

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
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<b>NATURE OF CONVEYANCE:</b>	MERGER
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<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Peak Acquisitions, LLC		08/01/2004	limited liability company: COLORADO

<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	Colorado Baking Company, Inc.
<b>Doing Business As:</b>	Colorado Baking Co.
<b>Street Address:</b>	3333 Warrenville Road, Suite 200
<b>City:</b>	Lisle
<b>State/Country:</b>	ILLINOIS
<b>Postal Code:</b>	60532
<b>Entity Type:</b>	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 17**

Property Type	Number	Word Mark
Serial Number:	78359307	FREEDOM BAR
Serial Number:	78354452	PEAKBITES
Serial Number:	78354449	PEAKSTARTS
Serial Number:	78354446	PEAK FOR LIFE
Serial Number:	78351986	SPIDERBITES
Serial Number:	78341699	EAT WELL, RIDE HAPPY
Serial Number:	78341693	THE ALL DAY, EVERYDAY SNACK
Serial Number:	78116148	BEST TASTING ENERGY BAR ON THE PLANET!
Serial Number:	78115944	FRUIT MANIA
Registration Number:	2879088	ENERGY FOR PEAK PERFORMANCE
Serial Number:	76263478	PEAK BAR
Registration Number:	2675229	WAY COOL BAKERY
Registration Number:	2732097	SUPER-LEAN CHOCOLATE MALT
Registration Number:	2732096	BODACIOUS PEANUT CHOCOLATE CHUNK

CH \$440.00 78359307

Registration Number:	2672335	VERRY BERRY
Registration Number:	2094875	PEAK BAR WAY COOL FUEL!
Registration Number:	2705607	FUDGE PEANUT CRUNCHEE

**CORRESPONDENCE DATA**

Fax Number: (866)286-3852  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
Phone: 312-627-2147  
Email: nmarsico@dykema.com  
Correspondent Name: Nick Marsico  
Address Line 1: 10 S. Wacker Drive, Suite 2300  
Address Line 4: Chicago, ILLINOIS 60606-7407

ATTORNEY DOCKET NUMBER:	097017-0003
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NAME OF SUBMITTER:	Nick Marsico
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Total Attachments: 3  
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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (“Merger Agreement”), dated as of August 1, 2004 by and between PEAK ACQUISITIONS, LLC, a Colorado limited liability company, Colorado ID Number 20021043030 (“Peak LLC”) and COLORADO BAKING COMPANY, INC., a Delaware corporation, Delaware File Number 3829948 (“the Corporation”).

**WHEREAS**, Peak LLC and the Corporation (collectively, the “Constituent Entities”) deem it advisable and in their best interests to effect a merger pursuant to Section 209 of the Delaware Limited Liability Company Act and Section 264 of the Delaware General Corporation Law, whereby Peak LLC will be merged into the Corporation, which will survive the merger;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Constituent Entities hereby agree to effect the merger on the terms and conditions set forth below.

### ARTICLE I THE MERGER

1.1 **The Merger.** At the Effective Time (as defined in Section 1.2), in accordance with the terms and conditions of this Merger Agreement and the applicable provisions of Delaware law, Peak LLC shall be merged with and into the Corporation (the “Merger”), and the separate corporate existence of Peak LLC shall cease and the Corporation shall continue its existence as the surviving entity in the Merger (the “Corporation”) under the laws of Delaware.

1.2 **Effective Time of the Merger.** The Merger shall become effective when the Certificate of Merger (as defined in Section 1.3) is filed with the office of the Secretary of State of Delaware in accordance with the applicable provisions of Delaware law. The date and time when the Merger shall become effective are herein referred to as the “Effective Time.”

1.3 **Filing of Certificate of Merger.** The Corporation shall execute a certificate of merger (“Certificate of Merger”) in accordance with Delaware law as soon as practicable after approval of this Merger Agreement by the members of Peak LLC and the stockholders of the Corporation, and the Corporation shall cause such Certificate of Merger to be filed and recorded in accordance with Delaware law.

1.4 **Effect of the Merger.** At and after the Effective Time, by virtue of the Merger and without any action on the part of any party, (a) the separate existence of Peak LLC shall cease; (b) the Corporation shall possess all of the rights, privileges, powers, immunities and franchises of a public as well as of a private nature, and be subject to all of the restrictions, disabilities and duties, of each of the Constituent Entities; (c) all rights, privileges, powers, immunities and franchises of each of the Constituent Entities, and all property, real, personal and mixed, and debts due either of the Constituent Entities on whatever account, as well for stock subscriptions and all other things in action or belonging to each of the Constituent Entities, shall be vested in the Corporation; (d) all property, rights, privileges, powers, immunities and

franchises, and all and every other interest, shall be thereafter the property of the Corporation as they were of the several and respective Corporation; (e) the title to any real estate vested by deed or otherwise in either of the Constituent Entities shall not revert or be in any way impaired by reason of the Merger; (f) all rights of creditors and all liens upon the properties of the Constituent Entities shall be preserved unimpaired; (g) all debts, liabilities, obligations and duties of the Constituent Entities shall attach to the Corporation, and may be enforced against it to the same extent as if such debts, liabilities, obligations and duties have been incurred or contracted by it; (h) any claim existing or action or proceeding, whether civil, criminal or administrative, pending by or against either of the Constituent Entities may be prosecuted to judgment or decree as if the Merger had not taken place, or the Corporation may be substituted in such action or proceeding.

1.5 **Further Action.** If at any time after the Effective Time the Corporation shall consider or be advised that any further deeds, conveyances, assignments, or assurances in law or any other acts are necessary, desirable or proper to vest, perfect, or confirm of record or otherwise in the Corporation the title to any property or rights of the Constituent Entities acquired or to be acquired by reason of, or as a result of, the Merger, or otherwise to carry out the purposes of this Merger Agreement, the Constituent Entities agree that the Corporation and its proper officers shall execute and deliver all such deeds, conveyances, assignments and assurances in law and do all things necessary, desirable, or proper to vest, perfect or confirm title to such property or rights in the Corporation and otherwise to carry out the purposes of this Merger Agreement, and that the proper officers of the Corporation are fully authorized, in the name of the Constituent Entities or otherwise, to take any and all such action.

## **ARTICLE II STATUS AND CONVERSION OF SECURITIES**

2.1 **Status and Conversion of Securities.** At the Effective Time, by virtue of the Merger and without any action on the part of any party, all membership interests Peak LLC shall be cancelled and extinguished without payment of any consideration therefor and without any conversion thereof. The Merger shall not cause any change in the issued and outstanding shares of the capital stock of the Corporation.

## **ARTICLE III THE SURVIVING ENTITY**

3.1 **Charter of the Corporation.** The Certificate of Incorporation of the Corporation as in effect immediately prior to the Effective Time shall continue as the Certificate of Incorporation of the Corporation after the Effective Time. The Articles of Organization of Peak LLC, as in effect immediately prior to the Effective Time, shall be cancelled as of the Effective Time.

3.2 **By-Laws of the Corporation.** The By-laws of the Corporation as in effect immediately prior to the Effective Time shall continue to govern the internal affairs of the Corporation after the Effective Time. The Operating Agreement of Peak LLC, as in effect immediately prior to the Effective Time, shall be cancelled as of the Effective Time.

3.3 **Officers and Directors of the Corporation.** The officers and directors of the Corporation immediately prior to the Effective Time shall continue to be the officers and directors of the Corporation after the Effective Time. The term of office of each of the managers of Peak LLC shall terminate as of the Effective Time.

**ARTICLE IV  
MISCELLANEOUS**

4.1 **Amendment and Modifications.** Subject to applicable law, this Merger Agreement may be amended, modified, supplemented, and terminated in any and all respects by written agreement of the Constituent Entities at any time prior to the Effective Time.

4.2 **Section Headings.** The section headings contained in this Merger Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Merger Agreement.

4.3 **Governing Law.** This Merger Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without reference to choice-of-law or conflict of law principles.

4.5 **Counterparts.** This Merger Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement of Plan of Merger as of the date first above written.

**PEAK ACQUISITIONS, LLC**

By: \_\_\_\_\_

Steven J. Beaman  
Manager

**COLORADO BAKING COMPANY, INC.**

By: \_\_\_\_\_

Steven J. Beaman  
President