK USE ONLY: Date of Initial Disbursement: <u>April 14</u> , 20 <u>20</u>
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