

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## COFFEE HOLDING CO INC

**Form: 10-K**

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

Form 10-K

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

For the fiscal year ended **October 31, 2010**

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: **001-32491**

**COFFEE HOLDING CO., INC.**

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation or organization)

11-2238111

(I.R.S. Employer Identification No.)

3475 Victory Boulevard, Staten Island, New York

(Address of principal executive offices)

10314

(Zip Code)

Registrant's telephone number, including area code: **(718) 832-0800**

Securities registered under Section 12(b) of the Act:

Title of each class:

Common Stock, Par Value \$0.001 Per Share

Name of each exchange on which registered:

Nasdaq Stock Market LLC

Securities registered under Section 12(b) of the Exchange Act:

**None**

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

Indicate by check mark if 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 past 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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained in, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller Reporting Company

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 common equity held by non-affiliates of the registrant, computed by reference to the closing price of the registrant's common stock on the Nasdaq Capital Market on December 31, 2010, was \$16,268,575.

As of December 31, 2010, the registrant had 5,490,823 shares of common stock, par value \$0.001 per share, outstanding.

**Documents incorporated by reference**

Portions of the registrant's proxy statement for the 2011 annual meeting of stockholders to be filed pursuant to Regulation 14A within 120 days after registrant's fiscal year ended October 31, 2010, are incorporated by reference in Part III of this Form 10-K.



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## PART I

### ITEM 1. BUSINESS

#### General Overview

**Products and Operations.** We are an integrated wholesale coffee roaster and dealer in the United States. Our core products can be divided into three categories:

- **Wholesale Green Coffee:** unroasted raw beans imported from around the world and sold to large and small roasters and coffee shop operators;
- **Private Label Coffee:** coffee roasted, blended, packaged and sold under the specifications and names of others, including supermarkets that want to have their own brand name on coffee to compete with national brands; and
- **Branded Coffee:** coffee roasted and blended to our own specifications and packaged and sold under our seven proprietary and licensed brand names in different segments of the market.

Our private label and branded coffee products are sold throughout the United States and Canada to supermarkets, wholesalers, and individually owned and multi-unit retail customers. Our unprocessed green coffee, which includes over 90 specialty coffee offerings, is sold to specialty gourmet roasters.

We conduct our operations in accordance with strict freshness and quality standards. All of our private label and branded coffees are produced from high quality coffee beans that are deep roasted for full flavor using a slow roasting process that has been perfected utilizing our more than thirty years of experience in the coffee industry. In order to ensure freshness, our products are delivered to our customers within 72 hours of roasting. We believe that our long history has enabled us to develop a loyal customer base.

We were founded and incorporated in New York State in 1971 and have been a family operated business for almost 40 years. In 1998, we merged with Transpacific International Group Corp. and became a Nevada corporation. In May 2005, we concluded our initial public offering and our common stock began trading on the American Stock Exchange ("AMEX") under the symbol "JVA." On March 15, 2010, we filed a Form 25 delisting our common stock from the AMEX and filed a Form 8-A listing our common stock on the Nasdaq Capital Market ("Nasdaq") under the symbol "JVA." Our fiscal year ends on October 31.

Our corporate offices are located at 3475 Victory Boulevard, Staten Island, New York 10314. Our telephone number is (718) 832-0800 and our website address is [www.coffeeholding.com](http://www.coffeeholding.com).

#### Our Competitive Strengths

To achieve our growth objectives described below, we intend to leverage the following competitive strengths:

**National Distribution with Capacity For Growth.** From 1991 to 2004, we expanded our distribution to a national platform while operating from only our Brooklyn, New York location by making capital investments to improve our roasting, packaging and fulfillment infrastructure to support the production and distribution of large quantities of fresh coffee products throughout the United States. In February 2004, we acquired certain assets of Premier Roasters, a roaster-dealer located in La Junta, Colorado, for \$825,000. The assets purchased by us include all of the operating equipment located at Premier Roasters's La Junta and Rocky Ford, Colorado locations, as well as all labels for all of Premier Roasters's coffee products. In connection with the acquisition of these assets, we reached an agreement with the City of La Junta, Colorado on a 20-year lease for a 50,000 square foot facility in La Junta. We are using the assets that we purchased to expand our integrated wholesale coffee roaster and dealer operations in the Western United States. Our Colorado location allows us to reduce our freight and shipping costs to the Western United States, thereby enabling us to be more competitive in bidding for new business. In addition, our presence in Colorado has increased the number of customers we have because of our proximity to the West Coast.

In April 2006, we entered into a joint venture with Caruso's Coffee, Inc. of Brecksville, Ohio and formed Generations Coffee Company, LLC, a Delaware limited liability company ("GCC"), which engages in the roasting, packaging and sale of private label specialty coffee products. We own a 60% equity interest in GCC and are the exclusive supplier of its coffee inventory. We believe that the joint venture with GCC allows us to bid on the private label gourmet whole bean business which we had not been equipped to pursue from an operational standpoint in the past. With this specialty roasting facility in place, in many cases right in the backyard of some of our current wholesale and retail customers, we believe we will be able to successfully combine our canned private label business with high-end private label specialty whole bean business. High-end specialty whole bean coffee sells for as much as three times more per pound than the canned coffees.

In October 2009, we sold our Brooklyn, New York location after ceasing our manufacturing operations there in May. The majority of our processing has been moved to our La Junta, Colorado facility with our Generations Coffee Company, LLC facility in Brecksville, Ohio becoming more involved with everyday coffee processing. The closing of our Brooklyn facility reduced our long-term operating expenses, increased efficiencies and ultimately increased the profitability of the Company. In addition, we believe that the savings and the proceeds generated from the sale will improve our cash flow and provide us with great flexibility as a company to promote our own brands, be more selective as to potential private label customers and explore and re-evaluate strategic opportunities to bolster our long-term growth.

In May 2010, we purchased substantially all of the assets, including fixed assets, inventory, trademarks, customer list and supply chain relationships of Organic Products Trading Company, Inc. ("OPTCO"). A green coffee merchant located on the West Coast who specializes in both the procurement and sales of high end organic and fair trade Arabica coffees.

***Positioned to Profitably Grow Through Varying Cycles of the Coffee Market.*** We believe that we are one of the few coffee companies to offer a broad array of branded and private label roasted ground coffees and wholesale green coffee across the spectrum of consumer tastes, preferences and price points. While many of our competitors engage in distinct segments of the coffee business, we sell products in each of the following areas:

- Retail branded coffee;
- Mainstream retail private label coffee;
- Specialty retail coffees both private label and branded;
- Wholesale specialty green and gourmet whole bean coffees;
- Food service;
- Instant coffees; and
- Niche products.

Our branded and private label roasted ground coffees are sold at competitive and value price levels while some of our other branded and specialty coffees are sold predominantly at premium price levels. Premium price level coffee is high-quality gourmet coffee, such as AA Arabica coffee, which sell at a substantial premium over traditional retail canned coffee, while competitive and value price level coffee is mainstream or traditional canned coffee. Because of this diversification, we believe that our profitability is not dependent on any one area of the coffee industry and, therefore, is less sensitive than our competition to potential coffee commodity price and overall economic volatility.

**Wholesale Green Coffee Market Presence.** As a large roaster-dealer of green coffee, we believe that we are favorably positioned to increase our specialty coffee sales. Since 1998, we have increased the number of our wholesale green coffee customers, including coffee houses, single store operators, mall coffee stores and mail order sellers, by 86% from 150 to 280. We are a charter member of the Specialty Coffee Association of America and one of the largest distributors of Swiss Water Processed Decaffeinated Coffees along the East Coast. In addition, although we do not have any formalized, material agreements or long-term contracts with Green Mountain Coffee Roasters (“GMCR”), we have a 18-year relationship with GMCR, our largest wholesale green coffee customer. Our almost 40 years of experience as a roaster and a dealer of green coffee allows us to provide our roasting experience as a value added service to our gourmet roaster customers. The assistance we provide to our customers includes training, coffee blending and market identification. We believe that our relationships with wholesale green coffee customers and our focus on selling green coffee as a wholesaler has enabled us to participate in the growth of the specialty coffee market while mitigating the risks associated with the competitive retail specialty coffee environment.

**Diverse Portfolio of Differentiated Branded Coffees.** We have amassed a portfolio of five proprietary name brands sold to supermarkets, wholesalers and individually owned stores in the United States, including brands for specialty espresso, Latin espresso, Italian espresso, 100% Colombian coffee and blended coffee. In addition, we have entered into a licensing agreement with Del Monte Corporation for the exclusive right to use the S&W and IL CLASSICO trademarks in the United States and other countries approved by Del Monte Corporation in connection with the production, manufacture and sale of roasted whole bean and ground coffee for distribution to retail customers. We plan to broaden our customer base and increase penetration with existing customers by expanding the S&W label from a well-known brand on the West Coast to a well-known brand throughout the United States. In July 2007, we entered into a three-year licensing agreement (which was subsequently amended) with Entenmann’s Products, Inc., a subsidiary of Entenmann’s, Inc., which is one of the nation’s oldest baking companies. The agreement gives us the exclusive rights to manufacture, market and distribute a full line of Entenmann’s brand coffee products throughout the United States. We have developed not only mainstream Entenmann’s coffee items, but upscale flavored Entenmann’s products in twelve-ounce valve bags as well. These products will give the line a visible upscale image to our retailers and their customers, which we believe will be integral to the long-term success of this arrangement. Our first production run was in February 2008 and our Entenmann’s coffee products began appearing in supermarkets in the Northeast during mid-March 2008. Our existing portfolio of differentiated brands combined with our management expertise serve as a platform to add additional name brands through acquisition or licensing agreements which target product niches and segments that do not compete with our existing brands.

**Management Has Extensive Experience in the Coffee Industry.** We have been a family-operated business for three generations. Throughout this time, we have remained profitable through varying cycles in the coffee industry and the economy. Andrew Gordon, our President, Chief Executive Officer and Chief Financial Officer, and David Gordon, our Executive Vice President – Operations, have worked with Coffee Holding for 28 and 30 years, respectively. David Gordon is an original member of the Specialty Coffee Association of America. We believe that our employees and management are dedicated to our vision and mission, which is to produce high quality products, as well as to provide quality and responsive service to our customers.

## **Our Growth Strategy**

We believe that significant growth opportunities exist by selectively pursuing strategic acquisitions and alliances, targeting the rapidly growing Hispanic market in the United States, increasing penetration with existing customers by adding new products, and developing our food service business. By capitalizing on this strategy, we hope to continue to grow our business with our commitment to quality and personalized service to our customers. We do not intend to compete on price alone nor do we intend to expand sales at the expense of profitability.

**Selectively Pursue Strategic Acquisitions and Alliances.** We intend to expand our operations by acquiring coffee companies, seeking strategic alliances and acquiring or licensing brands, which complement our business objectives. Consistent with this strategy, in February 2004, we acquired certain assets of Premier Roasters and entered into a licensing agreement with Del Monte Corporation for the exclusive right to use the S&W and IL CLASSICO trademarks, including Premium, Premium Decaf, French Roast, Colombian, Colombian Decaf, Swiss Water Decaf, Kona, and Mellow’d Roast lines, in the United States and other countries approved by Del Monte Corporation in connection with the production, manufacture and sale of roasted whole bean and ground coffee for distribution at the retail level.

In April 2006, we entered into a joint venture with Caruso’s Coffee, Inc. of Brecksville, Ohio and formed Generations Coffee Company, LLC, which engages in the roasting, packaging and sale of private label specialty coffee products. We believe this joint venture allows us to successfully bid on and compete for specialty private label coffee opportunities which we were not operationally set up to compete for in the past.

In July 2007, we entered into a three year licensing agreement with Entenmann’s Products, Inc. (which was subsequently amended), which gives us the exclusive rights to manufacture, market and distribute a full line of Entenmann’s brand coffee products throughout the United States. We have developed not only mainstream Entenmann’s coffee items, but upscale flavored Entenmann’s products in twelve-ounce valve bags as well. We believe these products give the line a visible upscale image to our retailers and their customers, which we believe is integral to the long-term success of this arrangement.

In May 2010, we purchased substantially all of the assets, including fixed assets, inventory, trademarks, customer list and supply chain relationships of Organic Products Trading Company, Inc.

**Grow Our Cafe Caribe and Cafe Supremo Products.** The Hispanic population in the United States is the fastest growing and now represents the largest minority demographic in the United States. We believe there is significant opportunity for our Café Caribe and Café Supremo brands to gain market share among Hispanic consumers in the United States. Café Caribe, which has historically been our leading brand by poundage, is a specialty espresso coffee that targets espresso coffee drinkers and, in particular, Hispanic consumers. Café Supremo is a specialty espresso coffee which is priced for the more price sensitive Hispanic espresso coffee drinker.

**Further Market Penetration of Our Niche Products.** We intend to capture additional market share through our existing distribution channels by selectively adding or introducing new brand names and products across multiple price points, including:

- Specialty blends;
- Private label “value” blends and trial-sized mini-brick packages;
- Specialty instant coffees;
- Instant cappuccinos and hot chocolates; and
- Tea line products.

**Develop Our Food Service Business.** We plan to expand further into the food service business by developing new distribution channels for our products. Currently, we have a limited presence in the food service market. In 2003, we began marketing our upscale restaurant and Colombian coffee brands to hotels, restaurants, office coffee services companies and other food service retailers. In addition, we have expanded our food service offerings to include instant cappuccinos, tea products and an equipment program for our customers. We attend various annual trade shows held by different buying groups, which provide us a national audience to market our food service products.

## Our Core Products

Our core products can be divided into three categories:

- **Wholesale Green Coffee:** unroasted raw beans imported from around the world and sold to large and small roasters and coffee shop operators;
- **Private Label Coffee:** coffee roasted, blended, packaged and sold under the specifications and names of others, including supermarkets that want to have their own brand name on coffee to compete with national brands; and
- **Branded Coffee:** coffee roasted and blended to our own specifications and packaged and sold under our seven proprietary and licensed brand names in different segments of the market.

**Wholesale Green Coffee.** The specialty coffee market represents the fastest growing area of our industry. The number of gourmet coffee houses have been increasing in all areas of the United States. The growth in specialty coffee sales has created a marketplace for higher quality and differentiated products, which can be priced at a premium in the marketplace. As a large roaster-dealer of green coffee, we are favorably positioned to increase our specialty coffee sales. We sell green coffee beans to small roasters and coffee shop operators located throughout the United States and carry over 90 different varieties. Specialty green coffee beans are sold unroasted, direct from warehouses to small roasters and gourmet coffee shop operators, which then roast the beans themselves. We sell from as little as one bag (132 pounds) to a full truckload (44,000 pounds) of specialty green coffee beans, depending on the size and need of the customer. We believe that we can increase sales of wholesale green coffee without an increase in infrastructure as well as not venturing into the highly competitive retail specialty coffee environment and utilizing our current strategy we can be as profitable or more profitable than our competitors in this segment by selling “one bag at a time” rather than “one cup at a time.”

**Private Label Coffee.** We roast, blend, package and sell coffee under private labels for companies throughout the United States and Canada. Our private label coffee is sold in cans, brick packages and instants in a variety of sizes. As of October 31, 2010, we supplied coffee under approximately 34 different labels to wholesalers and retailers. We produce private label coffee for customers who desire to sell coffee under their own name but do not want to engage in the manufacturing process. Our private label customers seek a quality similar to the national brands at a lower cost, which represents a better value for the consumer.

**Branded Coffee.** We roast and blend our branded coffee according to our own recipes and package the coffee at our facilities in La Junta, Colorado and Brecksville, Ohio. We then sell the packaged coffee under our brand labels to supermarkets, wholesalers and individually-owned stores throughout the United States.

We hold trademarks for each of our proprietary name brands and have the exclusive right to use the S&W, IL CLASSICO, and Entenmann's trademarks in the United States in connection with the production, manufacture and sale of roasted whole bean and ground coffee for distribution at the retail level. For further information regarding our trademark rights, see "*Business—Trademarks.*"

Each of our name brands is directed at a particular segment of the coffee market. Our branded coffees are:

**Cafe Caribe** is a specialty espresso coffee that targets espresso coffee drinkers and, in particular, the Hispanic consumer market;

**S&W** is an upscale canned coffee established in 1921 and includes Premium, Premium Decaf, French Roast, Colombian, Colombian Decaf, Swiss Water Decaf, Kona, Mellow'd Roast and IL CLASSICO lines;

**Cafe Supremo** is a specialty espresso that targets espresso drinkers of all backgrounds and tastes. It is designed to introduce coffee drinkers to the tastes of dark roasted coffee;

**Don Manuel** is produced from the finest 100% Colombian coffee beans. Don Manuel is an upscale quality product which commands a substantial premium compared to the more traditional brown coffee blends. We also use this known trademark in our food service business because of the high brand quality;

**Fifth Avenue** is a blended coffee that has become popular as an alternative for consumers who purchase private label or national branded coffee. We also market this brand to wholesalers who do not wish to undertake the expense of developing a private label coffee program under their own name;

**Via Roma** is an Italian espresso targeted at the more traditional espresso drinker;

**IL CLASSICO** is an S&W brand espresso product; and

Our **Entenmann's** line of coffee products consists of three canned coffees and seven different bagged coffees, each of which is made from superior quality 100% Arabica specialty coffee beans that represent less than 10% of all coffee beans grown in the world.

#### **Other Products**

We also offer several niche products, including:

- trial-sized mini-brick coffee packages;
- specialty instant coffees;
- instant cappuccinos and hot chocolates; and
- tea line products.

#### **Raw Materials**

Coffee is a commodity traded on the Commodities and Futures Exchange subject to price fluctuations. Over the past five years, the average price per pound of coffee beans ranged from approximately \$1.09 to \$2.05. The price for coffee beans on the commodities market as of October 31, 2010 and 2009 were \$2.04 and \$1.36 per pound, respectively. Specialty green coffee, unlike most coffee, is not tied directly to the commodities cash markets. Instead, it tends to trade on a negotiated basis at a substantial premium over commodity coffee pricing, depending on the origin, supply and demand at the time of purchase. We are a licensed Fair Trade dealer for Fair Trade certified coffee. Fair Trade certified coffee helps small coffee farmers to increase their incomes and improve the prospects of their communities and families by guaranteeing farmers a minimum price of ten cents above the current market price. Our Ohio Facility operated by GCC is certified organic by the Organic Crop Improvement Association (OCIA). All of our specialty green coffees, as well as all of the other coffees we import for roasting, are subject to multiple levels of quality control.

We purchase our green coffee from dealers located primarily within the United States. The dealers supply us with coffee beans from many countries, including Colombia, Mexico, Kenya, Indonesia, Brazil and Uganda. For the fiscal years 2010 and 2009, approximately 85% and 83% of all of our green coffee purchases were from ten suppliers. One of these suppliers, Rothfos Corporation, accounted for approximately \$19.3 million or 30% in 2010, and \$16.7 million or 27% in 2009, of our total product purchases. An employee of Rothfos Corporation is one of our directors. Another of these suppliers, Daarnhouwer & Co., B.V., accounted for approximately \$5.9 million or 9.2% in 2010, and \$7.6 million or 12% in 2009, of our total product purchases. We do not have any formalized, material agreements or long-term contracts with any of these suppliers. Rather, our purchases are typically made pursuant to individual purchase orders. We do not believe that the loss of any one supplier, including Rothfos, would have a material adverse effect on our operations due to the availability of alternate suppliers.

The supply and price of coffee beans are subject to volatility and are influenced by numerous factors which are beyond our control. Supply and price can be affected by factors such as weather, politics and economics in the coffee exporting countries. Increases in the cost of coffee beans can, to a certain extent, be passed on to our customers in the form of higher prices for coffee beans and processed coffee. Drastic or prolonged increases in coffee prices may also adversely impact our business as it could lead to a decline in overall consumption of coffee. Similarly, rapid decreases in the cost of coffee beans may force us to lower our sale prices before realizing cost reductions in our purchases.

We subject all of our private unroasted green coffee to both a pre-shipment sample approval and an additional sample approval upon arrival into the United States. Once the arrival sample is approved, we then bring the coffee to one of our facilities to roast and blend according to our own strict specifications. During the roasting and blending process, samples are pulled off the production line and tested on an hourly basis to ensure that each batch roasted is consistent with the others and meets the strict quality standards demanded by our customers and us.

#### **Our Use of Derivatives**

Historically, we have used short-term coffee futures and options contracts primarily for the purpose of partially hedging and minimizing the effects of changing green coffee prices and to reduce our cost of sales. In addition, we acquire futures contracts with longer terms, generally three to four months, primarily for the purpose of guaranteeing an adequate supply of green coffee at favorable prices. Although the use of these derivative financial instruments has enabled us to mitigate the effect of changing prices, no strategy can entirely eliminate pricing risks and we generally remain exposed to loss when prices decline or increase significantly in a very short period of time. In addition, we would generally remain exposed to supply risk in the event of non-performance by the counter-parties to any futures contract. If the hedges that we enter do not adequately offset the risks of coffee bean price volatility or our hedges result in losses, our cost of sales may increase, resulting in a decrease in profitability. See Quantitative and Qualitative Disclosures About Market Risk—Commodity Price Risks.

#### **Trademarks**

We hold trademarks, registered with the United States Patent and Trademark Office, for all seven of our proprietary coffee brands and an exclusive license for S&W, IL CLASSICO, and Entenmann's brands for sale in the United States. Trademark registrations are subject to periodic renewal and we anticipate maintaining our registrations. We believe that our brands are recognizable in the marketplace and that brand recognition is important to the success of our branded coffee business.

#### **Customers**

We sell our private label and our branded coffee to some of the largest retail and wholesale customers in the United States (according to *Supermarket News*). We sell wholesale green coffee to GMCR. Sales to GMCR accounted for approximately \$39.0 million or 47% of our net sales for the fiscal year ended October 31, 2010, \$26.4 million or 35% for the fiscal year ended October 31, 2009, and \$23.6 million, or 32%, for the fiscal year ended October 31, 2008.

Although our agreements with wholesale customers generally contain only pricing terms, our contracts with certain customers also contain minimum and maximum purchase obligations at fixed prices. Because our profits on a fixed-price contract could decline if coffee prices increased, we acquire futures contracts with longer terms (generally three to four months) primarily for the purpose of guaranteeing an adequate supply of green coffee at favorable prices. Although the use of these derivative financial instruments has enabled us to mitigate the effect of changing prices, no strategy is effective to eliminate the pricing risks and we would remain exposed to loss when prices change significantly in a short period of time, and we would remain exposed to supply risk in the event of non-performance by the counterparties to any futures contracts.

## Marketing

We market our private label and wholesale coffee through trade shows, industry publications, face-to-face contact and through the use of our internal sales force and non-exclusive independent food and beverage sales brokers. We also use our web site ([www.coffeeholding.com](http://www.coffeeholding.com)) as a method of marketing our coffee products and ourselves.

For our private label and branded coffees, we will, from time to time in conjunction with retailers and with wholesalers, conduct in-store promotions, such as product demonstrations, coupons, price reductions, two-for-one sales and new product launches to capture changing consumer taste preference for upscale canned coffees.

We evaluate opportunities for growth consistent with our business objectives. We have established relationships with independent sales brokers to market our products across the United States, in areas of the country where we have not had a high penetration of sales. In addition, we employ a VP of sales on the west coast who markets our S&W and IL CLASSICO brands, as well as our other branded and private label coffee products. We intend to capture additional market share in our existing distribution channels by selectively adding or introducing new brand names and products across multiple price points, including niche specialty blends, private label "value" blends and mini-brick, filter packages, and peripheral products including, instant cappuccinos and tea line products.

## Charitable Activities

We are also a supporter of several coffee-oriented charitable organizations.

- For over 15 years, we have been members of Coffee Kids, an international non-profit organization that helps to improve the quality of life of children and their families in coffee-growing communities in Mexico, Guatemala, Nicaragua and Costa Rica.
- We are members of Grounds for Health, an organization that educates, screens, and arranges treatment for women who have cancer and live in the rural coffee growing communities of Mexico.
- We are a licensed Fair Trade dealer of Fair Trade certified coffee. Fair Trade helps small coffee farmers to increase their incomes and improve the prospects of their communities and families. It guarantees farmers a minimum price of \$1.25 per pound or ten cents above the current market price.
- We are the administrative benefactors to a non-profit organization called Cup for Education. After discovering the lack of schools, teachers, and basic fundamental learning supplies in the poor coffee growing communities of Central and Latin America, "Cup" was established by our employee, Karen Gordon, to help build schools, sponsor teachers, and purchase basic supplies such as books, chalk and other necessities for a proper education.
- Most recently, we were the national opening ceremony coffee sponsor of the 2010 Avon Walk For Breast Cancer in four (4) cities (Washington, D.C., Boston, MA, San Francisco, CA and New York, NY) across the United States. Coffee Holding was on site in all four cities serving their Entenmann's specialty Arabica coffees to the participants who walk 39 miles over two days. The money raised did provide women and men with breast cancer screening, support and treatment regardless of their ability to pay.

## Competition

The coffee market is highly competitive. We compete in the following areas:

**Wholesale Green Coffee.** There are many green coffee dealers throughout the United States. Many of these dealers have greater financial resources than we do. However, we believe that we have both the knowledge and the capability to assist small specialty gourmet coffee roasters with developing and growing their businesses. Our almost 40 years of experience as a roaster and a dealer of green coffee allows us to provide our roasting experience as a value added service to our gourmet roaster customers. While other coffee merchants may be able to offer lower prices for coffee beans, we market ourselves as a value-added supplier to small roasters, with the ability to help them market their specialty coffee products and develop a customer base. The assistance we provide our customers includes training, coffee blending and market identification. Because specialty green coffee beans are sold unroasted to small coffee shops and roasters that market their products to local gourmet customers, we do not believe that our specialty green coffee customers compete with our private label or branded coffee lines of business. We believe that the addition of OPTCO as well as our two green coffee salespersons in South Carolina and Oregon allows us to compete more effectively throughout the country.

**Private Label Competition.** There are several major producers of coffee for private label sales in the United States. Many other companies produce coffee for sale on a regional basis. Our main competitor is the former retail coffee division of Sara Lee Corporation, which was purchased by Segafredo Zanetti Group in 2006, now known as Massimo Zanetti Beverage. Massimo Zanetti Beverage is larger and has more financial and other resources than we do and, therefore, is able to devote more resources to product development and marketing. We believe that we remain competitive by providing a higher level of quality and customer service. This service includes ensuring that the coffee produced for each label maintains a consistent taste and is delivered on time and in the proper quantities. In addition, we provide our private label customers with information on the coffee market on a regular basis.

**Branded Competition.** Our proprietary brand coffees compete with many other brands that are sold in supermarkets and specialty stores, primarily in the Northeastern United States. The branded coffee market in both the Northeast and elsewhere is dominated by three large companies: Kraft General Foods, Inc. (owner of the Maxwell House brand), Smuckers (owner of the Folgers brand) and Massimo Zanetti Beverage which also markets specialty coffee in addition to non-specialty coffee. Our large competitors have greater access to capital and a greater ability to conduct marketing and promotions. We believe that, while our competitors' brands may be more nationally recognizable, our Café Caribe brand is competitive in the fast growing Hispanic demographic and our S&W brand has been a popular and recognizable brand on the West Coast for over 80 years. In addition, our relationship with Entenmann's resulted in Entenmann's entry into the coffee business being voted as the second best brand extension of 2007 by Brandweek.com.

## **Government Regulation**

Our coffee roasting operations are subject to various governmental laws and regulations, which require us to obtain licenses relating to customs, health and safety, building and land use and environmental protection. Our roasting facility is subject to state and local air-quality and emissions regulation. If we encounter difficulties in obtaining any necessary licenses or if we have difficulty complying with these laws and regulations, then we could be subject to fines and penalties, which could have a material adverse effect on our profitability. In addition, our product offerings could be limited, thereby reducing our revenues.

We believe that we are in compliance in all material respects with all such laws and regulations and that we have obtained all material licenses and permits that are required for the operation of our business. We are not aware of any environmental regulations that have or that we believe will have a material adverse effect on our operations.

## **Employees**

We have 67 full-time employees. None of our employees are represented by unions or collective bargaining agreements. Our management believes that we maintain good working relationships with our employees. To supplement our internal sales staff, we sometimes engage independent national and regional sales brokers as independent contractors who work on a commission basis.

## ITEM 1A. RISK FACTORS

An investment in our common stock is subject to risks inherent in our business. Before making an investment decision, you should carefully consider the risks and uncertainties described below together with all of the other information included in this report. In addition to the risks and uncertainties described below, other risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially and adversely affect our business, financial condition and results of operations. The value or market price of our common stock could decline due to any of these identified or other risks, and you could lose all of your investment.

### Risk Factors Affecting Our Company

***Because our business is highly dependent upon a single commodity, coffee, any decrease in demand for coffee could materially adversely affect our revenues and profitability.*** Our business is centered on essentially one commodity: coffee. Our operations have primarily focused on the following areas of the coffee industry:

- the roasting, blending, packaging and distribution of private label coffee;
- the roasting, blending, packaging and distribution of proprietary branded coffee; and
- the sale of wholesale specialty green coffee.

Demand for our products is affected by:

- consumer tastes and preferences;
- global economic conditions;
- demographic trends; and
- the type, number and location of competing products.

Because we rely on a single commodity, any decrease in demand for coffee would harm our business more than if we had more diversified product offerings and could materially adversely affect our revenues and operating results.

***If we are unable to geographically expand our branded and private label products, our growth will be impeded which could result in reduced sales and profitability.*** Our business strategy emphasizes, among other things, geographic expansion of our branded and private label products as opportunities arise. We may not be able to implement successfully this portion of our business strategy. Our ability to implement this portion of our business strategy is dependent on our ability to:

- market our products on a national scale;
- increase our brand recognition on a national scale;
- enter into distribution and other strategic arrangements with third party retailers; and
- manage growth in administrative overhead and distribution costs likely to result from the planned expansion of our distribution channels.

Our sales and profitability may be adversely affected if we fail to successfully expand the geographic distribution of our branded and private label products. In addition, our expenses could increase and our profits could decrease as we implement our growth strategy.

***If our hedging policy is not effective, we may not be able to control our coffee costs, we may be forced to pay greater than market value for green coffee and our profitability may be reduced.*** The supply and price of coffee beans are subject to volatility and are influenced by numerous factors which are beyond our control. Historically, we have used short-term coffee futures and options contracts for the purpose of hedging the effects of changing green coffee prices. In addition, during the latter half of fiscal year 2000, we began to acquire futures contracts with longer terms, generally three to four months, for the purpose of guaranteeing an adequate supply of green coffee. Realized and unrealized gains or losses on options and futures contracts are reflected in cost of sales. Gains on options and futures contracts reduce cost of sales and losses on options and futures contracts increase cost of sales. Although we had net gains on options and futures contracts, we have incurred losses on options and futures contracts during some past reporting periods. Such losses could materially increase our cost of sales and materially decrease our profitability and adversely affect our stock price.

Although the use of these derivative financial instruments has generally enabled us to mitigate the effect of changing prices, no strategy is 100% effective in eliminating pricing risks and we generally remain exposed to loss on futures contracts when prices decline significantly in a short period of time, and we would generally remain exposed to supply risk in the event of non-performance by the counterparties to any futures contracts. Although, historically, we generally have been able to pass green coffee price increases through to customers, thereby maintaining our gross profits, we may not be able to pass price increases through to our customers in the future. Our hedging strategy and the hedges that we enter into may not adequately offset the risks of coffee bean price volatility and our hedges may result in losses. Failure to properly design and implement an effective hedging strategy may materially adversely affect our business and operating results. In this case, our costs of sales may increase, resulting in a decrease in profitability.

***Our revenues and profitability could be adversely affected if our joint venture is not successful.*** In April 2006, we entered into a joint venture with Caruso's Coffee, Inc. of Brecksville, Ohio and formed GCC, which engages in the roasting, packaging and sale of private label specialty coffee products. While we believe that the GCC joint venture will continue to be successful, losses in this joint venture would hurt our profitability.

In addition, we generally will not be in a position to exercise sole decision-making authority regarding our joint ventures. Investments in joint ventures may under certain circumstances, involve risks not present when a third party is not involved, including the possibility that joint venture partners might become bankrupt or fail to fund their share of the required capital contributions. Joint venture partners may have business interests, strategies or goals that are inconsistent with our business interests, strategies or goals and may be, in cases where we have a minority interest, in a position to take actions contrary to our policies, strategies or objectives. Any disputes that may arise between us and our joint venture partners may result in litigation or arbitration that could increase our expenses and could prevent our officers and/or directors from focusing their time and effort exclusively on our business strategies. In addition, we may in certain circumstances be liable for the actions of our third-party joint venture partners.

***Any inability to successfully implement our strategy of growth through selective acquisitions, licensing arrangements and other strategic alliances could materially affect our revenues and profitability.*** Part of our growth strategy utilizes the selective acquisition of coffee companies, the selective acquisition or licensing of additional coffee brands and other strategic alliances presents risks that could result in increased expenditures and could materially adversely affect our revenues and profitability, including:

- such acquisitions, licensing arrangements or other strategic alliances may divert our management's attention from our existing operations;
- we may not be able to successfully integrate any acquired coffee companies or new coffee brands into our existing business;
- we may not be able to manage the contingent risks associated with the past operations of, and other unanticipated problems arising in, any acquired coffee company; and
- we may not be able to control unanticipated costs associated with such acquisitions, licensing arrangements or strategic alliances.

In addition, any such acquisitions, licensing arrangements or strategic alliances may result in:

- potentially dilutive issuances of our equity securities; and
- the incurrence of additional debt.

As has been our practice in the past, we will continuously evaluate any such acquisitions, licensing opportunities or strategic alliances as they arise. However, we have not reached any new agreements or arrangements with respect to any such acquisition, licensing opportunity or strategic alliance (other than those described herein) at this time and we may not be able to consummate any acquisitions, licensing arrangements or strategic alliances on terms favorable to us or at all. The failure to consummate any such acquisitions, licensing arrangements or strategic alliances may reduce our growth and expansion.

***The loss of any of our key customers could negatively affect our revenues and decrease our earnings.*** We are dependant upon sales of wholesale green coffee to one customer, Green Mountain Coffee Roasters ("GMCR"). Sales to GMCR accounted for approximately 47% of our net sales for the fiscal year ended October 31, 2010 and 35% for the fiscal year ended 2009.

Although no other customer accounted for greater than 10% of our net sales during this period, other customers may account for more than 10% of our net sales in future periods. We generally do not have long-term contracts with these or any of our customers. Accordingly, our customers can stop purchasing our products at any time without penalty and are free to purchase products from our competitors. The loss of, or reduction in sales to, customers such as GMCR or any of our other customers to which we sell a significant amount of our products or any material adverse change in the financial condition of such customers would negatively affect our revenues and decrease our earnings.

***If we lose our key personnel, including Andrew Gordon and David Gordon, our revenues and profitability could suffer.*** Our success depends to a large degree upon the services of Andrew Gordon, our President, Chief Executive Officer, Chief Financial Officer and Treasurer, and David Gordon, our Executive Vice President – Operations and Secretary. We also depend to a large degree on the expertise of our coffee roasters. We do not have employment contracts with our coffee roasters. Our ability to source and purchase a sufficient supply of high quality coffee beans and to roast coffee beans consistent with our quality standards could suffer if we lose the services of any of these individuals. As a result, our business and operating results would be adversely affected. We may not be successful in obtaining and retaining a replacement for either Andrew Gordon or David Gordon if they elect to stop working for us. In addition, we do not have key-person insurance on the lives of Andrew Gordon or David Gordon.

***If our planned increase in marketing expenditures fails to promote and enhance our brands, the value of our brands could decrease and our revenues and profitability could be adversely affected.*** We believe that promoting and enhancing our brands is critical to our success. We intend to increase our marketing expenditures to increase awareness of our brands, which we expect will create and maintain brand loyalty. If our brand-building strategy is unsuccessful, these expenses may never be recovered, and we may be unable to increase awareness of our brands or protect the value of our brands. If we are unable to achieve these goals, our revenues and ability to implement our business strategy could be adversely affected.

Our success in promoting and enhancing our brands will also depend on our ability to provide customers with high quality products and service. Although we take measures to ensure that we sell only fresh roasted coffee, we have no control over our roasted coffee products once they are purchased by our customers. Accordingly, wholesale customers may store our coffee for longer periods of time or resell our coffee without our consent, in each case, potentially affecting the quality of the coffee prepared from our products. Although we believe we are less susceptible to quality control problems than many of our competitors because a majority of our products are sold in cans or brick packs unlike whole bean coffees, if consumers do not perceive our products and service to be of high quality, then the value of our brands may be diminished and, consequently, our operating results and ability to implement our business strategy may be adversely affected.

***Our roasting methods are not proprietary, so competitors may be able to duplicate them, which could harm our competitive position. If our competitive position is weakened, our revenues and profitability could be materially adversely affected.*** We consider our roasting methods essential to the flavor and richness of our roasted coffee and, therefore, essential to our brands of coffee. Because we do not hold any patents for our roasting methods, it may be difficult for us to prevent competitors from copying our roasting methods if such methods become known. If our competitors copy our roasting methods, the value of our coffee brands may be diminished, and we may lose customers to our competitors. In addition, competitors may be able to develop roasting methods that are more advanced than our roasting methods, which may also harm our competitive position.

***Our operating results may fluctuate significantly, which makes our results of operations difficult to predict and could cause our results of operations to fall short of expectations.*** Our operating results may fluctuate from quarter to quarter and year to year as a result of a number of factors, many of which are outside of our control. These fluctuations could be caused by a number of factors including:

- fluctuations in purchase prices and supply of green coffee;
- fluctuations in the selling prices of our products;
- the level of marketing and pricing competition from existing or new competitors in the coffee industry;
- the success of our hedging strategy;
- our ability to retain existing customers and attract new customers; and
- our ability to manage inventory and fulfillment operations and maintain gross margins.

As a result of the foregoing, period-to-period comparisons of our operating results may not necessarily be meaningful and those comparisons should not be relied upon as indicators of future performance. Accordingly, our operating results in future quarters may be below market expectations. In this event, the price of our common stock may decline.

***Since we rely heavily on common carriers to ship our coffee on a daily basis, any disruption in their services or increase in shipping costs could adversely affect our relationship with our customers, which could result in reduced revenues, increased operating expenses, a loss of customers or reduced profitability.*** We rely on a number of common carriers to deliver coffee to our customers and to deliver coffee beans to us. We have no control over these common carriers and the services provided by them may be interrupted as a result of labor shortages, contract disputes and other factors. If we experience an interruption in these services, we may be unable to ship our coffee in a timely manner, which could reduce our revenues and adversely affect our relationship with our customers. In addition, a delay in shipping could require us to contract with alternative, and possibly more expensive, common carriers and could cause orders to be cancelled or receipt of goods to be refused. Any significant increase in shipping costs could lower our profit margins or force us to raise prices, which could cause our revenue and profits to suffer.

***If there was a significant interruption in the operation of our Colorado facility, we may not have the capacity to service all of our customers and we may not be able to service our customers in a timely manner, thereby reducing our revenues and earnings.*** A significant interruption in the operation of our Colorado coffee roasting and distribution facility, whether as a result of a natural disaster or other causes, could significantly impair our ability to operate our business. As a result, our revenues and earnings would be materially adversely affected.

***A worsening of the United States economy could materially adversely affect our business.*** Our revenues and performance depend on consumer confidence and spending, which have recently deteriorated due to current worldwide economic downturn. This economic downturn and decrease in consumer spending may adversely impact our revenues, ability to market our products or otherwise implement our business strategy. For example, we are highly dependent on consumer demand for specialty coffee and a shift in consumer demand away from specialty coffee due to economic or other consumer preferences would harm our business. If the current economic situation deteriorates significantly, our business could be negatively impacted.

## RISK FACTORS RELATED TO THE COFFEE INDUSTRY

***Increases in the cost of high quality Arabica or Robusta coffee beans could reduce our gross margin and profit.*** Green coffee is our largest single cost of sales. Coffee is a traded commodity and, in general, its price can fluctuate depending on:

- weather patterns in coffee-producing countries;
- economic and political conditions affecting coffee-producing countries, including acts of terrorism in such countries;
- foreign currency fluctuations; and
- trade regulations and restrictions between coffee-producing countries and the United States.

If the cost of wholesale green coffee increases due to any of these factors, our margins could decrease and our profitability could suffer accordingly. It is expected that coffee prices will remain volatile in the coming years. Although we have historically attempted to raise the selling prices of our products in response to increases in the price of wholesale green coffee, when wholesale green coffee prices increase rapidly or to significantly higher than normal levels, we are not always able to pass the price increases through to our customers on a timely basis, if at all, which adversely affects our operating margins and cash flow. We may not be able to recover any future increases in the cost of wholesale green coffee. Even if we are able to recover future increases, our operating margins and results of operations may still be materially and adversely affected by time delays in the implementation of price increases.

***Disruptions in the supply of green coffee could result in a deterioration of our relationship with our customers, decreased revenues or could impair our ability to grow our business.*** Green coffee is a commodity and its supply is subject to volatility beyond our control. Supply is affected by many factors in the coffee growing countries including weather, political and economic conditions, acts of terrorism, as well as efforts by coffee growers to expand or form cartels or associations. If we were unable to procure a sufficient supply of green coffee, our sales would suffer.

Some of the Arabica coffee beans of the quality we purchase do not trade directly on the commodity markets. Rather, we purchase the high-end Arabica coffee beans that we use on a negotiated basis. We depend on our relationships with coffee brokers, exporters and growers for the supply of our primary raw material, high quality Arabica coffee beans. If any of our relationships with coffee brokers, exporters or growers deteriorate, we may be unable to procure a sufficient quantity of high quality coffee beans at prices acceptable to us or at all. In such case, we may not be able to fulfill the demand of our existing customers, supply new retail stores or expand other channels of distribution. A raw material shortage could result in a deterioration of our relationship with our customers, decreased revenues or could impair our ability to expand our business.

***The coffee industry is highly competitive and if we cannot compete successfully, we may lose our customers or experience reduced sales and profitability.*** The coffee markets in which we do business are highly competitive and competition in these markets could become increasingly more intense due to the relatively low barriers of entry. The industry in which we compete is particularly sensitive to price pressure, as well as quality, reputation and viability for wholesale and brand loyalty for retail. To the extent that one or more of our competitors becomes more successful with respect to any key competitive factor, our ability to attract and retain customers could be materially adversely affected. Our private label and branded coffee products compete with other manufacturers of private label coffee and branded coffees. These competitors, such as Kraft General Foods, Inc. (owner of the Maxwell House brand), Massimo Zanetti Beverage, and Smuckers (owner of the Folgers brand), have much greater financial, marketing, distribution, management and other resources than we do for marketing, promotions and geographic and market expansion. In addition, there are a growing number of specialty coffee companies who provide specialty green coffee and roasted coffee for retail sale. If we are unable to compete successfully against existing and new competitors, we may lose our customers or experience reduced sales and profitability.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

Not applicable.

**ITEM 2. PROPERTIES**

We are headquartered at 3475 Victory Boulevard, Staten Island, New York, where we lease office and warehouse space. We pay annual rent of \$117,420 under the terms of the lease, which expires on October 31, 2023.

We lease a 50,000 square foot facility located at 27700 Frontage Road in La Junta, Colorado from the City of La Junta. We pay annual rent of \$100,093 through January of 2024.

We also use a variety of independent, bonded commercial warehouses to store our green coffee beans. Our management believes that our facilities are adequate for our current operations and for our contemplated operations in the foreseeable future.

**ITEM 3. LEGAL PROCEEDINGS**

We are not a party to, and none of our property is the subject of, any pending legal proceedings other than routine litigation that is incidental to our business. To our knowledge, no governmental authority is contemplating initiating any such proceedings.

**ITEM 4. (REMOVED AND RESERVED)**

**PART II**

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

Our common stock trades on Nasdaq under the symbol "JVA." On June 25, 2010, our Board of Directors approved a regular dividend program of \$0.03 per share to shareholders (each, a "Quarterly Dividend"). We paid a Quarterly Dividend on July 29, 2010 and October 28, 2010. We have not declared or paid any other dividends on our common stock during the last two fiscal years. At December 31, 2010, there were 371 holders of record of an aggregate of 5,490,823 shares of our common stock issued and outstanding.

We did not repurchase any of our common stock during the quarter ended October 31, 2010.

The following table sets forth the high and low sales prices of our common stock for each quarter of the last two fiscal years.

	<u>High</u>	<u>Low</u>
	<u>2009</u>	
1st Quarter	\$ 1.79	\$ 0.77
2nd Quarter	\$ 4.91	\$ 0.56
3rd Quarter	\$ 4.98	\$ 1.87
4th Quarter	\$ 5.21	\$ 3.55
	<u>2010</u>	
1st Quarter	\$ 4.83	\$ 3.85
2nd Quarter	\$ 5.17	\$ 3.80
3rd Quarter	\$ 4.12	\$ 3.71
4th Quarter	\$ 4.85	\$ 3.89

**ITEM 6. SELECTED FINANCIAL DATA**

The following table sets forth selected financial data for the last five years from the consolidated financial statements of Coffee Holding Co., Inc. The following information is only a summary, and you should read it in conjunction with our consolidated financial statements and notes beginning on page F-1.

	For the Years Ended October 31,				
	2010	2009	2008	2007	2006
	(Dollars in thousands, except per share data)				
<b>Income Statement Data:</b>					
Net sales	\$ 83,492	\$ 74,452	\$ 71,186	\$ 57,365	\$ 51,171
Cost of sales	72,932	64,440	68,762	49,071	43,576
Gross profit	10,560	10,012	2,424	8,294	7,595
Operating expenses	6,545	6,389	6,363	6,842	6,231
Income (loss) from operations	4,015	3,623	(3,939)	1,452	1,364
Other income (expense)	(143)	1,869	(86)	(90)	(68)
Income (loss) before income taxes	3,872	5,492	(4,025)	1,362	1,296
Provision (benefit) for income taxes	1,479	2,159	(1,430)	418	602
Non controlling interest	(4)	(42)	(2)	(7)	(6)
Net income (loss)	\$ 2,389	\$ 3,291	\$ (2,597)	\$ 937	\$ 700
Net income (loss) per share – Basic and diluted	\$ 0.44	\$ 0.60	\$ (0.47)	\$ 0.17	\$ 0.13

	At October 31,				
	2010	2009	2008	2007	2006
	(Dollars in thousands, except per shares data)				
<b>Balance Sheet Data:</b>					
Total assets	\$ 24,193	\$ 19,804	\$ 21,002	\$ 20,397	\$ 18,982
Short-term debt	2,307	792	3,522	897	2,543
Long-term debt	–	–	–	–	–
Total liabilities	10,662	8,625	13,151	8,194	7,640
Stockholders' equity	13,482	11,133	7,847	12,202	11,342
Book value per share	\$ 2.46	\$ 2.05	\$ 1.44	\$ 2.05	\$ 2.05

	At October 31,				
	2010	2009	2008	2007	2006
	(Dollars in thousands, except per shares data)				
<b>Per Common Share Data:</b>					
Basic EPS	\$ .44	\$ .60	\$ (.47)	\$ .17	\$ .13
Diluted EPS	\$ .44	\$ .60	\$ (.47)	\$ .17	\$ .13
Cash dividends declared	\$ 333,978	\$ -	\$ 1,544,568	\$ -	\$ -

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

### Cautionary Note on Forward-Looking Statements

Some of the matters discussed under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operation," "Business," "Risk Factors" and elsewhere in this annual report include forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. We have based these forward-looking statements upon information available to management as of the date of this Form 10-K and management's expectations and projections about future events, including, among other things:

- the impact of rapid or persistent fluctuations in the price of coffee beans;
- fluctuations in the supply of coffee beans;
- general economic conditions and conditions which affect the market for coffee;
- the macro global economic environment;
- our success in implementing our business strategy or introducing new products;
- our ability to attract and retain customers;
- our success in expanding our market presence in new geographic regions;
- the effects of competition from other coffee manufacturers and other beverage alternatives;
- changes in tastes and preferences for, or the consumption of, coffee;
- our ability to obtain additional financing; and
- other risks which we identify in future filings with the Securities and Exchange Commission (the "SEC").

In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "could," "predict," "potential," "continue," "expect," "anticipate," "future," "intend," "plan," "believe," "estimate" and similar expressions (or the negative of such expressions). Any or all of our forward looking statements in this annual report and in any other public statements we make may turn out to be wrong. They can be affected by inaccurate assumptions we might make or by known or unknown risks and uncertainties. Consequently, no forward-looking statement can be guaranteed. In addition, we undertake no responsibility to update any forward-looking statement to reflect events or circumstances, that occur after the date of this annual report.

## Overview

We are an integrated wholesale coffee roaster and dealer in the United States and one of the few coffee companies that offers a broad array of coffee products across the entire spectrum of consumer tastes, preferences and price points. As a result, we believe that we are well-positioned to increase our profitability and endure potential coffee price volatility throughout varying cycles of the coffee market and economic conditions.

Our operations have primarily focused on the following areas of the coffee industry:

- the sale of wholesale specialty green coffee;
- the roasting, blending, packaging and sale of private label coffee; and
- the roasting, blending, packaging and sale of our seven brands of coffee.

Our operating results are affected by a number of factors including:

- the level of marketing and pricing competition from existing or new competitors in the coffee industry;
- our ability to retain existing customers and attract new customers;
- fluctuations in purchase prices and supply of green coffee and in the selling prices of our products; and
- our ability to manage inventory and fulfillment operations and maintain gross margins.

Our net sales are driven primarily by the success of our sales and marketing efforts and our ability to retain existing customers and attract new customers. For this reason, we have made the strategic decision to invest in measures that will increase net sales. In February 2004, we acquired certain assets of Premier Roasters, LLC, including equipment and a roasting facility in La Junta, Colorado. We also hired a West Coast Brand Manager to market our S&W brand and to increase sales of S&W coffee to new customers. In April 2006, we entered into a joint venture with Caruso's Coffee, Inc. of Brecksville, Ohio and formed GCC, which engages in the roasting, packaging and sale of private label specialty coffee products. We own a 60% equity interest in GCC and we are the exclusive supplier of its coffee inventory. We believe that the joint venture will allow us to bid on the private label gourmet whole bean business which we have not been equipped to pursue from an operational standpoint in the past. With this specialty roasting facility in place, in many cases right in the backyard of our most important wholesale and retail customers, we believe that we are in an ideal position to combine our current canned private label business with high-end private label specialty whole bean business. High-end specialty whole bean coffee sells for as much as three times more per pound than the canned coffees in which we currently specialize. As a result of these efforts, net sales increased in our specialty green coffee, private label and branded coffee business lines in both dollars and pounds sold. In addition, the number of our customers in all three areas increased.

We closed our manufacturing operations at our Brooklyn, New York location in May 2009. The majority of our processing has been moved to our Colorado facility with our GCC facility in Brecksville, Ohio becoming more involved with our everyday coffee production. We have leased office and warehouse space located in Staten Island, New York to house the corporate offices and serve as temporary storage of our branded product. We sold the property located in Brooklyn, New York in October 2009 for a pre-tax gain of approximately \$2,108,000, which enhanced our already strong cash position and liquidity. We used the proceeds of the sale to pay down our line of credit borrowings and reduce interest expense. Although we incurred a related severance cost of \$78,500 in the third quarter of fiscal year 2009, we believe that these measures will reduce long-term operating expenses, increase efficiencies and ultimately increase the profitability of our Company.

On May 17, 2010, we completed the Organic Products Transaction for a purchase price consisting of a) \$450,000 in cash on the Closing Date, b) an additional \$50,000 in cash if Buyer generates a pre-tax net profit of \$300,000 or more within a certain period, which payment will be made on or before June 15, 2011, c) 50,000 shares of Company common stock on the Closing Date (the "Common Stock Payment"), d) up to an additional 10,000 shares of Company common stock if Buyer generates a pre-tax net profit of \$300,000 or more within certain periods, which payments of up to 5,000 shares each will be made on June 15, 2011 and June 15, 2012 (the "Supplemental Common Stock Payments"), and e) on the Closing Date, \$1,809,924.24, which amount was based on the cost of inventory transferred to Buyer. All of the employees of Seller became employees of Buyer at the closing and Buyer has entered into two-year employment agreements with each of Seller's principals, Garth Smith and Gaylene Smith, to ensure continuity of the business. Buyer will operate under the "Organic Products Trading Company" name from Seller's Vancouver, Washington location.

In July 2007, we entered into a three-year licensing agreement with Entenmann's Products, Inc., a subsidiary of Entenmann's, Inc., (which was subsequently amended) which is one of the nation's oldest baking companies. The agreement gives us the exclusive rights to manufacture, market and distribute a full line of Entenmann's brand coffee products throughout the United States. We are continuing to develop not only mainstream Entenmann's coffee items, but upscale flavored Entenmann's products in twelve-ounce valve bags as well. These products will give the line a visible upscale image to our retailers and their customers, which we believe will be integral to the long term success of this arrangement.

Our net sales are affected by the price of green coffee. We purchase our green coffee from dealers located primarily within the United States. The dealers supply us with coffee beans from many countries, including Colombia, Mexico, Kenya, Indonesia, Brazil and Uganda. The supply and price of coffee beans are subject to volatility and are influenced by numerous factors which are beyond our control. For example, in Brazil, which produces approximately 40% of the world's green coffee, the coffee crops are historically susceptible to frost in June and July and drought in September, October and November. However, because we purchase coffee from a number of countries and are able to freely substitute one country's coffee for another in our products, price fluctuations in one country generally have not had a material impact on the price we pay for coffee. Accordingly, price fluctuations in one country generally have not had a material effect on our results of operations, liquidity and capital resources. Historically, because we generally have been able to pass green coffee price increases through to customers, increased prices of green coffee generally result in increased net sales.

We have used short-term coffee futures and options contracts primarily for the purpose of partially hedging and minimizing the effects of changing green coffee prices and to reduce our cost of sales. In addition, we acquire futures contracts with longer terms, generally three to four months, primarily for the purpose of guaranteeing an adequate supply of green coffee at favorable prices. Although the use of these derivative financial instruments has enabled us to mitigate the effect of changing prices, no strategy can entirely eliminate pricing risks and we generally remain exposed to loss when prices decline significantly in a short period of time. In addition, we would remain exposed to supply risk in the event of non-performance by the counterparties to any futures contracts. If the hedges that we enter into do not adequately offset the risks of coffee bean price volatility or our hedges result in losses, our cost of sales may increase, resulting in a decrease in profitability.

## Critical Accounting Policies and Estimates

The preparation of financial statements and related disclosures in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Estimates are used for, but not limited to, the accounting for the allowance for doubtful accounts, inventories, assets held for sale, income taxes and loss contingencies. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Actual results could differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies, among others, may be impacted significantly by judgment, assumptions and estimates used in the preparation of the financial statements:

- We recognize revenue in accordance with the relevant authoritative guidance. Revenue is recognized at the point title and risk of ownership transfers to its customers which is upon the shippers taking possession of the goods because i) title passes in accordance with the terms of the purchase orders and with its agreements with its customers, ii) any risk of loss is covered by the customers' insurance, iii) there is persuasive evidence of a sales arrangement, iv) the sales price is determinable and v) collection of the resulting receivable is reasonably assured. Thus, revenue is recognized at the point of shipment.
- Our allowance for doubtful accounts is maintained to provide for losses arising from customers' inability to make required payments. If there is deterioration of our customers' credit worthiness and/or there is an increase in the length of time that the receivables are past due greater than the historical assumptions used, additional allowances may be required. For example, every additional one percent of our accounts receivable that becomes uncollectible, would decrease our operating income by approximately \$89,000 for the year ended October 31, 2010. The reserve for sales discounts represents the estimated discount that customers will take upon payment. The reserve for other allowances represents the estimated amount of returns, slotting fees and volume based discounts estimated to be incurred by the Company from its customers.
- Inventories are stated at lower of cost (determined on a first-in, first-out basis) or market. Based on our assumptions about future demand and market conditions, inventories are subject to be written-down to market value. If our assumptions about future demand change and/or actual market conditions are less favorable than those projected, additional write-downs of inventories may be required. Each additional one percent of potential inventory writedown would have decreased operating income by approximately \$82,000 for the year ended October 31, 2010.
- We account for income taxes in accordance with the relevant authoritative guidance. Deferred tax assets and liabilities are computed for temporary differences between the financial statement and tax basis of assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax rates in effect for the year in which the differences are expected to reverse. Deferred tax assets are reflected on the balance sheet when it is determined that it is more likely than not that the asset will be realized. Accordingly, our net deferred tax asset as of October 31, 2010 of \$38,000 may require a valuation allowance if we do not generate taxable income.
- Our goodwill consists of the cost in excess of the fair market value of the acquired net assets of OPTCO. This company has been integrated into a structure which does not provide the basis for separate reporting units. Consequently, the Company is a single reporting unit for goodwill impairment testing purposes. We also have intangible assets consisting of customer list and relationships and trademarks acquired from OPTCO. At October 31, 2010 our balance sheet reflected goodwill and intangible assets as set forth below:

	October 31, 2010
Customer list and relationships, net	\$ 146,250
Trademarks	180,000
Goodwill	440,000
	<u>\$ 766,250</u>

Goodwill and the trademarks which are deemed to have indefinite lives are subject to annual impairment tests. Goodwill and trademarks impairment tests require the comparison of the fair value and carrying value of reporting units. We assess the potential impairment of goodwill and trademarks annually and on an interim basis whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Upon completion of such review, if impairment is found to have occurred, a corresponding charge will be recorded. The value assigned to the customer list and relationships is being amortized over a twenty year period.

Because the Company is a single reporting unit, the closing NASDAQ Capital Market price of our Common Stock as of the acquisition date was used as a basis to measure the fair value of goodwill. In addition, the Company retained a third party outside valuation firm to assist it in acquisition valuation as of May 17, 2010. Goodwill and trademarks will be tested annually at the end of each fiscal year to determine whether they have been impaired. Upon completion of each annual review, there can be no assurance that a material charge will not be recorded. Impairment testing is required more often than annually if an event or circumstance indicates that an impairment or decline in value may have occurred.

#### **Year Ended October 31, 2010 (Fiscal Year 2010) Compared to the Year Ended October 31, 2009 (Fiscal Year 2009)**

**Net Income.** We had net income of \$2,389,361, or \$0.44 per share (basic and diluted), for the fiscal year ended October 31, 2010 compared to a net income of \$3,291,066, or \$0.60 per share (basic and diluted) for the fiscal year ended October 31, 2009. Results for the fiscal year ended October 31, 2009 include a one-time gain of \$1,205,796, or \$0.22 cents per share, on the sale of the company's Brooklyn, New York facility.

**Net Sales.** Net sales totaled \$83,491,967 for the fiscal year ended October 31, 2010, an increase of \$9,040,294, or 12.1%, from \$74,451,673 for the fiscal year ended October 31, 2009. The increase in net sales reflects higher coffee prices during fiscal year 2010 as compared to fiscal year 2009, as well as an increase in pounds of coffee sold as we surpassed 40 million pounds for the first time in the history of the Company.

**Cost of Sales.** Cost of sales for the fiscal year ended October 31, 2010 was \$72,931,626, or 87.3% of net sales, as compared to \$64,439,494, or 86.6%, of net sales for the fiscal year ended October 31, 2009. Cost of sales consists primarily of the cost of green coffee and packaging materials and realized and unrealized gains or losses on hedging activity. The increase in cost of sales reflects the increased cost of green coffee. Cost of sales includes purchases of approximately \$19.3 million and \$16.7 million in fiscal years 2010 and 2009, respectively, from a related party.

**Gross Profit.** Gross profit for the fiscal year ended October 31, 2010 was \$10,560,341, an increase of \$548,162 from \$10,012,179 for the fiscal year ended October 31, 2009. Gross profit as a percentage of net sales decreased to 12.6% for the fiscal year ended October 31, 2010 from 13.4% for the fiscal year ended October 31, 2009 due to higher green coffee prices.

**Operating Expenses.** Total operating expenses increased \$155,547, or 2.4%, to \$6,544,597 for the fiscal year ended October 31, 2010 from \$6,389,050 for the fiscal year ended October 31, 2009 due to a slight increase in selling and administrative expense, partially offset by a slight decrease in officers' salaries. Selling and administrative expenses increased \$183,746, or 3.2%, to \$5,809,397 for the year ended October 31, 2010 from \$5,625,651 for 2009. The slight increase in selling and administrative expenses reflects several factors, including increases of approximately \$20,000 in advertising costs, \$33,000 in insurance cost, \$153,000 in professional services, \$20,000 in office expenses and \$118,000 in travel/show and demo costs, partially offset by decreases of approximately \$103,000 in salaries, \$50,000 in utilities and \$16,000 in moving costs.

Advertising and travel/show and demo costs increased as we were much more aggressive in the promotion of our products in the attempt to expand our markets. Professional services increase primarily due to the acquisition of our subsidiary "OPTCO" and insurance costs increased due to the coverage of "OPTCO." Salaries decreased due to our cost cutting efforts, utilities decreased due to the shifting of our manufacturing to Colorado and Ohio and the moving costs were a one time cost incurred in fiscal 2009.

**Other Income (Expense).** Other expense was \$142,993 for the fiscal year ended October 31, 2010 as compared to other income of \$1,869,300 for the fiscal year ended October 31, 2009. The decrease in other income was attributable to the sale of our manufacturing facilities during fiscal 2009.

**Income Before Taxes and Noncontrolling Interest in Subsidiary.** We had income of \$3,872,751 before income taxes and noncontrolling interest in subsidiary for the fiscal year ended October 31, 2010 compared to income of \$5,492,429 for the fiscal year ended October 31, 2009. The sale of our manufacturing facilities during fiscal 2009 resulted in a one time gain of \$2,107,501. The income for the year ended October 31, 2009 would have been \$3,384,928 without the gain from the sale of our manufacturing facility. Therefore a comparison on an operational basis, as adjusted for the effect of the one-time gain on the sales of the facility, shows that our income actually increased \$487,823 for the year ended October 31, 2010 from \$3,384,928 to \$3,872,751. The increase was primarily attributable to our increased gross profit on higher sales.

**Income Taxes.** Our provision for income taxes for the fiscal year ended October 31, 2010 totaled \$1,479,489 compared to a provision of \$2,159,319 for the fiscal year ended October 31, 2009. The change was attributable to lower total income due to the sale of our manufacturing facility during fiscal 2009.

## Liquidity and Capital Resources

As of October 31, 2010, we had working capital of \$11,387,396, which represented a \$1,842,601 increase from our working capital of \$9,544,795 as of October 31, 2009, and total stockholders' equity of \$13,482,346 which increased by \$2,349,383 from our total stockholders' equity of \$11,132,963 as of October 31, 2009. Our working capital increased primarily due to an increase of \$3,390,277 in inventories and \$1,335,676 in prepaid green coffee, partially offset by a decrease of \$1,321,849 in accounts receivable. At October 31, 2010, the outstanding balance on our line of credit was \$2,306,749 compared to \$791,628 at October 31, 2009. Total stockholders' equity increased primarily due to an increase in retained earnings as a result of our net income for fiscal year 2010.

On February 17, 2009, the Company entered into a financing agreement with Sterling National Bank ("Sterling") for a \$5,000,000 credit facility. The credit facility is a revolving \$5,000,000 line of credit and the Company can draw on the line at an amount up to 85% of eligible accounts receivable and 25% of eligible inventory consisting of green coffee beans and finished coffee not to exceed \$1,000,000. Sterling shall have the right from time to time to adjust the foregoing percentages based upon, among other things, dilution, its sole determination of the value or likelihood of collection of eligible accounts receivables owed to the Company, considerations regarding inventory, and other factors. The credit facility is payable monthly in arrears on the average unpaid balance of the line of credit at an interest rate equal to a per annum reference rate (5.00% and 4.25% at October 31, 2010 and 2009, respectively) plus 1.0%. The initial term of the credit facility is three years, expiring February 17, 2012, and shall be automatically extended for successive periods of one year each unless one party shall have provided the other party with a written notice of termination at least ninety days prior to the expiration of the initial contract term or any renewal term. The credit facility is secured by all tangible and intangible assets of the Company and was personally guaranteed by two officers/stockholders of the Company. The personal guarantees of the two officers/stockholders were released by Sterling effective October 31, 2009.

The credit facility contains covenants that place annual restrictions on the Company's operations, including covenants relating to debt restrictions, capital expenditures, minimum deposit restrictions, tangible net worth, net profit, leverage, employee loan restrictions, distribution restrictions (common stock and preferred stock), dividend restrictions, and restrictions on intercompany transactions. The credit facility also requires that the Company maintain a minimum working capital at all times. The initial borrowings under the revolving credit facility were used to repay the outstanding principal and accrued interest under the \$4,500,000 line of credit previously held with Merrill Lynch, which was terminated and replaced with the revolving line of credit, with the excess being available for working capital purposes.

On July 22, 2010, the Company had the credit facility increased to \$7,000,000. In addition, OPTCO was added as a co-borrower and the inventory sublimit was raised from \$1,000,000 to \$2,000,000. The term of the facility has been extended to February 17, 2013. Additionally, the Company received a limited credit guarantee of \$1,800,000 from the not-for-profit entity CORDAID that is available to be used as collateral for the loan facility to Sterling.

CORDAID, a non-profit organization that supports development projects in developing countries, registered under the laws of the Netherlands, has agreed to make available \$1,800,000 to be used as collateral by OPTCO for a loan facility from Sterling to the Company under a Guarantee Agreement. OPTCO has agreed to pre-finance coffee from small coffee producer groups. The Company pays a guarantee fee of 1.5% per year in advance. The Guarantee Agreement expires no later than March 31, 2011 and can be extended for one additional year. In addition, the Company has a corporate guarantee as security to Cordaid as the first loss guarantee of 25% of the outstanding amount of the guarantee up to a maximum of \$350,000.

On July 23, 2010, the Company amended their credit facility regarding the payment of dividends. The facility agreement was changed to allow the payment of quarterly dividends of not more than 3 cents per share.

As of October 31, 2010 and 2009 the outstanding balance under the bank line of credit was \$2,306,749 and \$791,628, respectively. The Company was in compliance with all required financial covenants at October 31, 2010 and 2009.

We closed our manufacturing operations at our Brooklyn, New York location in May 2009. The majority of our processing has been moved to our La Junta, Colorado facility with our GCC facility in Brecksville, Ohio becoming more involved with our everyday coffee production. We have leased office and warehouse space located in Staten Island, New York to house the corporate offices and serve as temporary storage of our branded product. We sold the property located in Brooklyn, New York in October 2009 for a pre-tax gain of approximately \$2,108,000, which enhanced our already strong cash position and liquidity. We used the proceeds of the sale to pay down our line of credit borrowings and reduce interest expense. Although we incurred a related severance cost of \$78,500 in the third quarter of fiscal 2009, we believe that these measures will reduce long-term operating expenses, increase efficiencies and ultimately increase the profitability of our Company.

For the fiscal year ended October 31, 2010 our operating activities provided net cash of \$1,342,092 as compared to the fiscal year ended October 31, 2009 when operating activities provided net cash of \$814,515. The increased cash flow from operations for the fiscal year ended October 31, 2010 was primarily due to decreases in accounts receivable of \$1,304,231, partially offset by increases in accounts payable of \$468,156.

For the fiscal year ended October 31, 2010, our investing activities used net cash of \$2,623,687 as compared to the fiscal year October 31, 2009 when net cash provided by investing activities was \$2,731,665. The increase in our uses of cash in investing activities was primarily due to the gain realized in fiscal 2009 from the sale of our manufacturing facility of \$2,906,473 and by the cost of the acquisition of our subsidiary of \$2,259,924.

For the fiscal year ended October 31, 2010, our financing activities provided net cash of \$1,181,143 compared to net cash used in financing activities of \$2,736,105 for the fiscal year ended October 31, 2009. The change in cash flow from financing activities for the fiscal year ended October 31, 2010 was primarily due to paying off our old line of credit with Merrill Lynch Business Financial Services, Inc. in fiscal year 2009, partially offset by the payment of dividends of \$333,978 during fiscal year 2010.

We expect to fund our operations, including paying our liabilities, funding capital expenditures and making required payments on our debts, through October 31, 2011 with cash provided by operating activities and the use of our credit facility. In addition, an increase in eligible accounts receivable and inventory would permit us to make additional borrowings under our line of credit.

#### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risks relating to our operations result primarily from changes in interest rates and commodity prices as further described below.

**Interest Rate Risks.** We are subject to market risk from exposure to fluctuations in interest rates. At October 31, 2010, our debt consisted of \$2,306,749 of variable rate debt under our revolving line of credit. Our line of credit provides for a maximum of \$7,000,000 and is payable monthly in arrears on the average unpaid balance of the line of credit at an interest rate equal to a per annum reference rate (currently 5.00%) plus 1%. This loan is secured by tangible and intangible assets of the Company.

**Commodity Price Risks.** The supply and price of coffee beans are subject to volatility and are influenced by numerous factors which are beyond our control. Historically, we have used short-term coffee futures and options contracts (generally with terms of two months or less) primarily for the purpose of partially hedging and minimizing the effects of changing green coffee prices, as further explained in Note 2 of the notes to financial statements in this report. In addition, during the latter half of fiscal 2000, we began to acquire futures contracts with longer terms (generally three to four months) primarily for the purpose of guaranteeing an adequate supply of green coffee. The use of these derivative financial instruments has enabled us to mitigate the effect of changing prices although we generally remain exposed to loss when prices decline significantly in a short period of time or remain at higher levels, preventing us from obtaining inventory at favorable prices. We generally have been able to pass green coffee price increases through to customers, thereby maintaining our gross profits. However, we cannot predict whether we will be able to pass inventory price increases through to our customers in the future. We believe our hedging policies remain a vital element to our business model not only in controlling our cost of sales, but also giving us the flexibility to obtain the inventory necessary to continue to grow our sales while minimizing margin compression during a time of historically high coffee prices.

At October 31, 2010, the Company held 37 future contracts for the purchase of 1,387,500 pounds of coffee at a weighted average price of \$1.872 per pound compared to 50 future contracts for the purchase of 1,875,000 pounds of coffee at a weighted average price of \$1.35 per pound for the fiscal year ended October 31, 2009. The fair market value of coffee applicable to such contracts was \$2.054 and \$1.36 per pound, respectively.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See pages F-1 through F-31 following the Exhibit Index of this Annual Report on Form 10-K.

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

None.

### ITEM 9A. CONTROLS AND PROCEDURES

**Evaluation of Disclosure Controls and Procedures.** Management, which includes our President, Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based upon that evaluation, the Company's President, Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures were effective to ensure that information required to be disclosed in the reports that we file and submit under the Exchange Act is (i) recorded, processed, summarized and reported as and when required and (ii) accumulated and communicated, as is appropriate, to the Company's management, including its principal executive officer and financial officer to allow timely decisions regarding disclosure.

**Management Report on Internal Control Over Financial Reporting** The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control system is a process designed to provide reasonable assurance to the Company's management and Board of Directors regarding the preparation and fair presentation of published financial statements.

Our internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets, provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures are being made only in accordance with authorizations of our management and the directors, and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of its internal control over financial reporting as of October 31, 2010. In making this assessment, the management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control-Integrated Framework. Based on our assessment our management believes that, as of October 31, 2010, our internal control over financial reporting is effective based on those criteria.

There have been no changes in our internal control over financial reporting identified in connection with the evaluation that occurred during our last fiscal quarter that has materially affected, or that is reasonably likely to materially affect, the Company's internal control over financial reporting.

#### **Attestation Report of the Registered Public Accounting Firm**

This annual report does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our registered public accounting firm pursuant to section 989G of the Dodd-Frank Wall Street Reform and Consumer Protection Act that permits us to provide only management's report in this annual report.

### ITEM 9B. OTHER INFORMATION

None.

## PART III

### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information required by this item is incorporated by reference to the Company's Proxy Statement for the 2011 Annual Meeting of Stockholders.

### **ITEM 11. EXECUTIVE COMPENSATION**

Information required by this item is incorporated by reference to the Company's Proxy Statement for the 2011 Annual Meeting of Stockholders.

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

Information required by this item is incorporated by reference to the Company's Proxy Statement for the 2011 Annual Meeting of Stockholders.

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

Information required by this item is incorporated by reference to the Company's Proxy Statement for the 2011 Annual Meeting of Stockholders.

### **ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

Information required by this item is incorporated by reference to the Company's Proxy Statement for the 2011 Annual Meeting of Stockholders.

**PART IV**

**ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

**(a) List of Documents filed as part of this Report**

**(1) Financial Statements**

The financial statements and related notes, together with the report of ParenteBeard LLC appear at pages F-1 through F-31 following the Exhibit List as required by Part II, Item 8 "Financial Statements and Supplementary Data" of this Form 10-K.

**(2) Financial Statement Schedules**

None.

**(3) List of Exhibits**

**(a) Exhibits**

The Company has filed with this report or incorporated by reference herein certain exhibits as specified below pursuant to Rule 12b-32 under the Exchange Act. See Exhibit Index following the signature page to this report for a complete list of documents filed with this report.

<b>Exhibit No.</b>	<b>Description</b>
2.1	Agreement and Plan of Merger, dated October 31, 1997, by and among Transpacific International Group Corp. and Coffee Holding Co., Inc. (incorporated herein by reference to Exhibit 2 to Post-Effective Amendment No. 1 to the Company's Registration Statement on Form SB-2 filed on November 10, 1997 (File No. 333-00588-NY)).
2.2	Asset Purchase Agreement, dated February 4, 2004, by and between Coffee Holding Co., Inc. and Premier Roasters LLC (incorporated herein by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on February 20, 2004 (File No. 333-00588-NY)).
3.1	Amended and Restated Articles of Incorporation of the Company (incorporated herein by reference to Exhibit 3.1 to the Company's Registration Statement on Form 8-A the "2005 Registration Statement" filed on May 2, 2005 (File No. 001-32491)).
3.2	By-Laws of the Company (incorporated herein by reference to Exhibit 3.2 to the 2005 Registration Statement (File No. 001-32491)).
4.1	Form of Stock Certificate of the Company (incorporated herein by reference to the Company's Registration Statement on Form SB-2 filed on June 24, 2004 (Registration No. 333-116838)).
10.1	Loan and Security Agreement, dated February 17, 2009, by and between Sterling National Bank and Coffee Holding Co., Inc. (incorporated herein by reference to Exhibit 10.21 to the Company's Current Report on Form 8-K filed on February 23, 2009 (File No. 001-32491)).
10.2	Lease, dated February 4, 2004, by and between Coffee Holding Co., Inc. and the City of La Junta, Colorado (incorporated herein by reference to Exhibit 10.12 to Amendment No. 1 to the Company's Registration Statement on Form SB-2/A filed on August 12, 2004 (Registration No. 333-116838)).
10.3	Trademark License Agreement, dated February 4, 2004, between Del Monte Corporation and Coffee Holding Co., Inc. (incorporated herein by reference to Exhibit 10.13 to the Company's Quarterly Report on Form 10-QSB/A for the quarter ended April 30, 2004 filed on August 26, 2004 (File No. 333-00588-NY)).
10.4	Amended and Restated Employment Agreement, dated April 11, 2008, by and between Coffee Holding Co., Inc. and Andrew Gordon (incorporated herein by reference to Exhibit 10.14 of the Company's Current Report on Form 8-K filed on April 16, 2008 (File No. 001-32491)).
10.5	Amended and Restated Employment Agreement, dated April 11, 2008, by and between Coffee Holding Co., Inc. and David Gordon (incorporated herein by reference to Exhibit 10.15 of the Company's Current Report on Form 8-K filed on April 16, 2008 (File No. 001-32491)).
10.6	Coffee Holding Co., Inc. Non-Qualified Deferred Compensation Plan (incorporated herein by reference to the Company's Quarterly Report on Form 10-QSB filed on June 14, 2005 (File No. 001-32491)).
10.7	Contract of Sale, dated April 14, 2009, by and between Coffee Holding Co., Inc. and 4401 1st Ave LLC.
10.8	License Agreement with Entenmann's Products, Inc., dated April 1, 2007.
10.9	Amendment No. 1 to the License Agreement with Entenmann's Products, Inc., dated August 7, 2007.
10.10	First Amendment to Loan and Security Agreement between Coffee Holding Co., Inc. and Sterling National Bank, dated July 23, 2010.
11.1	Calculation of Earnings Per Share.
31.1	Principal Executive Officer and Principal Financial Officer's Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Principal Executive Officer and Principal Financial Officer's Certification furnished pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

## SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on January 31, 2011.

### COFFEE HOLDING CO., INC.

By: /s/ Andrew Gordon  
Andrew Gordon  
President, Chief Executive Officer

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Andrew Gordon</u> Andrew Gordon	President, Chief Executive Officer, Chief Financial Officer, Treasurer and Director (principal executive officer and principal financial and accounting officer)	January 31, 2011
<u>/s/ David Gordon</u> David Gordon	Executive Vice President – Operations, Secretary and Director	January 31, 2011
<u>/s/ Gerard DeCapua</u> Gerard DeCapua	Director	January 31, 2011
<u>/s/ Daniel Dwyer</u> Daniel Dwyer	Director	January 31, 2011
<u>/s/ Barry Knepper</u> Barry Knepper	Director	January 31, 2011
<u>/s/ John Rotelli</u> John Rotelli	Director	January 31, 2011
<u>/s/ Robert M. Williams</u> Robert M. Williams	Director	January 31, 2011

## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
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**COFFEE HOLDING CO., INC. AND SUBSIDIARY  
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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

Board of Directors and Stockholders of  
Coffee Holding Co., Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of Coffee Holding Co., Inc. and Subsidiaries (the "Company") as of October 31, 2010 and 2009 and the related consolidated statements of income, changes in stockholders' equity and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, 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. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Coffee Holding Co., Inc. and Subsidiaries as of October 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

PARENTEBEARD LLC

Clark, New Jersey

January 31, 2011

## PART I – FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**OCTOBER 31, 2010 AND 2009**

	2010	2009
<b>- ASSETS -</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 1,672,921	\$ 1,773,373
Commodities held at broker	275,499	77,306
Accounts receivable, net of allowances of \$197,078 for 2010 and \$165,078 for 2009	8,852,372	10,174,221
Inventories	8,190,420	4,800,143
Prepaid green coffee	1,335,676	-
Prepaid expenses and other current assets	502,852	419,740
Prepaid and refundable income taxes	9,521	36,068
Deferred income tax asset	328,000	286,000
<b>TOTAL CURRENT ASSETS</b>	<b>21,167,261</b>	<b>17,566,851</b>
Machinery and equipment, at cost, net of accumulated depreciation of \$5,147,593 and \$4,681,558 for 2010 and 2009, respectively	1,560,940	1,648,214
Customer list and relationships, net of accumulated amortization of \$3,750 for 2010	146,250	-
Trademarks	180,000	-
Goodwill	440,000	-
Deposits and other assets	699,029	588,573
<b>TOTAL ASSETS</b>	<b>\$ 24,193,480</b>	<b>\$ 19,803,638</b>
<b>- LIABILITIES AND STOCKHOLDERS' EQUITY -</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable and accrued expenses	\$ 7,124,072	\$ 6,655,916
Line of credit	2,306,749	791,628
Income taxes payable	234,744	453,512
Contingent liability	41,000	-
Deferred income tax liabilities	73,300	121,000
<b>TOTAL CURRENT LIABILITIES</b>	<b>9,779,865</b>	<b>8,022,056</b>
Deferred income tax liabilities	216,700	14,500
Deferred rent payable	124,756	99,067
Deferred compensation payable	540,642	489,782
<b>TOTAL LIABILITIES</b>	<b>10,661,963</b>	<b>8,625,405</b>
<b>STOCKHOLDERS' EQUITY:</b>		
Preferred stock, par value \$.001 per share; 10,000,000 shares authorized; none issued	-	-
Common stock, par value \$.001 per share; 30,000,000 shares authorized, 5,579,830 and 5,529,830 shares issued for 2010 and 2009, respectively; 5,490,823 and 5,440,823 shares outstanding for 2010 and 2009, respectively	5,580	5,530
Additional paid-in capital	7,581,973	7,327,023
Contingent consideration	39,000	-
Retained earnings	6,151,054	4,095,671
Less: Treasury stock, 89,007 common shares, at cost for 2010 and 2009	(295,261)	(295,261)
Total Coffee Holding Co., Inc. and OPTCO Stockholders' Equity	<b>13,482,346</b>	<b>11,132,963</b>
Noncontrolling interest	49,171	45,270
<b>TOTAL EQUITY</b>	<b>13,531,517</b>	<b>11,178,233</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 24,193,480</b>	<b>\$ 19,803,638</b>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**  
**FISCAL YEARS ENDED OCTOBER 31, 2010 AND 2009**

	<u>2010</u>	<u>2009</u>
<b>NET SALES</b>	<b>\$ 83,491,967</b>	<b>\$ 74,451,673</b>
<b>COST OF SALES</b> (which include purchases of approximately \$19.3 million and \$16.7 million in fiscal years 2010 and 2009, respectively, from a related party)	<b>72,931,626</b>	<b>64,439,494</b>
<b>GROSS PROFIT</b>	<b>10,560,341</b>	<b>10,012,179</b>
<b>OPERATING EXPENSES:</b>		
Selling and administrative	5,809,397	5,625,651
Officers' salaries	735,200	763,399
<b>TOTAL</b>	<b>6,544,597</b>	<b>6,389,050</b>
<b>INCOME FROM OPERATIONS</b>	<b>4,015,744</b>	<b>3,623,129</b>
<b>OTHER INCOME (EXPENSE):</b>		
Interest income	94,355	9,191
Other income and gains	-	5,700
Gain on sale of manufacturing facility	-	2,107,501
Interest expense	(237,348)	(253,092)
<b>TOTAL</b>	<b>(142,993)</b>	<b>1,869,300</b>
<b>INCOME BEFORE PROVISION FOR INCOME TAXES AND NONCONTROLLING INTEREST IN SUBSIDIARIES</b>	<b>3,872,751</b>	<b>5,492,429</b>
Provision for income taxes	1,479,489	2,159,319
<b>NET INCOME BEFORE NONCONTROLLING INTEREST IN SUBSIDIARIES</b>	<b>2,393,262</b>	<b>3,333,110</b>
Less: Net income attributable to the noncontrolling interest in subsidiaries	(3,901)	(42,044)
<b>NET INCOME ATTRIBUTABLE TO COFFEE HOLDING CO., INC.</b>	<b>\$ 2,389,361</b>	<b>\$ 3,291,066</b>
Basic and diluted earnings per share	<u>\$ .44</u>	<u>\$ .60</u>
Weighted average common shares outstanding:		
Basic	<u>5,463,837</u>	<u>5,441,462</u>
Diluted	<u>5,468,439</u>	<u>5,441,462</u>

**COFFEE HOLDING CO., INC. AND SUBSIDIARY**  
**CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY**  
**FISCAL YEARS ENDED OCTOBER 31, 2010 AND 2009**

ITEM 2.	Common Stock		Treasury Stock		Additional Paid - in Capital	Retained Earnings	Contingent Consideration	Non- Controlling Interest	Total
	\$.001 Par Value								
	Number of Shares	Amount	Number of Shares	Amount					
Balance, 10/31/08	5,445,516	\$ 5,530	84,314	\$ (289,735)	7,327,023	\$ 804,605	\$ 0	\$ 0	\$ 7,847,423
Stock repurchase	(4,693)	-	4,693	(5,526)	-	-	-	-	(5,526)
Net income	-	-	-	-	-	3,291,066	-	-	3,291,066
Non-Controlling Interest	-	-	-	-	-	-	-	45,270	45,270
Balance, 10/31/09	<u>5,440,823</u>	<u>\$ 5,530</u>	<u>89,007</u>	<u>\$ (295,261)</u>	<u>\$ 7,327,023</u>	<u>\$ 4,095,671</u>	<u>\$ -</u>	<u>\$ 45,270</u>	<u>\$ 11,178,233</u>
Stock issued	50,000	50	-	-	254,950	-	-	-	255,000
OPTCO	-	-	-	-	-	-	39,000	-	39,000
Dividend	-	-	-	-	-	(333,978)	-	-	(333,978)
Net income	-	-	-	-	-	2,389,361	-	-	2,389,361
Non-Controlling Interest	-	-	-	-	-	-	-	3,901	3,901
Balance, 10/31/10	<u>5,490,823</u>	<u>\$ 5,580</u>	<u>89,007</u>	<u>\$ (295,261)</u>	<u>\$ 7,581,973</u>	<u>\$ 6,151,054</u>	<u>\$ 39,000</u>	<u>\$ 49,171</u>	<u>\$ 13,531,517</u>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FISCAL YEARS ENDED OCTOBER 31, 2010 AND 2009**

	2010	2009
<b>OPERATING ACTIVITIES:</b>		
Net income	\$ 2,393,262	\$ 3,333,110
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	469,787	537,375
Gain on sale of manufacturing facility	-	(2,107,501)
Unrealized gain on commodities	(198,193)	(329,187)
Other gains	-	(5,700)
Bad debt expense	17,618	95,294
Deferred rent	25,689	29,108
Deferred income taxes	112,500	687,377
Changes in operating assets and liabilities:		
Accounts receivable	1,304,231	(1,201,718)
Inventories	(1,580,353)	246,411
Prepaid expenses and other current assets	(83,112)	(134,840)
Prepaid green coffee	(1,335,676)	-
Prepaid and refundable income taxes	26,547	989,867
Accounts payable and accrued expenses	468,156	(2,464,207)
Deposits and other assets	(59,596)	91,464
Income taxes payable	(218,768)	453,512
<b>Net cash provided by operating activities</b>	<b>1,342,092</b>	<b>220,365</b>
<b>INVESTING ACTIVITIES:</b>		
Purchase of assets of OPTCO – net cash paid	(2,259,924)	-
Proceeds from the sale of equipment	-	30,000
Proceeds from the sale of manufacturing facility	-	2,906,473
Purchases of machinery and equipment	(363,763)	(204,808)
<b>Net cash (used in) provided by investing activities</b>	<b>(2,623,687)</b>	<b>2,731,665</b>
<b>FINANCING ACTIVITIES:</b>		
Advances under bank line of credit	84,750,863	76,276,346
Principal payments under bank line of credit	(83,235,742)	(75,484,718)
Payoff of previous bank line of credit	-	(3,522,207)
Payment of dividend	(333,978)	-
Purchase of treasury stock	-	(5,526)
<b>Net cash provided by (used in) financing activities</b>	<b>1,181,143</b>	<b>(2,736,105)</b>
<b>NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>(100,452)</b>	<b>215,925</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD</b>	<b>1,773,373</b>	<b>1,557,448</b>
<b>CASH AND CASH EQUIVALENTS, END OF PERIOD</b>	<b>\$ 1,672,921</b>	<b>\$ 1,773,373</b>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FISCAL YEARS ENDED OCTOBER 31, 2010 AND 2009**

	2010	2009
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW DATA:</b>		
Interest paid	\$ 241,371	\$ 250,266
Income taxes paid	\$ 1,585,757	\$ 737,494
Income taxes (refunded)	\$ -	\$ (703,123)

**SUPPLEMENTAL DISCLOSURE INVESTING ACTIVITIES:**

On May 17, 2010, the Coffee Holding Co., Inc. acquired substantially all of the assets of OPTCO:

Assets acquired:		
Inventory	\$ 1,809,924	\$ -
Equipment	15,000	-
Customer list and relationships	150,000	-
Trademarks	180,000	-
Goodwill	440,000	-
Total assets acquired:	2,594,924	-
Purchase of assets funded by:		
Contingent liability	41,000	-
Contingent consideration	39,000	-
Common stock, par value \$.001 per share, 50,000 shares	50	-
Additional paid-in capital	254,950	-
	335,000	-
Net cash paid	\$ 2,259,924	\$ -

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 1 - BUSINESS ACTIVITIES:**

Coffee Holding Co., Inc. (the "Company") conducts wholesale coffee operations, including manufacturing, roasting, packaging, marketing and distributing roasted and blended coffees for private labeled accounts and its own brands, and it sells green coffee. The Company's core product, coffee, can be summarized and divided into three product categories ("product lines") as follows:

***Wholesale Green Coffee:*** unroasted raw beans imported from around the world and sold to large and small roasters and coffee shop operators;

***Private Label Coffee:*** coffee roasted, blended, packaged and sold under the specifications and names of others, including supermarkets that want to have their own brand name on coffee to compete with national brands; and

***Branded Coffee:*** coffee roasted and blended to the Company's own specifications and packaged and sold under the Company's seven proprietary and licensed brand names in different segments of the market.

The Company's private label and branded coffee sales are primarily to customers that are located throughout the United States with limited sales in Canada. Such customers include supermarkets, wholesalers, and individually-owned and multi-unit retailers. The Company's unprocessed green coffee, which includes over 90 specialty coffee offerings, is sold primarily to specialty gourmet roasters and to coffee shop operators in the United States.

The Company's wholesale green, private label, and branded coffee product categories generate revenues and cost of sales individually but incur selling, general and administrative expenses in the aggregate. There are no individual product managers and discrete financial information is not available for any of the product lines. The Company's product portfolio is used in one business and it operates and competes in one business activity and economic environment. In addition, the three product lines share customers, manufacturing resources, sales channels, and marketing support. Thus, the Company considers the three product lines to be one single reporting segment.

The Company closed its manufacturing operations at its Brooklyn, New York location in May 2009. The majority of the Company's processing capacity has been moved to its La Junta, Colorado facility and its facility in Brecksville, Ohio. The Company has leased office and warehouse space located in Staten Island, New York to house the corporate offices and serve as temporary storage of its branded product. The Company sold the property located in Brooklyn, New York in October 2009.

On May 17, 2010, the Company entered into an asset purchase agreement with Organic Products Trading Company, Inc. to purchase certain assets. The Company formed a wholly-owned subsidiary Coffee Holding Acquisition Company, LLC to purchase the assets. Subsequent to closing the Company changed the name of the subsidiary to Organic Products Trading Company, LLC ("OPTCO"). The financial statements of OPTCO are consolidated with those of the Company.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 1 - BUSINESS ACTIVITIES (cont'd):**

On April 7, 2006, the Company entered into a joint venture with Caruso's Coffee, Inc. and formed Generations Coffee Company, LLC ("GCC"). The Company now owns a 60% equity interest in GCC. GCC operates the facility located in Brecksville, Ohio and is in the same general business as the Company. The Company also exercises control of GCC. As a result of its 60% equity interest and control of GCC, the financial statements of GCC are consolidated with those of the Company.

**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:**

**BASIS OF PRESENTATION:**

The consolidated financial statements include the accounts of the Company, OPTCO and GCC. All significant inter-company balances and transactions have been eliminated in consolidation.

**USE OF ESTIMATES:**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Actual results could differ from those amounts.

**CASH AND CASH EQUIVALENTS:**

Cash and cash equivalents represent highly liquid investments with maturities of three months or less at the date of purchase.

**PREPAID GREEN COFFEE:**

Prepaid coffee is an item that emanates from OPTCO. The balance represents advance payments made by OPTCO to several coffee growing cooperatives for the purchase of green coffee. Interest is charged to the cooperatives for these advances. Interest earned for the year ended October 31, 2010 was \$66,482. The prepaid coffee balance was \$1,335,676 at October 31, 2010.

**ACCOUNTS RECEIVABLE:**

Accounts receivable are recorded net of allowances. The allowance for doubtful accounts represents the estimated uncollectible portion of accounts receivable. The Company establishes the allowance for doubtful accounts based on a history of past write-offs, collections and current credit considerations. The reserve for sales discounts represents the estimated discount that customers will take upon payment. The reserve for other allowances represents the estimated amount of returns, slotting fees and volume based discounts estimated to be incurred by the Company from its customers. The allowances are summarized as follows:

	<u>2010</u>	<u>2009</u>
Allowance for doubtful accounts	\$ 90,078	\$ 105,078
Reserve for other allowances	47,000	-
Reserve for sales discounts	60,000	60,000
Totals	<u>\$ 197,078</u>	<u>\$ 165,078</u>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont'd):**

**INVENTORIES:**

Inventories are valued at the lower of cost (first-in, first-out basis) or market.

**MACHINERY AND EQUIPMENT:**

Machinery and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful lives of the assets. Purchases of machinery and equipment and additions and betterments which substantially extend the useful life of an asset are capitalized at cost. Expenditures which do not materially prolong the normal useful life of an asset are charged to operations as incurred. The Company also provides for amortization of leasehold improvements over the lives of the respective leases or the service lives of the improvements, whichever is shorter.

**COMMODITIES HELD AT BROKER:**

The commodities held at broker represent the market value of the Company's trading account, which consists of cash and future and option contracts for the purchase of coffee held with Morgan Stanley Smith Barney. The Company uses options and futures contracts, which are not designated or qualifying as hedging instruments, to partially hedge the effects of fluctuations in the price of green coffee beans. Options and futures contracts are marked to market based on market data of similar instruments that are in observable markets with current recognition of gains and losses on such positions. The Company's accounting for options and futures contracts may increase earnings volatility in any particular period. The Company acquires options and futures contracts primarily for the purpose of guaranteeing an adequate supply of green coffee. The Company has open position contracts held by the broker, which includes cash and commodities for futures and options summarized as follows:

	2010	2009
Cash	<b><u>\$1,344,109</u></b>	<u>\$ 405,440</u>
Option contracts	<b>(323,002)</b>	65,812
Future contracts	<b>598,501</b>	11,494
Total commodities	<b><u>275,499</u></b>	<u>77,306</u>
Totals	<b><u>\$1,619,608</u></b>	<u>\$ 482,746</u>

The Company has grouped any cash balances held by the broker with the cash and cash equivalent balance on the accompanying consolidated balance sheet. The Company classifies its options and future contracts as trading securities and accordingly, unrealized holding gains and losses are included in earnings and not reflected as a net amount as a separate component of stockholders' equity.

At October 31, 2010, the Company held 50 options (generally with terms of two months or less) covering an aggregate of 1,875,000 pounds of green coffee beans at \$2.00 per pound. The fair market value of these options, which was obtained from observable market data of similar instruments, was (\$323,002) at October 31, 2010. The Company held 37 futures contracts (generally with terms of three to four months) for the purchase of 1,387,500 pounds of green coffee at a weighted average price of \$1.872 per pound. The fair market value of coffee applicable to such contracts was \$2.054 per pound at that date.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont'd):**

At October 31, 2009, the Company held 30 options (generally with terms of two months or less) covering an aggregate of 1,125,000 pounds of green coffee beans at \$1.35 per pound. The fair market value of these options, which was obtained from observable market data of similar instruments, was \$65,812 at October 31, 2009. At October 31, 2009, the Company held 50 futures contracts for the purchase of 1,875,000 pounds of green coffee at a weighted average price of \$1.35 per pound. The fair market value of coffee applicable to such contracts was \$1.36 per pound at that date.

Included in cost of sales for the years ended October 31, 2010 and 2009, the Company recorded realized and unrealized gains and losses respectively, on these contracts as follows:

	Year Ended October	
	31,	
	2010	2009
Gross realized gains	\$1,550,330	\$1,789,424
Gross realized (losses)	(375,302)	(269,702)
Unrealized gains	198,193	329,187
Total	<u>\$1,373,221</u>	<u>\$1,848,909</u>

**RECLASSIFICATION:**

A reclassification has been made to the Company's consolidated financial statements for the prior period to conform to the current presentation. The reclassification had no effect on previously reported consolidated results of operations or retained earnings. The cash balance included in commodities held at broker has been reclassified and included in the cash and cash equivalents balance on the accompanying consolidated balance sheets for the fiscal years ended October 31, 2010 and 2009.

**GOODWILL AND TRADEMARKS:**

The Company has determined that its goodwill and trademarks, which consist of product lines, trade names and packaging designs have an indefinite useful life. The value of the goodwill and trademarks was allocated based on an independent valuation. In accordance with authoritative accounting guidance the Company's goodwill and trademarks are not amortized but are assigned to a specific reporting unit or asset class and tested for possible impairment at least annually or upon the occurrence of an event or when circumstances indicate that the reporting unit's carrying amount of goodwill and trademarks is greater than its fair value. As of October 31, 2010, the Company has determined that an impairment did not exist.

**CUSTOMER LIST AND RELATIONSHIPS:**

Customer list and relationships consist of a specific customer list and customer contracts obtained by the Company in the acquisition of OPTCO which are being amortized on the straight-line method over their estimated useful life of twenty years.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont'd):**

**ADVERTISING:**

The Company expenses the cost of advertising and promotion as incurred. Advertising costs charged to operations totaled \$61,390 and \$41,724 for the years ended October 31, 2010 and 2009, respectively.

**INCOME TAXES:**

The Company accounts for income taxes pursuant to the asset and liability method which requires deferred income tax assets and liabilities to be computed for temporary differences between the financial statement and tax basis of assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. The income tax provision or benefit is the tax incurred for the period plus or minus the change during the period in deferred tax assets and liabilities.

On November 1, 2007, the Company adopted authoritative guidance issued by the Financial Accounting Standards Board (FASB) "Accounting for Uncertainty in Income Taxes. At the adoption date and at October 31, 2010 and 2009, the Company did not have any unrecognized tax benefits. The Company's practice is to recognize interest and/or penalties related to income tax matters in income tax expense. As of October 31, 2010 and 2009, the Company had no accrued interest or penalties related to income taxes. The Company currently has no federal or state tax examinations in progress

**STOCK OPTIONS:**

The Company accounts for any stock options in accordance with the recognition and measurement provisions as included in the authoritative guidance issued by the FASB. The FASB requires compensation costs related to share-based payment transactions, including employee stock options, to be recognized in the financial statements. In addition, the Company adheres to the guidance set forth within Securities and Exchange Commission ("SEC") which provides views regarding the interaction between the FASB and certain SEC rules and regulations and provides interpretations with respect to the valuation of share-based payments for public companies.

**EARNINGS (LOSS) PER SHARE:**

The Company presents "basic" and, if applicable, "diluted" earnings per common share pursuant to the provisions included in the authoritative guidance issued by FASB, "Earnings per Share" and certain other financial accounting pronouncements. Basic earnings per common share is computed by dividing net income by the sum of the weighted-average number of common shares outstanding. Diluted earnings per common share is computed by dividing the net income by the weighted-average number of common shares outstanding plus the dilutive effect of common shares issuable upon exercise of potential sources of dilution.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont'd):**

The weighted average common shares outstanding used in the computation of basic earnings per share was 5,463,837 and 5,441,462 at October 31, 2010 and 2009, respectively. The weighted average common shares outstanding used in the computation of diluted earnings per share was 5,468,439 and 5,441,462 at October 31, 2010 and 2009, respectively. Through April 30, 2009 on a common share equivalent basis, 70,000 warrants, all of which expired as of May 6, 2009, have been excluded from the diluted earnings per share calculation due to the anti-dilution impact.

	<u>2010</u>	<u>2009</u>
Net Income	<u>\$2,389,361</u>	<u>\$3,291,066</u>
<b>BASIC EARNINGS:</b>		
Weighted average number of common shares outstanding	<u>5,463,837</u>	<u>5,441,462</u>
Basic earnings per common share	<u>\$ 0.44</u>	<u>\$ 0.60</u>
<b>DILUTED EARNINGS:</b>		
Weighted average number of common shares outstanding	<u>5,463,837</u>	<u>5,441,462</u>
Contingent shares - common stock equivalents	<u>4,602</u>	<u>-</u>
Weighted average number of common shares outstanding - as adjusted	<u>5,468,439</u>	<u>5,441,462</u>
Diluted earnings per common share	<u>\$ 0.44</u>	<u>\$ 0.60</u>

**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont'd):**

**FAIR VALUE OF FINANCIAL INSTRUMENTS:**

The carrying amounts of cash and cash equivalents, accounts receivable and accounts payable and accrued expenses approximate fair value because of the short-term nature of these instruments. The carrying amount of the bank line of credit borrowings approximates fair value because the debt is based on current rates at which the Company could borrow funds with similar remaining maturities. Fair value estimates are made at a specific point in time, based on relevant market information about the financial instruments when available. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore, cannot be determined with precision. Changes in assumptions could significantly affect the estimates.

**REVENUE RECOGNITION:**

The Company recognizes revenue in accordance with the authoritative guidance. Revenue is recognized at the point title and risk of ownership transfers to its customers upon the Company's shippers taking possession of the goods at the time of shipment because i) title passes in accordance with the terms of the Company's purchase orders and with its agreements with its customers, ii) any risk of loss is covered by the Company's customers' insurance, iii) there is persuasive evidence of a sales arrangement, iv) the sales price is determinable and v) collection of the resulting receivable is reasonably assured. Thus, revenue is recognized at the point of shipment to its customers.

Returns: The Company does not accept returns for damaged goods on packed coffee and unusable green coffee, as the customer takes possession of our product at the point of shipment. In the event a customer claims receipt of damaged goods, the Company, acting as an agent on behalf of the customer, may file a claim for reimbursement with the shipper. The Company is not obligated or required to act as an agent on behalf of its customers, but may make the business decision to do so as a convenience to its customers. The shipper keeps the damaged product. The Company will then ship a completely new order to the customer once a claim has been filed and the Company receives reimbursement or credit from the shipper for the initial shipment. The Company does evaluate the need, if any, of an accrual for returns for damaged goods. To date, returns for damaged goods have been immaterial. The Company estimates that, based on historical trends, that future returns for damaged goods should also be immaterial.

In the event that the Company ships an incorrect order or has returns for short dated product, the Company will accept those two types of items back as returns. The amount for these two types of returns are estimated, accrued and recognized at the date of sale. These amounts are included in the determination of net sales.

Slotting fees: Certain retailers require the payment of slotting fees in order to obtain space for the Company's products on the retailer's store shelves. The cost of these fees are estimated, accrued and recognized at the earlier of the date cash is paid or a liability to the retailer is created. The amounts are included in the determination of net sales.

Sales discounts: The amount of sales discounts are estimated, accrued and recognized at the date of the sale. These amounts are included in the determination of net sales.

Volume-based incentives: These incentives typically involve rebates or refunds of a specific amount of cash consideration that are redeemable only if the reseller completes a specified cumulative level of sales transactions. Under incentive programs of this nature, the Company estimates and accrues the cost of the rebate at the date of the sale. These amounts are included in the determination of net sales.

Cooperative advertising: Under these arrangements, the Company will agree to reimburse the reseller for a portion of the costs incurred by the reseller to advertise and promote certain of the Company's products. The Company estimates, accrues and recognizes the cost of cooperative advertising programs in the period in which the advertising and promotional activity first takes place. The costs of these incentives are included in advertising expense.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont'd):**

**SHIPPING AND HANDLING FEES AND COSTS:**

In accordance with the authoritative guidance pertaining to the "Accounting for Shipping and Handling Fees and Costs", revenue earned from shipping and handling fees is reflected in net sales. Costs associated with shipping product to customers aggregating approximately \$1,294,000 and \$1,322,000 for the years ended October 31, 2010 and 2009, respectively is included in selling and administrative expenses.

**CONCENTRATION OF RISK:**

The Company's cash and cash equivalent at times, exceed applicable insurance limits. The Company performs periodic reviews of the relative credit rating of its bank to lower its risk. The Company has not experienced any losses in such accounts, and believes it is not subject to any significant credit risk on cash and cash equivalents.

In addition, see Note 10 for concentration of risks with respect to trade receivables and purchases from certain vendors.

**OPERATING LEASES:**

Operating leases which provide for lease payments that vary materially from the straight-line basis are adjusted for financial accounting purposes to reflect rental income or expense on the straight-line basis in accordance with the authoritative guidance issued by the FASB. The excess of straight-line rent over actual payments by the Company of \$124,756 and \$99,067 is included as deferred rent payable as of October 31, 2010 and 2009, respectively.

**NOTE 3 - RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS AFFECTING THE COMPANY:**

***Consolidation of Variable Interest Entities ("VIEs")***

In June 2009, the FASB issued authoritative guidance to amend the manner in which entities evaluate whether consolidation is required for VIEs. The model for determining which enterprise has a controlling financial interest and is the primary beneficiary of a VIE has changed significantly under the new guidance. Previously, variable interest holders had to determine whether they had a controlling financial interest in a VIE based on a quantitative analysis of the expected gains and/or losses of the entity. In contrast, the new guidance requires an enterprise with a variable interest in a VIE to qualitatively assess whether it has a controlling financial interest in the entity, and if so, whether it is the primary beneficiary. Furthermore, this guidance requires that companies continually evaluate VIEs for consolidation, rather than assessing base upon the occurrence of triggering events. This revised guidance also requires enhanced disclosures about how a company's involvement with a VIE affects its financial statements and exposure to risks. This guidance is effective for the Company beginning November 1, 2010. The Company is currently assessing the impact, if any, this may have on their consolidated financial statements.

***Fair Value Measurements***

In January 2010, the FASB issued authoritative guidance that requires new disclosures about recurring and nonrecurring fair-value measurements including significant transfers in and out of Level 1 and Level 2 fair-value measurements and a description of the reasons for the transfers. In addition, the standard requires new disclosures regarding activity in Level 3 fair value measurements, including information on purchases, sales, issuances, and settlements on a gross basis in the reconciliation of Level 3 fair-value measurements. The Company adopted the guidance for Level 1 and Level 2 fair-value measurements for the second fiscal quarter beginning February 1, 2010. The Company will adopt the guidance for Level 3 fair-value measurements for the second fiscal quarter beginning February 1, 2011, as required. The Company does not expect the adoption of this standard will have a material impact on the disclosures for fair-value measurements.

**NOTE 3 - RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS AFFECTING THE COMPANY (cont'd):**

***Intangibles – Goodwill and Other***

In December 2010, the FASB amended the existing guidance to modify Step 1 of the goodwill impairment test for a reporting unit with a zero or negative carrying amount. Upon adoption of the amendment, an entity with a reporting unit that has a carrying amount that is zero or negative is required to assess whether it is more likely than not that the reporting unit's goodwill is impaired. If the entity determines that it is more likely than not that the goodwill of the reporting unit is impaired, the entity should perform Step 2 of the goodwill impairment test for the reporting unit. Any resulting goodwill impairment should be recorded as a cumulative-effect adjustment to beginning retained earnings in the period of adoption. Any goodwill impairments occurring after the initial adoption of the amendment should be included in earnings. This guidance is effective for the Company beginning November 1, 2011. The Company is currently assessing the impact, if any, this may have on their consolidated financial statements.

***Broad Transactions – Business Combination***

In December 2010, the FASB amended the existing guidance to require a public entity, which presents comparative financial statements, to disclose revenue and earnings of the combined entity as though the business combination that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only.

The amendment also expanded the required supplemental pro forma disclosures to include a description of the nature and amount of material, nonrecurring pro forma adjustments directly attributable to the business combination, which are included in the reported pro forma revenue and earnings. The amendments are effective for the Company beginning November 1, 2011. The Company is currently assessing the impact, if any, this may have on their consolidated financial statements.

***Noncontrolling Interests in Consolidated Financial Statements***

In December 2007, the Financial Accounting Standards Board ("FASB") issued authoritative guidance clarifying that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. This guidance requires that a change in a parent's ownership interest in a subsidiary be reported as an equity transaction in the consolidated financial statements when it does not result in a change in control of the subsidiary. When a change in a parent's ownership interest results in deconsolidation, a gain or loss should be recognized in the consolidated financial statements. This guidance was adopted and is effective as of November 1, 2009. The provisions of this guidance have been applied to all noncontrolling interests prospectively, except for the presentation and disclosure requirements, which have been applied retrospectively for all periods presented. The retrospective impact of applying this guidance was to reclassify minority interest as a part of equity noncontrolling interest included in the consolidated statement of changes in stockholders' equity.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 4 - FORMATION OF SUBSIDIARY:**

On April 21, 2010, the Company formed a 100% owned subsidiary named Coffee Holding Acquisition Company, LLC in the state of Delaware.

On May 17, 2010, the Company and Coffee Holding Acquisition Company, LLC (collectively the "Buyer") purchased substantially all of the assets, including equipment, inventory, trademarks, customer list and relationships (the "Assets") of Organic Products Trading Company, Inc., a Washington corporation (the "Seller") pursuant to the terms of an Asset Purchase Agreement dated April 22, 2010 (the "Agreement"). The Buyer purchased the Assets for a purchase price consisting of: a) \$450,000 in cash at closing, b) an additional \$50,000 in cash if Buyer generates a pre-tax net profit of \$300,000 or more during the periods from May 1, 2010 to April 30, 2011, which payment will be made on or before June 15, 2011, c) 50,000 shares of the Company's common stock at closing, d) up to an additional 10,000 shares of the Company's common stock if Buyer generates a pre-tax net profit of \$300,000 or more during the period from May 1, 2010 to April 30, 2011, and May 1, 2011, to April 30, 2012 which issuance of up to 5,000 shares each will be made on June 15, 2011 and June 15, 2012, and e) an additional cash payment of \$1,809,924 based on the cost of inventory transferred to Buyer at closing. The Agreement also indicates that commencing no sooner than six months from the Closing that the Company has agreed to repurchase the common stock shares issued to the Seller for \$4.00 per share regardless of the market value of the common stock at that time not to exceed the repurchase of 10,000 shares in any given calendar year. At closing, Coffee Holding Acquisition, Company LLC changed its name to Organic Products Trading Company, LLC ("OPTCO").

As part of the transaction, all of the employees of the Seller became employees of the Buyer. The Buyer entered into two-year employment agreements commencing on May 14, 2010, with two of the Seller's principals and executives, Garth Smith and Gaylene Smith, to ensure continuity of the business and to continue to operate the business located in Vancouver, Washington. The employment agreements include base pay for each executive of \$150,000 and each are eligible for a bonus. The Buyer shall have the right to terminate the employment of the executives at any time with or without cause and the executive shall have the right to resign at any time with or without good reason.

The Buyer has also entered into confidentiality and non-compete agreements with seven employees and or executives of the Seller. The non-compete agreements are in effect during their period of employment by the Buyer and continue one year thereafter. The executives agree not to directly or indirectly engage in any activities competitive in nature with the business of the Company.

The Buyer also has agreed to lease certain premises located in Vancouver, Washington from Seller for annual rental of \$31,800 plus certain common area charges with one month rent held as a security deposit for a two year period commencing June 1, 2010.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 4 - FORMATION OF SUBSIDIARY (cont'd):**

The following table summarizes the allocation of the \$2,594,924 purchase price utilizing the estimated fair values of the assets acquired at May 17, 2010.

Purchase price – cash	\$2,259,924
Contingent liability	41,000
Contingent consideration	39,000
Common stock, par value \$.001 per share, 50,000 shares	50
Additional paid-in Capital	254,950
Total purchase price	<u>2,594,924</u>
Equipment	15,000
Inventory	1,809,924
Customer list and relationships	150,000
Trademarks	180,000
Goodwill	440,000
Total asset acquired	<u>\$2,594,924</u>

The \$440,000 of goodwill and \$330,000 of intangible assets, consisting of trademarks and customer relationships, are expected to be fully deductible for income tax reporting purposes. The values assigned to the customer list and relationships are being amortized over a twenty year period. Amortization expense was \$3,750 for the year ended October 31, 2010. The future amortization on the customer list and relationships will be \$7,500 per year. Goodwill and trademark intangible assets were recorded at their fair value on the date of the acquisition and will be evaluated at least on an annual basis for impairment. Any future adjustments to the contingent liability for fair value will be recorded in the statement of income. As of October 31, 2010, the Company has determined that no adjustment was warranted to the contingent liability. The contingent consideration will not be remeasured each reporting period and any subsequent settlement will be accounted for in stockholders' equity.

**Pro Forma Results of Operations (unaudited)**

The following pro forma results of operations for the years ended October 31, 2010 and 2009 have been prepared as though the acquisition of OPTCO had occurred as of the beginning of the earliest period presented. This pro forma financial information is not indicative of the results of operations that the Company would have attained had the acquisition of OPTCO occurred at the beginning of the periods presented, nor is the pro forma financial information indicative of the results of operations that may occur in the future:

	<b>Year Ended October 31,</b>	
	<b>2010</b>	<b>2009</b>
Pro forma sales	\$90,418,058	\$84,108,275
Pro forma net income	\$ 2,671,822	\$ 3,604,895
Pro forma basic and diluted earnings per share	\$ .49	\$ .66

The operations of OPTCO have been included in the Company's consolidated statement of operations since the date of the acquisition on May 17, 2010.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 5 - INVENTORIES:**

Inventories at October 31, 2010 and 2009 consisted of the following:

	2010	2009
Packed coffee	<u>\$1,566,678</u>	<u>\$1,388,547</u>
Green coffee	<u>5,952,225</u>	<u>2,484,518</u>
Packaging supplies	<u>671,517</u>	<u>927,078</u>
Totals	<u>\$8,190,420</u>	<u>\$4,800,143</u>

**NOTE 6 - MACHINERY AND EQUIPMENT:**

Machinery and equipment at October 31, 2010 and 2009 consisted of the following:

	Estimated Useful Life	2010	2009
Improvements	15-30 years	<u>\$ 161,298</u>	<u>\$ 161,298</u>
Machinery and equipment	7 years	<u>5,947,027</u>	<u>5,708,166</u>
Furniture and fixtures	7 years	<u>600,208</u>	<u>460,308</u>
		<u>6,708,533</u>	<u>6,329,772</u>
Less, accumulated depreciation		<u>5,147,593</u>	<u>4,681,558</u>
		<u>\$1,560,940</u>	<u>\$1,648,214</u>

Depreciation expense totaled \$466,037 and \$537,375 for the years ended October 31, 2010 and 2009, respectively.

The Company recorded a current asset for assets held for sale at July 31, 2009 since the Company expected to sell its Brooklyn, New York warehouse and roasting facility (the "Facility") within twelve months and had met all other criteria required to meet held for sale accounting. The Company sold the Facility in October 2009 at a gain summarized as follows:

Sales price	<u>\$3,000,000</u>
Less: remaining depreciated cost and land of the Facility	<u>(798,972)</u>
Less: closing costs	<u>(93,527)</u>
Gain on sale of manufacturing facility	<u>\$2,107,501</u>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 7 - LINE OF CREDIT:**

On February 17, 2009, the Company entered into a financing agreement with Sterling National Bank ("Sterling") for a \$5,000,000 credit facility. The credit facility is a revolving \$5,000,000 line of credit and the Company can draw on the line at an amount up to 85% of eligible accounts receivable and 25% of eligible inventory consisting of green coffee beans and finished coffee not to exceed \$1,000,000. Sterling shall have the right from time to time to adjust the foregoing percentages based upon, among other things, dilution, its sole determination of the value or likelihood of collection of eligible accounts receivables owed to the Company, considerations regarding inventory, and other factors. The credit facility is payable monthly in arrears on the average unpaid balance of the line of credit at an interest rate equal to a per annum reference rate (5.00% and 4.25% at October 31, 2010 and 2009, respectively) plus 1.0%. The initial term of the credit facility is three years, expiring February 17, 2012, and shall be automatically extended for successive periods of one year each unless one party shall have provided the other party with a written notice of termination at least ninety days prior to the expiration of the initial contract term or any renewal term. The credit facility is secured by all tangible and intangible assets of the Company and was personally guaranteed by two officers/stockholders of the Company. The personal guarantees of the two officers/stockholders were released by Sterling effective October 31, 2009.

The credit facility contains covenants that place annual restrictions on the Company's operations, including covenants relating to debt restrictions, capital expenditures, minimum deposit restrictions, tangible net worth, net profit, leverage, employee loan restrictions, distribution restrictions (common stock and preferred stock), dividend restrictions, and restrictions on intercompany transactions. The credit facility also requires that the Company maintain a minimum working capital at all times. The initial borrowings under the revolving credit facility were used to repay the outstanding principal and accrued interest under the \$4,500,000 line of credit previously held with Merrill Lynch, which was terminated and replaced with the revolving line of credit, with the excess being available for working capital purposes.

On July 22, 2010, the Company had the credit facility increased to \$7,000,000. In addition, OPTCO was added as a co-borrower and the inventory sublimit was raised from \$1,000,000 to \$2,000,000. The term of the facility has been extended to February 17, 2013. Additionally, the Company received a limited credit guarantee of \$1,800,000 from the not-for-profit entity CORDAID that is available to be used as collateral for the loan facility to Sterling.

CORDAID, a non-profit organization that supports development projects in developing countries, registered under the laws of the Netherlands, has agreed to make available \$1,800,000 to be used as collateral by OPTCO for a loan facility from Sterling to the Company under a Guarantee Agreement. OPTCO has agreed to pre-finance coffee from small coffee producer groups. The Company pays a guarantee fee of 1.5% per year in advance. The Guarantee Agreement expires no later than March 31, 2011 and can be extended for one additional year. In addition, the Company has a corporate guarantee as security to CORDAID as the first loss guarantee of 25% of the outstanding amount of the guarantee up to a maximum of \$350,000.

On July 23, 2010, the Company amended their credit facility regarding the payment of dividends. The facility agreement was changed to allow the payment of quarterly dividends of not more than 3 cents per share.

As of October 31, 2010 and 2009, the outstanding balance under the bank line of credit was \$2,306,749 and \$791,628, respectively. The Company was in compliance with all required financial covenants at October 31, 2010 and 2009.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 8 - INCOME TAXES:**

The Company's provision for income taxes in 2010 and 2009 consisted of the following:

	<u>2010</u>	<u>2009</u>
Current		
Federal	<b>\$1,179,132</b>	\$1,270,286
State and local	<b>187,857</b>	201,656
	<b><u>1,366,989</u></b>	<u>1,471,942</u>
Deferred		
Federal	<b>100,000</b>	420,877
State and local	<b>12,500</b>	266,500
	<b><u>112,500</u></b>	<u>687,377</u>
Income tax expense	<b><u>\$1,479,489</u></b>	<b><u>\$2,159,319</u></b>

A reconciliation of the difference between the expected income tax rate using the statutory federal tax rate and the Company's effective tax rate is as follows:

	<u>2010</u>		<u>2009</u>	
Federal income tax statutory rate	<b>\$1,313,237</b>	<b>34%</b>	\$1,867,426	34%
State income taxes	<b>166,252</b>	<b>5%</b>	291,893	5%
Effective tax rate	<b><u>\$1,479,489</u></b>	<b><u>39%</u></b>	<b><u>\$2,159,319</u></b>	<b><u>39%</u></b>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 8 - INCOME TAXES (cont'd):**

The tax effects of the temporary differences that give rise to the deferred tax assets and liabilities as of October 31, 2010 and 2009 are as follows:

	<u>2010</u>	<u>2009</u>
Deferred tax assets:		
Accounts receivable	\$ 72,000	\$ 69,000
Deferred compensation	199,500	181,000
Inventory	56,500	36,000
Total current deferred tax asset	<u>\$ 328,000</u>	<u>\$ 286,000</u>
Deferred tax liabilities:		
Current deferred tax liability:		
Unrealized gains		
Non-current deferred tax liability:	\$ 73,300	\$ 121,000
Fixed assets	216,700	14,500
Total deferred tax liabilities	<u>\$ 290,000</u>	<u>\$ 135,500</u>

The Company utilized its remaining federal net operating loss of \$1,454,233 to reduce the Company's taxable income for the year ended October 31, 2009.

A valuation allowance was not provided at October 31, 2010 or 2009. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are expected to be deductible, management believes it is more likely than not the Company will realize the benefits of these deductible differences. The amount of the deferred tax asset considered realizable, however, could be reduced in the near term if estimates of future taxable income are reduced.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 8 - INCOME TAXES (cont'd):**

The Company adopted FASB authoritative guidance for accounting for uncertainty in income taxes. As of October 31, 2010 and 2009, the Company did not have any unrecognized tax benefits or open tax positions. The Company's practice is to recognize interest and/or penalties related to income tax matters in income tax expense. As of October 31, 2010 and 2009, the Company had no accrued interest or penalties related to income taxes. The Company currently has no federal or state tax examinations in progress.

The Company files a U.S. federal income tax return and California, Colorado, New Jersey, New York and Oregon state tax returns. The Company's federal income tax return is no longer subject to examination by the federal taxing authority for years before fiscal 2007. The Company's California, Colorado and New Jersey income tax returns are no longer subject to examination by their respective taxing authorities for the years before fiscal 2006. The Company's Oregon and New York income tax returns are no longer subject to examination by their respective taxing authorities for the years before fiscal 2007.

**NOTE 9 - COMMITMENTS AND CONTINGENCIES:**

**OPERATING LEASES:**

The Company occupied warehouse facilities, in Brooklyn, New York under an operating lease, which terminated in March 2009, it was originally set to expire on December 31, 2011, at a monthly rental of \$15,000. The lease required the Company to pay utilities and other maintenance expenses. Rent charged to operations amounted to \$75,000 for the year ended October 31, 2009.

The Company also uses a variety of independent, bonded commercial warehouses to store its green coffee beans.

In February 2004, the Company entered into a lease for office and warehouse space in La Junta City, Colorado. This lease, which is at a monthly rental of \$8,341 beginning January 2005, expires on January 31, 2024. Rent charged to operations amounted to \$95,504 for the years ended October 31, 2010 and 2009.

In October 2008, the Company entered into a lease for office and warehouse space in Staten Island, NY. This lease, which is at a monthly rental beginning November 2008, expires on October 31, 2023 and includes annual rent increases. Rent charged to operations amounted to \$147,696 for the years ended October 31, 2010 and 2009.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 9 - COMMITMENTS AND CONTINGENCIES (cont'd):**

**OPERATING LEASES:**

In May 2010, the Company entered into a lease for office space in Vancouver, WA. This lease, which is at a monthly rental beginning May 17, 2010, expires on June 1, 2012. Rent charged to operations amounted to \$15,900 for the year ended October 31, 2010.

The aggregate minimum future lease payments as of October 31, 2010 for each of the next five years and thereafter are as follows:

October 31,

2011	\$ 252,836
2012	239,354
2013	227,155
2014	232,238
2015	237,523
Thereafter	2,168,851
	<u>\$3,357,957</u>

**401 (K) RETIREMENT PLAN:**

The Company has a 401(k) Retirement Plan, which covers all the full time employees who have completed one year of service and have reached their 21<sup>st</sup> birthday. The Company matches 100% of the aggregate salary reduction contribution up to the first 3% of compensation and 50% of aggregate contribution of the next 2% of compensation. Contributions to the plan aggregated \$55,819 and \$59,882 for the years ended October 31, 2010 and 2009, respectively.

**NOTE 10 - ECONOMIC DEPENDENCY:**

Approximately 47% of the Company's sales were derived from one customer during the year ended October 31, 2010. This customer also accounted for approximately \$3,372,000 or 38% of the Company's accounts receivable balance at October 31, 2010. Approximately 35% of the Company's sales were derived from one customer during the year ended October 31, 2009. This customer also accounted for approximately \$3,075,000 or 30% of the Company's accounts receivable balance at October 31, 2009. Concentration of credit risk with respect to other trade receivables is limited due to the short payment terms generally extended by the Company, by ongoing credit evaluations of customers, and by maintaining an allowance for doubtful accounts and other allowances that management believes will adequately provide for credit losses.

For the year ended October 31, 2010, approximately 85% of the Company's purchases were from ten vendors. One of these vendors accounted for 30% of total purchases. This vendor accounted for approximately \$474,000 of the Company's accounts payable at October 31, 2010.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 10 - ECONOMIC DEPENDENCY (cont'd):**

For the year ended October 31, 2009, 83% of the Company's purchases were from ten vendors. One of these vendors accounted for 27% of total purchases. This vendor accounted for approximately \$373,000 of the Company's accounts payable at October 31, 2009.

**NOTE 11 - RELATED PARTY TRANSACTIONS:**

The Company has engaged its 40% partner in Generation Coffee Company, LLC as an outside contractor (the "Partner"). Included in contract labor expense, which is a component of cost of sales, are expenses incurred from the Partner during the years ended October 31, 2010 and 2009 of \$505,977 and \$273,271, respectively.

An employee of one of the top two vendors is a director of the Company. Purchases from that vendor totaled approximately \$19,282,000 and \$16,733,000 for the years ended October 31, 2010 and 2009, respectively. The corresponding accounts payable balance to this vendor was approximately \$474,000 and \$829,000 at October 31, 2010 and 2009, respectively. Management does not believe the loss of any one vendor would have a material adverse effect of the Company's operations due to the availability of many alternate suppliers.

In January 2005, the Company established the "Coffee Holding Co., Inc. Non-Qualified Deferred Compensation Plan." Currently, there is only one participant in the plan: Andrew Gordon, the CEO. Within the plan guidelines, this employee is deferring a portion of his current salary and bonus. The deferred compensation payable, which also includes investment earnings, represents the liability due to an officer of the Company. The deferred compensation liability at October 31, 2010 and 2009 was \$540,642 and \$489,782, respectively. Deferred compensation expenses included in officers' salaries were approximately \$13,462 and \$127,884 during the years ended October 31, 2010 and 2009, respectively.

**NOTE 12 - STOCKHOLDERS' EQUITY:**

- a. *Warrants to Purchase Common Stock.* The Company entered into an agreement with Maxim Group, LLC ("Maxim") for Maxim to serve as the Company's financial advisors and lead managing underwriter for a public offering of the Company's common stock which concluded on June 16, 2005. Subsequently, Maxim and Joseph Stevens & Company, Inc. ("Joseph Stevens") entered into an agreement pursuant to which Joseph Stevens agreed to act as managing underwriter and Maxim participated in the underwriting syndicate of the offering. The Company also sold to Joseph Stevens and Maxim for \$100, warrants to purchase 70,000 shares of common stock at a price of \$6.00 per share. The fair value of these warrants was credited to additional paid-in capital. The warrants were exercisable for a period of five (5) years and contained provisions for cashless exercise, anti-dilution and piggyback registration rights. The warrants expired May 6, 2009 and are no longer exercisable.
- b. *Treasury Stock.* The Company utilizes the cost method of accounting for treasury stock. The cost of reissued shares is determined under the last-in, first-out method. The Company did not purchase any shares during the year ended October 31, 2010. The Company purchased 4,693 shares for \$5,526 during year ended October 31, 2009
- c. *Dividends.* On October 25, 2010, the Company paid a cash dividend of \$166,989 (\$0.03 per share) to all stockholders of record as of October 1, 2010. On July 26, 2010, the Company paid a cash dividend of \$166,989 (\$0.03 per share) to all stockholders of record as of July 16, 2010.

**NOTE 13 - FAIR VALUE MEASUREMENTS:**

The Company adopted the authoritative guidance on "Fair Value Measurements". The guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, not adjusted for transaction costs. The guidance also establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels giving the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3) as described below:

Level 1 Inputs – Unadjusted quoted prices in active markets for identical assets or liabilities that are accessible by the Company;

Level 2 Inputs – Quoted prices in markets that are not active or financial instruments for which all significant inputs are observable, either directly or indirectly;

Level 3 Inputs – Unobservable inputs for the asset or liability including significant assumptions of the Company and other market participants.

The Company determines fair values for its investment assets as follows:

Investments at fair value consist of commodity securities. The Company's commodity securities are classified within Level 2 and include coffee futures and options contracts. To determine fair value, the Company utilizes the market approach valuation technique for the coffee futures and options contracts. The Company uses Level 2 inputs that are based on market data of similar instruments that are in observable markets. All commodities on the balance sheet are recorded at fair value with changes in fair value included in earnings and not reflected as a net amount as a separate component of stockholders' equity.

The following tables present the Company's assets that are measured at fair value on a recurring basis and are categorized using the fair value hierarchy. The fair value hierarchy has three levels based on the reliability of the inputs used to determine fair value.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**OCTOBER 31, 2010 AND 2009**

**NOTE 13 - FAIR VALUE MEASUREMENTS (cont'd):**

	Fair Value Measurements as of October 31, 2010			
	Total	Level 1	Level 2	Level 3
<b>Assets:</b>				
Commodities – Futures	\$ 598,501	–	\$ 598,501	–
Commodities – Options	(323,002)	–	(323,002)	–
<b>Total Assets</b>	<b>\$ 275,499</b>	<b>–</b>	<b>\$ 275,499</b>	<b>–</b>

	Fair Value Measurements as of October 31, 2009			
	Total	Level 1	Level 2	Level 3
<b>Assets:</b>				
Commodities – Futures	\$ 11,494	–	\$ 11,494	–
Commodities – Options	65,812	–	65,812	–
<b>Total Assets</b>	<b>\$ 77,306</b>	<b>–</b>	<b>\$ 77,306</b>	<b>–</b>

**NOTE 14 - SUBSEQUENT EVENT**

The Company paid a cash dividend on January 31, 2011, of \$166,989 (\$.03 per share) to all stockholders of record as of the close of business on January 17, 2011.



August 7, 2007

Mr. Andrew Gordon  
COFFEE HOLDING COMPANY,  
INC. 4401 1st Avenue  
Brooklyn, NY 11232

**AMENDMENT NO. ONE TO THE LICENSE AGREEMENT EFFECTIVE APRIL 1, 2007 BETWEEN ENTENMANN'S PRODUCTS, INC. AND COFFEE HOLDING COMPANY, INC.**

Dear Mr. Gordon:

The following, when signed by you and counter-executed by Entenmann's Products, Inc. (hereinafter "Licensor"), shall constitute Amendment No. One to the above-referenced Agreement as follows:

**LICENSE AGREEMENT – Paragraph 11.1 – Termination for Default by Licensee:**

Paragraph 11.1 (b) is hereby amended and restated as follows:

(b) Notwithstanding anything to the contrary set forth in this Agreement, Licensee shall maintain Minimum Net Sales Revenue (if applicable) of Licensed Products for each Contract Year as set forth in Exhibit B. If Licensee fails to maintain the required Minimum Net Sales Revenue as provided in Exhibit B, Licensor shall have the right to terminate this Agreement by written notice delivered to Licensee within 30 days after the end of any Contract Year in which Licensee shall fail to maintain such required Minimum Net Sales Revenue. Notwithstanding the preceding provisions of this subsection, Licensee may have a one-time option to avoid Licensor's right to terminate this Agreement for Licensee's failure to maintain the Minimum Net Sales Revenue as provided in Exhibit B, by paying to Licensor, within 30 days after the date of the notice of termination from Licensor, the difference between the aggregate royalty actually paid by Licensee to Licensor during the said Contract Year and the royalty that would have been paid by Licensee to Licensor during the Contract Year if Licensee maintained the required Minimum Net Sales Revenue for all categories as provided in Exhibit B for the subject Contract Year.

Except as specifically modified herein by this Amendment No. One, all other terms and conditions of the Agreement shall remain in full force and effect.

Assuming the amendment accurately reflect your understanding, please sign this Amendment No. One below and return it to me. We will then have the Amendment executed and return a fully-executed copy to you for your files. Of course, no binding modification exists until one fully-executed copy of this Amendment No. One has been returned to you.

If you have any questions, feel free to contact James Slifer.

Sincerely yours,

**Glory Ekpe**

Glory Ekpe  
Director, Contracts

**Agreed to and Accepted by:**

**ENTENMANN'S PRODUCTS, INC.**

By: /s/ \_\_\_\_\_

Name:

Title:

Date:

**COFFEE HOLDING COMPANY, INC.**

By: /s/ Andrew Gordon \_\_\_\_\_

Name: Andrew Gordon

Title: President & Chief Executive Officer

Date:

LICENSE AGREEMENT

Entenmann's Products, Inc., a Delaware corporation with a principal place of business at 1724 5th Avenue, Bay Shore, New York 11706 ("Licensor") enters into this License Agreement ("Agreement") with COFFEE HOLDING COMPANY, INC., a corporation with its principal place of business at 4401 1st Avenue, Brooklyn, NY 11232 ("Licensee") as of the 1<sup>st</sup> day of April, 2007 ("Effective Date").

Introduction

A. Licensor owns certain intellectual property, including but not limited, to trademarks, trade dress, names, logos, designs, slogans, copyrights and other proprietary materials set forth on Exhibit A of this Agreement (the "Intellectual Property").

B. Licensee desires to obtain a license to use the Intellectual Property on and in connection with the manufacturing, distribution and sale of Licensed Products in the Territory (as defined in this Agreement) under certain terms and conditions, and Licensor is willing to grant such license.

Terms

In consideration of and incorporating the above premises, and of the mutual covenants, conditions and agreements contained in this Agreement and for other good and valuable consideration, the adequacy of which the parties acknowledge, the parties intending to be legally bound agree as follows:

License Grant

1.1 Grant. Subject to the terms and conditions specified below, Licensee shall have the nonexclusive license to use the Intellectual Property in the Territory solely upon and in connection with the manufacturing, distribution, marketing, promotion, advertising and sale of the products specified on Exhibit B (the "Licensed Products").

1.2 Retail Distribution of Licensed Products. Licensee shall place in distribution the Licensed Products manufactured under this Agreement by or for Licensee in a fully finished condition and sold only in or to the channels of distribution set forth on Exhibit B ("Channels of Distribution"). Licensee may not, directly or indirectly, distribute Licensed Products to any channels not specified on Exhibit B without Licensor's prior written consent, which Licensor may withhold at its sole discretion. Licensee may not sell the Licensed Products to third parties who intend or are likely to resell them outside such Channels of Distribution. If Licensee discovers that its customers are reselling Licensed Products outside the Channels of Distribution, Licensee shall immediately cease selling the Licensed Products to such third parties. In no event shall Licensee sell the Licensed Products to any third party if the Licensee knows, or should have known, that the Licensed Products will be thereafter altered, modified, re-packaged, filled, made part of something else or used in any other unauthorized manner by any third party inside or outside the Channels of Distribution.

### 1.3 Reservation of Rights: Exclusions

(a) Licensor retains all rights not expressly and exclusively granted to Licensee under this Agreement. Licensor may use and grant licenses to others to use the Intellectual Property inside and outside the Territory in connection with products that are not Licensed Products in any Channels of Distribution and with Licensed Products inside the Territory distributed outside the Channels of Distribution.

(b) Licensee's rights under this Agreement shall not include the right to, and Licensee warrants and represents that it will not, use the Intellectual Property or the Licensed Products for an endorsement of any product or service. Licensee shall not (i) use or permit the use of any Licensed Products as a Premium except with Licensor's prior written consent, which Licensor may withhold at its sole discretion, and/or (ii) distribute any Licensed Products to any third party that Licensee has reason to believe would distribute such Licensed Products in contravention of the foregoing. "Premium" shall mean any Licensed Products distributed below cost or at no charge for the purpose of increasing the sale of any other article of merchandise or product, or any service, including without limitation, any Licensed Products distributed for publicity purposes, for combination sales, giveaways, traffic-building or any similar scheme or device or arrangement.

(c) If Licensor becomes aware of the inability or unwillingness of Licensee to fill an order for the Licensed Products for Licensor or any customer, Licensor shall have the right to seek and license other parties to fill said order(s).

### Territory

2. The license granted under this Agreement extends only to the geographic area set forth on Exhibit B ("Territory"). Licensee shall not (i) use or authorize any use of the Intellectual Property, directly or indirectly, outside the Territory, or (ii) sell the Licensed Products to third parties who intend or are likely to resell them outside the Territory. If Licensee discovers that third parties to whom it sells the Licensed Products are reselling them outside the Territory, Licensee shall immediately cease selling the Licensed Products to such third parties.

### Term

3. This Agreement shall commence on the Effective Date and continue for three (3) years and nine (9) months unless sooner terminated in accordance with the terms and conditions of this Agreement ("Term"). The parties may extend the Term only upon written agreement and for not more than two (2) renewal terms each of three (3) years. The Term shall be divided into periods of twelve months or more (each, a "Contract Year") as indicated below:

Contract Year 1: 04/01/2007- 12/31/2008  
Contract Year 2: 01/01/2009 - 12/31/2009  
Contract Year 3: 01/01/2010 - 12/31/2010

## Representative

4. From time to time, Licensor may designate one or more representatives ("Representative") upon written notice to Licensee, to act generally on behalf of Licensor, sometimes in conjunction with Licensor and sometimes in its stead, such as, but not limited to, receiving payments and statements and performing the various quality control functions as set forth in this Agreement. In the event such a Representative is designated in this Agreement, all references to administrative duties of the Licensor in this Agreement may be construed as referring to the Representative as appropriate to carry out the purposes of this Agreement. Licensor will be bound by any authorized communications of its Representative and cannot repudiate the same; provided, however, in the event of a dispute between Licensor and Representative as to communications to Licensee, Licensor's communications shall control. Licensor, at its complete discretion, may replace Representative upon written notice to Licensee, without affecting the validity of this Agreement. Until further notice, Licensor's Representative for the foregoing purposes shall be: The Joester Loria Group, LLC, 860 Broadway, Third Floor, New York, New York 10003. Unless stated otherwise in writing by Representative and Licensor subsequently with a copy to Licensee, all statements and payments under this Agreement shall be sent and paid to said Representative rather than Licensor and Licensor appoints Representative to act as Licensor for approvals and submissions under this Agreement.

## Payments

5.1 Royalties. Licensee shall pay to Licensor (or its Representative) the royalty at the rates specified in Exhibit B ("Royalties") based upon all Net Sales (defined below) by or on behalf of Licensee of the Licensed Products. Royalties shall accrue when the Licensed Products are invoiced or shipped, whichever occurs first, and shall be payable concurrently with the periodic statements required in Section 6. The term "Net Sales" shall mean the number of units sold multiplied by the full wholesale or distributor list price billed to retail customers or distributors less actual trade discounts and promotions, if any, not to exceed ten percent (10%). No other deductions shall be made for any reason, including without limitation, cash payments, early payments, uncollectible accounts, or costs incurred in the manufacture, distribution, sale, exploitation or advertisement of the Licensed Products. Sales to any affiliated or related party of Licensee shall be deemed to have been made at Licensee's wholesale or distributor selling price generally charged by Licensee to third parties in the normal equivalent Channels of Distribution. Net Sales shall include any amounts or the value of other consideration received by Licensee in connection with the exploitation of the Licensed Products.

5.2 Advertising/Marketing. Licensee agrees to spend no less than three percent (3%) of total annual Net Sales or total annual Minimum Net Sales Revenue, whichever is greater, each Contract Year to advertise and promote the Licensed Articles. Approved expenditures may include trade and consumer advertising, direct mail to consumers, "gift with purchase" (GWP), "purchase with purchase" (PWP) programs, off shelf merchandising vehicles, local and regional FSI's (Free Standing Insert) and other marketing initiatives approved by Licensor, in writing, as advertising and promotion. Any amounts not expended during any Contract Year shall be paid to Licensor within thirty (30) days of the end of said contract year.

Notwithstanding the foregoing, Licensee may apply up to twenty five percent (25%) of the Advertising/Marketing Commitment, capped at \$100,000 in total for each Contract Year, towards Slotting Fees for the Licensed Products. For the purpose of this Agreement, Slotting Fees shall be defined as a fixed-per-SKU one-time payment paid by the Licensee to a new retail account in exchange for shelf space for Licensed Products. Licensee may not deduct in-store circulars from advertising/marketing fund. In addition to the advertising requirements defined herein, Licensee agrees for each Contract Year to create dedicated 4 color sales materials that are of a quality consistent to other premium brands.

Licensee will create a dedicated section on their website, to be approved by Licensor, promoting the Licensed Product.

Licensee will provide Licensor with a full marketing and product rollout plan within 45 days of signing this Agreement. No later than thirty (30) days prior to the beginning of each calendar year, Licensee shall develop and submit for Licensor's written approval, a marketing plan, which includes a timeline detailing product roll-out and distribution plans as well as advertising, promotion and PR plans.

5.3 Advance. Licensee shall pay to Licensor (or its Representative) the amount set forth on Exhibit B as an advance ("Advance"). The Advance is guaranteed and nonrefundable, except as otherwise set forth in this Agreement. In addition, Licensee shall timely pay the amounts set forth in Exhibit B as minimum royalty guarantees ("Guaranteed Minimum Royalties"). The Advance and Guaranteed Minimum Royalties shall be credited toward Royalties due for the Term only (including any permitted Sell-Off Period), and such payments shall not be refunded for any reason, except as otherwise provided in this Agreement.

5.4 First Shipment Date. Licensee shall begin commercial distribution in reasonable quantities of a Licensed Product bearing the Intellectual Property and which has received Licensor's written approval no later than September 01, 2007.

#### Statements and Records

##### 6.1 Statements.

(a) Within 20 days of the end of each calendar quarter during the Term, commencing with the first full calendar quarter of the Term, Licensee shall deliver to Licensor (or its Representative), a complete and accurate statement of all sales activity, Net Sales and Royalties owed, for sales of Licensed Products during the preceding calendar quarter in the format set forth in Exhibit C, certified to be accurate by Licensee (if Licensee is a corporation, by an officer or authorized independent accountant of Licensee). Unless otherwise agreed by Licensor in writing, each statement must show, without limitation, the following:

- (i) the number of units sold of each Licensed Product,
- (ii) the unit price of each Licensed Product,

(iii) the gross sales for each Licensed Product,

(iv) the deductions taken from gross sales and the reasons therefor,

(v) Net Sales for each Licensed Product,

(vi) a computation of Royalties due, taking into account any Guaranteed Minimum Royalties which may be due to the extent that the Guaranteed Minimum Royalties for the preceding calendar quarter exceed earned Royalties, and

(vii) a listing of retail purchasers and distributors of Licensed Products who purchased directly from Licensee during the statement period.

(b) Each statement delivered pursuant to this Section shall be accompanied by a check payable to Licensor (or its Representative).

(c) Licensee shall deliver to Licensor (or its Representative), no later than 45 days after the close of each annual period during the term of this Agreement (or portion thereof in the event of prior termination for any reason) a statement signed and certified either by its regular certified public accountants or by a financial officer of Licensee relating to said entire annual period, setting forth the same information required to be submitted by Licensee in accordance with this Section. Such statements shall be furnished by Licensee whether or not any of the Licensed Products have been shipped or sold during the relevant period. Within ten (10) business days after demand by Licensor (or its Representative), Licensee shall, at its own expense, furnish a detailed statement by the chief financial officer of Licensee showing the number, description, gross sales price, itemized deductions from gross sales price and Net Sales of the Licensed Products distributed and/or sold by Licensee to the end of the month next preceding the date of the demand.

6.2 Records. Licensee shall keep and maintain in Licensee's principal place of business during the Term and for at least three (3) years following the date of the relevant statement, complete and accurate records and accounts covering all transactions relating to this Agreement including, without limitation, invoices, correspondence, banking, financial and all other pertinent records and accounts. Such records and accounts shall be maintained in accordance with generally accepted accounting procedures and principles and shall be available for inspection and audit at any time during the Term and for three years thereafter, during reasonable business hours for Licensor (or its Representative) (and accountants acting on their behalf) to inspect and make extracts or copies of such records for the purpose of ascertaining the correctness of such statements. Licensee will not cause or permit any interference with Licensor (or its Representative) in the performance of any such inspection and audit. In the event any errors or discrepancies are discovered in any records, statements or accounts or in payments resulting therefrom, they shall immediately be rectified and the appropriate payments made by Licensee, together with interest at the then prime rate per annum (announced by Citibank, NA or its successor) compounded from the date the payment was originally due. If discrepancy of 3% or more is found, Licensee shall pay, in addition to the discrepancy, the actual cost of such inspection and audit. Should any willful and material misstatements or discrepancies be disclosed as a result of the inspection or audit or otherwise, then in addition to all other relief to which Licensor may be entitled, Licensor may immediately terminate this Agreement.

6.3 Right to Dispute Records. Receipt or acceptance by Licensor (or its Representative) of any of the statements furnished pursuant to this Agreement, or the receipt or deposit by Licensor (or its Representative) of any payment tendered by or on behalf of Licensee shall be without prejudice to any rights or remedies of Licensor and shall not prevent Licensor from thereafter disputing the accuracy of any such statements, payments, records and accounts. Licensee waives all claims to return of any Advance, Guaranteed Minimum Royalties or other Royalty payments once made, except as otherwise provided in this Agreement, and for claims for refund of payments for returns of Licensed Products in subsequent reporting periods. As time is of the essence with respect to all payments made under this Agreement, interest at the rate of one and one-half percent (1 ½%) per month or three percentage points over prime (whichever is greater but in no event more than the maximum amount permitted by law) shall accrue on any amount due, from the date upon which the payment is due until the date of payment.

#### Quality Standards and Control

##### 7.1 Quality Control Standards

(a) If the Licensed Products manufactured and sold by Licensee are of inferior quality in design, material or workmanship, the substantial goodwill which Licensor has established and possesses in the Intellectual Property would be impaired. Accordingly, Licensee will maintain high quality control standards that are substantially equivalent to those standards approved by Licensor or used by Licensor as of the Effective Date or thereafter in connection with its products and/or the Licensed Products, including, but not limited to, quality control procedures, product sampling procedures and inspection procedures, labeling requirements and Licensed Product formulas and specifications as applicable.

(b) Licensee shall comply with all federal, state, and local laws, rules and regulations, if any, of governmental authorities in connection with the production, manufacturing, distribution, sale, labeling, packaging, advertising and promotion of the Licensed Products.

(c) Licensee is not authorized to sell Licensed Products which do not completely meet the quality standards of approved samples nor "irregular," "distressed" or other than "first quality" Licensed Products. Licensee shall not otherwise use the Intellectual Property in connection with any Licensed Products that do not meet the quality control standards in this Agreement.

7.2. Licensed Product Formulas and Specifications. Licensee shall submit to Licensor all proposed new formulas and specifications for the Licensed Products and all adjustments thereto for Licensor's approval, such approval to be consistent with (and based on equivalent standards to) products previously approved by, or sold by, Licensor, and subject to the Licensed Products passing Licensor's taste and consumer tests as required by Licensor. The actual and reasonable costs of such tests shall be paid by Licensee. Licensee shall not market any Licensed Products using the Intellectual Property without the prior written approval of Licensor, which Licensor shall not unreasonably withhold or delay. Formulas and specifications for the Licensed Products shall at all times remain the confidential property of Licensor.

### 7.3 Inspection Procedures

(a) In order to determine whether Licensee is maintaining the quality standards set forth above, Licensee, before selling or distributing any Licensed Products, including any modified or reformulated versions thereof, shall furnish to Licensor (or its Representative), at Licensee's cost, a reasonable number of each of the Licensed Products. The quality of such new Licensed Products shall be subject to the prior written approval of Licensor, such approval to be consistent with (and based on equivalent standards to) products previously approved by, or sold by, Licensor, and subject to the Licensed Products passing Licensor's taste and consumer tests if applicable. At the request of Licensor, Licensee shall supply any manufacturing information requested by Licensor to help Licensor in evaluating the quality and style of such Licensed Products.

(b) In addition, during normal business hours, Licensor (or its Representative) shall have access to Licensee's facilities and the facilities of Licensee's permitted sublicensees and/or contract manufacturers where the Licensed Products are manufactured and/or stored, for the purpose of inspecting the Licensed Products to the extent necessary to determine whether Licensor's quality standards are being met and to determine whether any health or safety issues may exist at such plants and/or facilities.

(c) Licensee represents and warrants that the Licensed Products manufactured, distributed and sold by Licensee, and, if applicable, its permitted contract manufacturers, and the manufacturing and sanitation practices used by Licensee, and, if applicable, its permitted contract manufacturers, to produce the Licensed Products will comply with all applicable federal, state and local laws, including, but not limited to, good manufacturing practices.

(d) Licensee shall not manufacture the Licensed Products from inherently dangerous materials or substances and will not design the Licensed Products so as to constitute or create any inherent danger.

(e) After samples of the Licensed Products have been approved by Licensor (or its Representative) pursuant to this Section 7, Licensee shall not depart from the quality and characteristics of those samples in any material respect without Licensor's prior written approval, and Licensor shall not withdraw its approval of the approved Licensed Products or of any approved plant except for good cause when Licensor may in good faith have reason to believe that the approved Licensed Products or the manufacture of Licensed Products by the approved plant may be detrimental to the health or safety of the public or otherwise fails to satisfy the specifications which have been previously approved by Licensor.

7.4 Plant Approval. All plants proposed to be used by Licensee shall be subject to Licensor's prior written approval, such approval to be consistent with Licensor's standards for approving plants which are used by Licensor in the Territory. Licensee proposes the following plants initially: \_\_\_\_\_. Any and all additional proposed plants to be used by Licensee shall be subject to Licensor's prior written approval, such approval to be consistent with Licensor's standards for approving the plants listed above.

#### 7.5 Prior Approval.

(a) No Licensed Product shall be manufactured, distributed, sold or used by Licensee prior to Licensor's written approval of pre-production prototypes or samples of each such Licensed Product, as well as proofs, manuscripts, artwork layout or the like, of any cartons, containers, tags, labels, other packaging, advertising, publicity and display materials to be used in connection with the Licensed Products (the "Related Materials"). Within 15 business days after its receipt of the foregoing, Licensor shall use reasonable efforts to advise Licensee, in writing, of its approval or disapproval of such material, and no items shall be deemed approved by Licensor unless such approval is given. Further written approval will be necessary if there is any change proposed by Licensor or Licensee in type, style, model, grade, description or the like from any previously approved Licensed Products or Related Materials. In the event any Licensed Products or any Related Materials differ materially from the approved samples, Licensor shall have the right, in its sole discretion, to withdraw its approval of such Licensed Products or Related Materials and/or to terminate this Agreement unless Licensee cures such breach within thirty days of notice of same. Approval by Licensor and by any other parties designated by Licensor shall not relieve Licensee of any of its obligations or warranties under this Agreement.

(b) All costs associated with the approval process, including all costs incurred by Licensee, Licensor, Representative or any third party approved by Licensor, in connection with the development, modification or formatting of artwork and Related Materials for the Licensed Products, shall be borne by Licensee. Licensee shall pay Licensor, or such third party, within thirty days of receiving an invoice for such expenses. Although Licensee is not obligated to utilize the artwork services of Licensor or an approved third party, Licensee is encouraged to do so if Licensor offers such services in order to minimize delays which may occur if unapproved artists do renditions of the Intellectual Property.

(c) Concurrently with the initial shipment of Licensed Products, Licensee shall furnish to Licensor (or its Representative) at no cost, 30 royalty-free samples of each "SKU" of the Licensed Products and thereafter shall furnish to Representative 25 samples of each SKU of the Licensed Products at the beginning of each subsequent year of the Term. In addition, upon Licensor's request, Licensee shall provide, at no cost, a reasonable number of royalty-free samples of the Licensed Products in each year of the Term for use by Licensor in connection with promotions, contests or sweepstakes not to exceed 25 samples per year. Any Licensed Products requested by Licensor in excess of the foregoing quantity shall be billed at Licensee's cost for the Licensed Product plus ten percent (10%).

7.6 Deficiency. Promptly upon receipt from Licensor (or its Representative) of information or notice that any Licensed Products or Related Materials manufactured, sold or used by Licensee do not or have not met the specifications or standards of nature and quality prescribed by Licensor, Licensee shall correct such deficiency at Licensee's expense. Licensee shall thereafter immediately submit samples of the corrected Licensed Products or Related Materials pursuant to Section 7.3 for approval. In the event the deficiency is that of substandard Licensed Product or that of material misuse of the Intellectual Property, all existing inventory or work in progress of Licensed Products and Related Materials containing the deficiency shall, at Licensee's expense, either be corrected to Licensor's satisfaction or shall be destroyed. The foregoing shall not preclude or otherwise limit in any way Licensor's rights under this Agreement.

#### Proprietary Rights

##### 8.1 Licensor's Title, Ownership, and Goodwill.

(a) All right, title and interest in and to the Intellectual Property (including all associated goodwill) shall be and remain the exclusive and complete property of Licensor, and all use of the Intellectual Property will inure to the benefit of Licensor. Licensee shall not, during or after the Term, dispute or contest, directly or indirectly, or do or cause to be done, any act which in any way questions, contests, impairs or tends to impair Licensor's right, title and interest in and to the Intellectual Property. Licensee will at no time use or authorize the use of any trademark, logo, trade dress, service mark, trade name, domain name or other designation identical or confusingly similar to the Intellectual Property. Except as otherwise provided in this Agreement for a sell-off period, if any, upon the expiration or earlier termination of the Term, all rights to use the Intellectual Property shall automatically revert to Licensor, and Licensee shall immediately discontinue all use.

(b) As between Licensor, Representative, and Licensee, Licensor shall be deemed to be the owner of all materials created for the Licensed Products under this Agreement, including but not limited to artwork. Licensee acknowledges that such materials created and furnished by Licensee, its employees, or contractors shall (if applicable) be considered "works made for hire" pursuant to U.S. copyright law and all rights in and to the copyrights (and any other intellectual property rights) to such materials shall be owned by Licensor. If any such materials or elements shall not be deemed a "work made for hire," Licensee assigns to Licensor all rights, including copyright, title and interest in and to all such materials and elements. Licensee will, without further consideration, execute any documents that Licensor may determine is necessary to perfect such assignment. In the event Licensee fails or refuses to do so after a reasonable period of time, Licensee appoints Licensor as its attorney-in-fact to execute such documents. Notwithstanding the foregoing, Licensor acknowledges that Licensee's UPC Codes are solely owned by Licensee, and Licensor shall have no right, title or interest in them.

(c) Licensee acknowledges the tremendous value and goodwill of the Intellectual Property and therefore will not use the Intellectual Property in any manner which may, in Licensor's judgment, be in bad taste, be inconsistent with Licensor's public image or which may in any way disparage Licensor or its reputation, including, but not limited to, types and placement of advertising and types of Channels of Distribution, nor take any action which will harm or jeopardize the Intellectual Property or Licensor's ownership, protection, and/or registration thereof, in any way.

8.2 Intellectual Property Registration. At Licensor's cost, Licensee will fully cooperate with and assist Licensor in the prosecution and maintenance of any patent, copyright, trademark, service mark or domain name applications or registrations concerning the Intellectual Property that Licensor may desire to file or maintain, and for that purpose, Licensee shall, upon request, supply to Licensor enough samples of the Licensed Products or other material as may be required in connection with any such application or registration.

8.3 No Representations of Ownership by Licensee Restrictions on Other Marks. Licensee shall not in any manner represent that it has any ownership in the Intellectual Property, in whole or in part, or in any other intellectual property owned by Licensor, or its affiliates, but may only, during the Term of this Agreement, and only if Licensee has complied with all laws and its obligations under this Agreement, represent that it is a "Licensee" under this Agreement. During or after the Term, Licensee shall not register or attempt to register any patent, trademark, service mark, domain name, copyright, domain name, or similar proprietary right in any portion of the Intellectual Property or in any intellectual property owned by Licensor that are not licensed under this Agreement, in its own name or that of any third party, nor shall it assist any third party in doing so. Licensee shall not use any other trademarks or other intellectual property similar to the Intellectual Property.

8.4 Approval. Licensee shall use the Intellectual Property only in such form and manner as is specifically approved in writing by Licensor and, upon request by Licensor, affix to the Licensed Products and Related Materials any legends, markings and notices of trademark registration or Licensor-Licensee relationship specified by Licensor, or any other notice of Licensor's ownership, including copyright. Licensor shall have the right to approve all advertising, displays and other material using the Intellectual Property prepared by Licensee. Licensee will promptly follow Licensor's instructions and guidelines regarding proper usage of the Intellectual Property in all respects.

#### 8.5 Copyright and Trademark Notices

(a) Licensee shall print, stamp, mold or otherwise affix the Copyright Notice (i.e., © [Year of first publication] **Entenmann's Products, Inc. Used under license.**) on all packaging for the Licensed Products and on all of the Related Materials, all in accordance with instructions from Licensor, including without limitation, instructions with respect to position and type size. No Licensed Product packaging or Related Materials upon which the Copyright Notice is printed, stamped, molded or otherwise affixed pursuant to the foregoing shall contain any other copyright notice whatsoever without Licensor's prior written consent. Licensor, may, at any time and from time to time, require the addition of a Copyright Notice, or change of the Copyright Notice, effective not less than thirty days after receipt by Licensee of notice of such addition or change; notwithstanding this, Licensee shall have the right to continue to distribute any inventory already manufactured and/or Licensed Product packaging already printed at the time it receives such notice.

(b) Licensee shall comply with all requirements of the United States Copyright Act, the Universal Copyright Convention, the Berne Convention and any other treaty and convention to which the United States is or becomes a party, as Licensor deems necessary to obtain or maintain copyright protection for the Licensed Products and/or Related Materials in the Territory. Licensee shall cooperate fully with Licensor in connection with Licensor's obtaining of copyright and trademark protection in the name of Licensor or, if Licensor shall so direct, in the name of a copyright or trademark proprietor other than Licensor.

(c) Licensee shall print, stamp, mold or otherwise affix the Trademark Notice (i.e., "\_\_\_\_\_ is a registered trademark of Entenmann's Products, Inc. Used under license.") in proximity to the Intellectual Property wherever used, including without limitation on the Licensed Products and on each of the Related Materials, all in accordance with instruction from Licensor, including without limitation, instructions with respect to position, content and type size. Licensor may, at any time and from time to time, require Licensee to change or add to the Trademark Notice by giving Licensee not less than thirty days' notice of such change; notwithstanding this, Licensee shall have the right to continue to distribute any inventory already manufactured and/or Licensed Product packaging already printed at the time it receives such notice.

(d) Licensee's name, trade name (or a trademark of Licensee which Licensee has advised Licensor in writing that it is using) shall appear on permanently affixed labeling on each Licensed Product and, if the Licensed Product is sold to the public in packaging or a container, printed on such packaging or container so that the public can identify the supplier of the Licensed Product in a manner acceptable to Licensor. On soft goods, "permanently affixed" shall mean sewn onto the goods; on hard goods, it means molded into the product; and on packaging, printed on the package. Licensee shall advise Licensor in writing of all trade names or trademarks it is using on Licensed Products being sold under this license if such names or marks differ from Licensee's corporate name.

(e) Licensee shall affix to the Licensed Products and/or Related Materials any other legends, markings and notices required by any law or regulation in the Territory or which Licensor reasonably may request.

#### 8.6 Protection and Defense.

(a) In its discretion and at its sole cost and expense, Licensor will protect and defend the Intellectual Property. Licensee shall promptly advise Licensor in writing of any claims that its use of the Intellectual Property infringes the rights of a third party and any potentially infringing uses by others involving the Intellectual Property. Decisions involving the protection and defense of the Intellectual Property shall be solely in the discretion of Licensor; Licensee shall take no actions in this regard without the express written permission of Licensor.

(b) Licensee will join with Licensor in any application to enter Licensee as a registered or permitted user, or the like, of the Intellectual Property with any appropriate governmental agency or entity. Upon termination or expiration of this Agreement for any reason whatsoever, Licensor may immediately apply to cancel Licensee's status as a registered or permitted user and Licensee shall consent in writing to the cancellation and shall join in any cancellation request. The expense of any of the foregoing recording registered or permitted user activities shall be borne by Licensor.

8.7 Changes to Intellectual Property. Licensor shall have the right at any time, upon notice, to make additions to, deletions from, and other changes in the Intellectual Property at its sole and complete discretion, and Licensee shall adopt and use any and all such additions, deletions and changes as soon as practicable (i.e., after depletion of raw or finished inventory at time notice was received by Licensee) in all new production of the Licensed Products and Related Materials.

9.1 Third-Party Manufacturing.

(a) Licensee shall have the right to subcontract for the manufacture and production of the Licensed Products or Related Materials with Licensor's prior written consent (not to be unreasonably withheld or delayed) and such subcontractor shall execute a subcontractor agreement. In addition, Licensee shall ensure that any subcontractor shall:

- (i) be fully subject to, and bound by, every applicable provision of this Agreement;
- (ii) be made aware and agree that it may not sell any Licensed Products manufactured by it to anyone but Licensee;
- (iii) agree that any related designs, labels, packaging or other materials incorporating or associated with the Intellectual Property shall become the sole property of Licensor and that Licensee shall be responsible for obtaining any relevant supporting legal documentation; and
- (iv) agree to immediately cease all manufacture of Licensed Products upon notice of termination or expiration of this Agreement.

(b) In addition, (v) a breach by a subcontractor of any provision of this Agreement shall be considered a breach by Licensee; (vi) Licensee shall remain primarily and completely obligated under all of the provisions of this Agreement; (vii) Licensee shall promptly furnish to Licensor a list of all such subcontractors and shall update this list once annually on or before the 31<sup>st</sup> day of January; and (viii) Licensee shall immediately notify any subcontractor in writing upon termination or expiration of this Agreement, with a copy sent to Licensor. In no event shall any subcontractor agreement include the right to grant any sublicenses. Licensee shall ensure that each subcontractor agreement provides that Licensor is a third party beneficiary of the agreement with an independent right to enforce its terms relating to quality control and protection of Intellectual Property and shall provide to Licensor (or its Representative) copies of all subcontractor agreements within 15 days of execution.

## 9.2 Licensee's Best Efforts

(a) Licensee shall in accordance with the annual Marketing Plan (defined below), use its persistent commercially reasonable efforts to continuously design, manufacture, promote, sell and ship all of the Licensed Products that have received Licensor's written approval in all of the Territory in commercially reasonable quantities and shall continuously and diligently during the Term use commercially reasonable efforts to produce an inventory of Licensed Products and procure and maintain facilities and trained personnel sufficient and adequate to accomplish the foregoing. Once sales have commenced, in no event shall Licensee allow a period of more than ninety days to elapse during which it does not manufacture, sell or distribute the Licensed Products in commercially reasonable quantities sufficient to meet changing customer demand.

(b) In addition to any other remedies available to Licensor, failure to comply with any of the foregoing in Section 9.2 may result in removal from this License of one or more of the unused or unexploited Licensed Products and/or brands, Licensed Products or Territories, upon written notice from Licensor; provided, however, before exercising such right of removal, Licensor will give Licensee 90 days advance written notice and Licensee shall have said ninety days in which to commence using commercially reasonable efforts to exploit the respective brands, Licensed Products and/or Territories in order to prevent any removal from this License.

## 9.3 Compliance with Laws

(a) The Licensed Products shall be manufactured, distributed, promoted, advertised and sold in accordance, and Licensee shall comply with all applicable international, national, federal, state, provincial and local laws, treaties and governmental orders and regulations, including, without limiting the generality of the foregoing, the Federal Food, Drug and Cosmetic Act, the Federal Hazardous Substance Act, the Flammable Fabrics Act, the Consumers Products Safety Act, and the ASTM Standard Consumer Safety Specifications on Toy Safety (Toy Manufacturers of America Voluntary Toy Safety Standard) or other acts and standards laws, regulations, ordinances, governmental standards and the like in any countries in which the Licensed Products are manufactured, shipped, stored, and/or sold (collectively, "Local Manufacturing Laws and Standards").

(b) In order to ensure that the Licensed Products meet the above standards, Licensee shall, where appropriate or upon request, prior to the date of first distribution of the Licensed Products, submit to Representative certificates in writing that the Licensed Products conform to the applicable laws and standards. Upon request by Representative, Licensee shall provide specific test data and laboratory reports.

(c) Where applicable, tests on Licensed Products must be performed by a national testing laboratory or an independent laboratory that is nationally approved unless another laboratory is otherwise approved by Licensor. Such testing laboratory or independent laboratory will provide written test reports indicating that the Licensed Products conform to the applicable laws and standards.

(d) Licensee shall use its best efforts to ensure that any and all third party manufacturers of the Licensed Products or any component thereof comply with the applicable Local Manufacturing Laws and Standards. The Local Manufacturing Laws and Standards include, but are not limited to, laws concerning import, export, certificate licenses, quota allocations, country of origin, safety (including fire code rules), employment standards, wages and benefits, and employee health and safety. All manufacturers of the Licensed Products shall comply with Local Manufacturing Laws and Standards concerning working hours and compensation. In countries where there are no such existing Local Manufacturing Laws and Standards, a manufacturer's suitability under this Agreement should be evaluated carefully, taking into account regional and United States standards.

(e) The employment or use by Licensee, or by any third-party manufacturer engaged by Licensee, of children for the manufacture, assembly, or conversion of the Licensed Products, or any component thereof, either directly or indirectly, shall not be permitted.

(f) No manufacturer of the Licensed Products will use forced or prison labor. Manufacturers must maintain a strict policy of employment on a voluntary basis.

#### 9.4 Consumer Response

(a) Licensee shall immediately notify Licensor in writing of any investigation, inquiry, claim or sanction by any governmental authority regarding any quality, labeling, advertising or other regulatory matter relating to the Licensed Products and shall keep Licensor fully advised of the progress and findings of such investigation or inquiry.

(b) If Licensor reasonably determines that any particular Licensed Product does not meet the required standards of quality set forth in Section 7, Licensor shall notify Licensee in writing of such defect (a "Deficiency Notice"), providing Licensee with reasonable detail regarding the deficiency. Upon receipt of such Deficiency Notice, Licensee shall cure such deficiency within thirty days, and shall provide Licensor with evidence of such cure, including samples of such Licensed Product; provided, however, that in the event that any deficiency poses a risk to public health or safety, Licensee shall take all steps necessary to cure the deficiency or otherwise eliminate the risk to public health or safety immediately. If any deficiency is not cured within the applicable time period, Licensee shall cease all use of the Intellectual Property in connection with the production, manufacture, distribution, sale, advertising and promotion of the Licensed Products in issue.

(c) If Licensor reasonably determines that any deficiency is such that any such Licensed Products are subject, or may be subject, to market withdrawal, quarantine, recall or correction based on applicable Food and Drug Administration or other applicable governmental authority guidelines, including good manufacturing practices, Licensee shall immediately implement such withdrawal, recall or correction procedures at Licensee's sole cost and expense and shall coordinate and cooperate with Licensor, including with respect to all press releases and other public relations aspects thereof. If Licensee is otherwise required or determines to withdraw from market, recall or correct any such Licensed Products, Licensee shall give Licensor prior notice of such withdrawal, recall or correction as soon as practicable and the parties shall coordinate and cooperate with each other, including with respect to all press releases and other public relations aspects thereof. Licensor shall be granted complete and immediate access to all sites at which such deficient Licensed Product has been produced or stored.

#### 9.5 Confidentiality.

(a) During and after the Term, the parties shall keep confidential any confidential proprietary information, knowledge or trade secrets ("Information"), such as but not limited to, the terms of this Agreement, marketing and advertising plans, licensing plans, market research data, flavors and flavor components and other information regarding any Food Elements, disclosed by the other party under this Agreement during the course of their mutual relationship. (Notwithstanding the foregoing, the parties may disclose Information to their attorneys, accountants and permitted successors and assigns.) The parties shall not use the Information for any purpose except in furtherance of this Agreement. If either party is uncertain about the status of a particular piece of Information, it shall consult with the other party to determine such status. The obligations of this Section shall not be binding on either party with respect to Information that (i) is already in the possession of the receiving party at the time of disclosure, (ii) is or becomes known to the public generally through no fault or other action of the receiving party, (iii) is obtained lawfully from a third party, directly or indirectly, without breach of an obligation to keep such Information confidential, (iv) is developed by the employees, agents or representatives of the receiving party wholly independently, as a result of its own efforts and without the knowledge or benefit of the Information received under this Agreement, or (v) is required to be disclosed by law or any court or other judicial entity empowered by law to compel such disclosure (subject to the notice obligations below).

(b) This confidentiality obligation shall cease when and to the extent that the Information becomes generally known to the public other than through the fault or other act or omission of the receiving party. In the event a party is required by law or court order to disclose any Information of the other party, that party shall (i) notify the other party in writing as soon as possible, but in no event less than ten calendar days prior to such disclosure, (ii) cooperate with the other party to preserve the confidentiality of such Information consistent with applicable law, and (iii) use its best efforts to limit any such disclosure to the minimum disclosure necessary to comply with such law or court order.

9.6 Public Statements. Subject to Section 9.5, Licensee shall not make any statements to the press or any media service or distribute or circulate any written release, promotional literature, news story, advertising, publicity or communications of any kind to any party regarding the subject matter of this Agreement, the Licensor, their respective affiliates, employees, programming services, operation, businesses and/or activities, or the Representative without Licensor's prior written approval.

9.7 Insurance. Licensee shall obtain and keep in force, at its own expense, Comprehensive General Liability insurance, including Products Liability coverage, with respect to the Licensed Products, with a thirty day written notice of cancellation provision to Licensor and Representative, from a recognized and responsible insurance company authorized to conduct an insurance business in New York with an A.M. Best Company rating of no less than A-10. Such insurance company shall name Licensor and Representative and each of their respective officers, directors, agents and employees as additional insureds, and provide protection in the amount of coverage not less than ten million dollars \$10,000,000 per occurrence. Licensee shall, within ten days after the Effective Date and before any Licensed Product is distributed or sold under this Agreement, submit to Licensor and Representative a copy of such insurance policy or a copy of a fully paid certificate of insurance therefor. Maintenance of such insurance and performance of Licensee of its obligations under this Agreement shall not relieve Licensee of liability under any of its indemnity under this Agreement. Licensee shall maintain such product liability insurance for a period coextensive with that for which indemnification might be required under the provisions of this Agreement and in no event less than five years beyond termination of this Agreement. Any subcontract manufacturer of Licensed Products for Licensee under this Agreement shall also be required by Licensee to obtain and maintain and keep in force, at its own expense, the same insurance coverage with same named insureds and limits as provided with respect to Licensee in this paragraph.

9.8 Consumer Inquiries. Licensee shall, at no cost to Licensor, promptly and courteously handle all warranty (guarantee) satisfaction, response and compliance and all consumer response relating to any of the Licensed Products. Licensor shall promptly forward to Licensee, for handling, any and all such consumer inquiries that it receives. Licensee shall use commercially reasonable efforts to keep Licensor generally informed of consumer complaints relating to the Licensed Products and their resolution.

#### Warranties and Indemnification

10.1 Licensee Warranties. Licensee represents and warrants as follows:

(a) Licensee is free to enter into and fully perform this Agreement;

(b) All ideas, creations, works, designs, materials and intellectual property furnished by Licensee in connection with each of the Licensed Products and Related Materials will be Licensee's own and original creation (except for matters in the public domain or material which Licensee is fully licensed to use for such purposes);

(c) The Licensed Products and the manufacture, advertisement, distribution and sale thereof under this Agreement will not infringe upon or violate any rights of any third party of any nature whatsoever, including third party patent rights;

(d) The Licensed Products and Related Materials will be of high standards in style, appearance and quality, will be safe for use by consumers, and will comply with all applicable governmental rules, guidelines, safety codes and regulations;

(e) Licensee will not manufacture, advertise, distribute or sell and will not authorize the manufacture, advertising, distribution or sale of the Licensed Products or Related Materials in any manner, at any time or in any place not specifically licensed under this Agreement.

(f) The Licensed Products and Related Materials (i) shall be in all respects noninjurious, (ii) shall not be adulterated or misbranded within the meaning of any applicable laws, rules or regulations of any governmental authority, and (iii) shall not purposely be packaged or sold in damaged containers.

#### 10.2 Licensee Indemnification.

(a) Licensee shall indemnify, defend and hold harmless Licensor (and its parent, subsidiaries, legal representatives, associated and affiliated companies, including each of their respective officers, directors, shareholders, agents and employees) and Representative (and its parent, subsidiaries, associated and affiliated companies, including each of their respective officers, directors, shareholders, agents and employees) from and against all damages, costs, reasonable attorney's fees and expenses based upon or arising out of:

(i) breach of any warranty or representation by Licensee,

(ii) unauthorized use of the Intellectual Property,

(iii) any actual or alleged defect in the Licensed Products or their packaging, whether latent or patent, including failure of said Licensed Products or their packaging, distribution promotion, sale or exploitation to meet any Federal, State or local laws or standards,

(iv) any other actual or alleged unauthorized action of Licensee, including without limitation, a breach of any term of this Agreement, or

(v) violations of any Local Manufacturing Laws and Standards.

(b) Licensor and/or Representative shall provide prompt written notice of any claim and cooperate fully with Licensee. With respect to such claims, Licensor and/or Representative may, at their election, individually or collectively, defend any action, by their own counsel and at Licensee's expense. Licensee will cause its counsel to cooperate fully in the defense of such action. Licensee shall not admit any liability or compromise any suit without Licensor's prior written consent, which Licensor may withhold at its sole discretion. The obligation for indemnification shall survive termination of the Agreement.

10.3. Licensor Warranties. Licensor warrants and represents that it is free to enter into and fully perform the duties and obligations of this Agreement, and that to the best of its knowledge, the use of the Intellectual Property, as authorized under this Agreement, does not infringe the rights of any third party.

10.4 Licensor Indemnification. Licensor shall indemnify, defend and hold harmless Licensee (and its parent, subsidiary, associated and affiliated companies, including each of their respective officers, directors, agents and employees) from and against all damages, costs, reasonable attorney's fees and expenses based upon or arising out of breach of the warranties and representations in Section 10.3 including those solely and strictly related to the Intellectual Property as properly used by Licensee in compliance with this Agreement; provided, however, that (i) prompt written notice is given to Licensor of such claim or suit, (ii) Licensor shall have the option to undertake and conduct the defense and/or settlement of any such claim or suit, (iii) Licensee shall cooperate with Licensor in the defense of any such claim or suit, (iv) Licensee acts to mitigate any damages, and (v) no settlement of any claim or suit may be made without Licensee's prior written consent. If Licensor undertakes the defense of a claim brought against Licensee, Licensor shall not be responsible for attorney's fees, costs and expenses incurred by Licensee after Licensor undertakes the defense of the claim. The obligation for indemnification shall survive termination of the Agreement.

11.1 Termination for Default by Licensee.

(a) Upon the occurrence of any of the following events (each of which is a "Default"), then in addition and without prejudice to any rights that it may have at law, in equity or otherwise, Licensor shall have the right to terminate this Agreement, to delete from this Agreement any elements of the Intellectual Property or any Licensed Products, and/or to require the immediate payment of any Guaranteed Minimum Royalties and Royalty due or to become due under this Agreement if:

(i) Licensee materially defaults in the performance of any of its obligations, representations or warranties provided for in this Agreement;

(ii) Licensee fails to take the necessary steps to ensure that the Licensed Articles are of high quality and are only distributed through the Channels of Distribution and only sold in the Territory;

(iii) any court, arbitration panel, government agency or similar body finds that the Licensed Products manufactured, sold or distributed by Licensee are defective, injurious, or unsafe in any way, manner or form;

(iv) a voluntary petition in bankruptcy is filed by Licensee and is not dismissed within thirty days thereafter, a receiver or trustee of any of Licensee's property is appointed and such appointment is not vacated within forty-five days thereafter, Licensee takes advantage of any insolvency law, Licensee makes an assignment for the benefit of its creditors, or an event of default (declared and not cured) occurs under any effective security agreement, financing statement, equivalent security or lien instrument, or continuation statement entered into by Licensee and a third party (a "Secured Party") covering all or part of the Licensed Products or any inventory thereof that enables such Secured Party to exercise any of its rights and remedies under this Agreement with respect to such Licensed Products. In such event, Licensor appoints Licensee as its bailee for the purposes of this Agreement, including the collection of Royalties under this Agreement. Licensee accepts such appointment. Licensor's Intellectual Property shall be owned by and shall be the exclusive property of Licensor, and no proceeding of the type set forth in this subparagraph shall in any way affect Licensor's right to the same in accordance with this Agreement;

(v) a subcontractor engages in conduct which, if engaged in by Licensee, would entitle Licensor to terminate this Agreement. If reasonably feasible, however, Licensor will endeavor to discuss with Licensee what action Licensee must take or cause to be taken to remedy any damages to Licensor resulting from such subcontractor's conduct. The nature and extent of the action to be taken shall be at Licensor's sole and absolute discretion, except that this Agreement may not be terminated by Licensor unless Licensee has failed to secure the correction of the Default by the subcontractor or obtain assurances to Licensor's satisfaction that appropriate corrective measures are being taken by the subcontractor within thirty days after written notice by Licensor;

(vi) Licensee fails to make any required payment or furnish any required statement, and such failure continues for five business days after written notice of such failure is sent; or

(vii) any assignment, transfer or material change in Licensee in contravention of this Agreement.

(b) Notwithstanding anything to the contrary set forth in this Agreement, Licensee shall maintain Minimum Net Sales Revenue (if applicable) of Licensed Products in each annual period as set forth in Exhibit B. If Licensee fails to maintain the required Minimum Net Sales Revenue as provided in Exhibit B, Licensor shall have the right to terminate this Agreement by written notice delivered to Licensee within 30 days after the end of any annual period in which Licensee shall fail to maintain such required Minimum Net Sales Revenue. Notwithstanding the provisions of the foregoing paragraph, the Licensee may have a one-time option to avoid Licensor's right to terminate the license granted under this Agreement by paying to Licensor, within said 30 day period after notice from Licensor, the difference between the aggregate royalty paid by Licensee during said year and the royalty that would have been paid to the Licensor during said year if Licensee maintained the required Minimum Net Sales Revenue as provided on Exhibit B during said year.

11.2 Notice of Termination and Right of Correction In the event any of the foregoing Defaults occurs, Licensor may give notice of termination. Subject to the provisions of Section.

11.3 and excepting a default in any payment due under this Agreement or any default related to sanction and/or Product quality that must be corrected within five (5) days of receipt of the notice and in the case of payment default can only be corrected by payment, Licensee shall have thirty days after the receipt of notice in which to correct the situation giving rise to the notice, or to assure to Licensor's satisfaction that appropriate corrective measures are being taken. Failing such correction or assurance, this Agreement shall terminate. Nothing contained in provision Section 7 above shall preclude or limit Licensor's rights under this Agreement.

11.3 Exceptions to Right of Correction. Notwithstanding the provisions of Section 11.2, Licensee shall have no right of correction in the event: (i) of willful and material misstatements or discrepancies in Licensee's required records; (b) required statements or payments are late by more than thirty days three or more times in any year during the Term; (c) of the occurrence of the same Default, other than concerning required statements or payments, more than twice during the Term, or during any renewal period; or (d) of termination under Sections 11.1(c) or (f).

#### 11.4 Post-Termination/Expiration Obligations

(a) Delivery of Final Statement. Licensee shall within thirty days after any termination or the expiration of this Agreement, deliver to Licensor a final statement certifying the number and description of Licensed Products on hand or in process of manufacture and make all payments due Licensor. Licensor shall also have the right to conduct a physical inventory in order to ascertain such inventory or verify such statement. There shall be no right of disposal of Licensed Products in the event of termination.

(b) Payment. If this Agreement is terminated by Licensor for Default by Licensee, any and all payments then or later due from Licensee, including all prospective Guaranteed Minimum Royalties due for the full Term during which the termination takes place, but not including any CMF payments relating to years or parts of years after termination, shall then be accelerated and immediately due and payable to Licensor, less any Royalties or Advances already paid, and no portion of any prior payments shall be repayable to Licensee. Notwithstanding the foregoing, upon termination of this Agreement for failure to meet Minimum Net Sales Revenue, Licensee shall only be required to pay Guaranteed Minimum Royalties due within the twelve month period following the date of the termination.

(c) Delivery of Intellectual Property Materials. Upon any termination or the expiration of this Agreement, all labels, signs, packages, wrappers, cartons, circulars, advertisements and other items bearing or containing any reproduction or representation of any of the Intellectual Property shall automatically and without cost to Licensor become the property of Licensor, and Licensee shall immediately deliver the same to Licensor's place of business or any other location designated by Licensor. The reasonable cost of such delivery shall be paid by Licensor. Such inventory shall, at Licensor's option, be destroyed by Licensee (in which event a certificate of destruction, certified by an officer of Licensee, shall be delivered to Licensor), or purchased by Licensor at Licensee's cost of manufacture. Disposition of any plates, molds, forms, lithographs and other material relating thereto then remaining on hand shall be subject to written instructions from Licensor to Licensee either to destroy or to deliver same to Licensor or its designee. In the event that Licensor requests Licensee to destroy the Licensed Intellectual Property or Related Materials, Licensor may require Licensee to deliver to Licensor an affidavit by an officer of Licensee, attesting to such destruction in such form as Licensor may in its sole discretion require. Notwithstanding anything to the contrary set forth above, all such packaging materials bearing information identifying Licensee as the manufacturer, supplier or distributor of the Licensed Products, including without limitation UPC numbers or bar codes of Licensee, shall be destroyed by Licensee and shall not become the property of Licensor, provided that Licensee shall in such event deliver to Licensor an affidavit by an officer of Licensee attesting to such destruction in such form as Licensor may in its sole discretion require.

(d) Infringement Prohibited. Upon any termination or the expiration of this Agreement, Licensee shall not directly or indirectly (and shall not assist a third party to) manufacture, advertise, distribute or sell the Licensed Products containing or including the Intellectual Property or any product that infringes upon Licensor' proprietary rights, or use any name, logo or design that is confusingly similar to Licensor's trademarks on any product in any place whatsoever. Licensee acknowledges that (i) any unauthorized use of the Intellectual Property shall be deemed an infringement, and (ii) such unauthorized use would cause irreparable harm for which monetary damages are insufficient and therefore Licensor shall be entitled to injunctive relief.

(e) Delivery of Customer and Contractor Lists. Upon any termination or the expiration of this Agreement, Licensee shall promptly deliver to Licensor a copy of the most recent lists of all accounts to which it sells Licensed Products and a list of all subcontractors or manufacturers of Licensee.

(f) Disposal Rights upon Expiration. Upon expiration of this Agreement, provided that Licensee is not in default or has cured such default in accordance with the terms of the Agreement, Licensee may continue to use up and sell any Licensed Products previously manufactured and approved by Licensor under Section 7, and on hand or in process of production on a nonexclusive basis for ninety days (the "Sell-Off Period") after expiration in accordance with all of the terms and conditions contained in this Agreement, provided that Licensee does not manufacture any Licensed Products during the Sell-Off Period except that Licensee may be permitted to manufacture the Licensed Products required to fulfill existing orders within the Sell-Off Period. It is understood that Royalties are owed for Licensed Products sold during the Sell-Off Period, and a final report and payment is due thirty days after the close of such period. Any Royalties earned during the Sell-Off Period may not be applied to any Guaranteed Minimum Royalties, such amount being due at the time of termination or expiration. After the Sell-Off Period has expired, all remaining inventory shall, at Licensor's option, be destroyed by Licensee or purchased by Licensor at Licensee's cost of manufacture. Disposition of any plates, molds, forms, lithographs and other material relating thereto then remaining on hand shall be subject to written instructions from Licensor to Licensee either to destroy or to deliver same to Licensor or its designee. In the event that Licensor requests Licensee to destroy the Licensed Products or Related Materials relating to them, Licensor may require Licensee to deliver to Licensor an affidavit by an officer of Licensee, attesting to such destruction in such form as Licensor may in its sole discretion require. Notwithstanding the foregoing, the Sell-Off Period shall not apply in the event of termination of this Agreement by Licensor under Sections 11.1 (c) or (f). Any right of disposal by Licensee shall not prohibit Licensor from granting rights to others to use the Intellectual Property on Licensed Products during the Sell-Off Period, provided that distribution of such Licensed Products does not take effect until after the Sell-Off Period has ended.

(g) Nothing in this Section shall be construed to limit Licensor's rights or remedies.

**11.5 Termination Due To Cessation of Sales of Licensor's Primary Product(s)** If Licensor discontinues the sale in the Territory during the Term one or more of its own primary branded products and/or key products using any Food Elements, it may at its option also terminate this Agreement or that portion of it that relates to the terminated branded product of Licensor or the Food Element. If it does so, Licensee may continue to complete manufacturing in process and deplete existing inventory of Licensed Products in accordance with average quantities sold during the Term. In either event, (i) the parties shall come to a mutually acceptable resolution regarding a reasonable date for the prompt cessation of Licensee's sales of those Licensed Products displaying the relevant brand(s) (or any flavor or other variation thereof) within the relevant Territory, (ii) to the extent affected, Licensee shall be entitled to the proportional waiver of Licensee's obligation to pay any future guarantees, to meet any relevant shipment guarantees or any other obligations for the period after date of cessation; and (iii) to the extent affected, Licensee shall be entitled to the refund of any unearned Advance or Guaranteed Minimum Royalties. Licensee shall have no other recourse against Licensor in this event.

#### Assignment

12. The license and all rights and obligations granted by this Agreement are personal to Licensee and may not be sublicensed, assigned, transferred, delegated, pledged, mortgaged or otherwise encumbered by Licensee in whole or in part without Licensor's prior written consent, which may be withheld at Licensor's sole discretion. Any transfer in violation of this provision shall be without force and effect. In addition, Licensor shall have the right to terminate this Agreement if there is any material change in the ownership or controlling interest of Licensee, its parent or subsidiaries. "Material change" with respect to "ownership or controlling interest" shall mean a sale or other transfer of more than ten percent (10%) of the stock or assets of Licensee to any third party other than a current disclosed shareholder of Licensee or a subsidiary or affiliate of Licensee, unless such sale or transfer is approved in writing by Licensor in its sole discretion. With notice to Licensee but without consent of Licensee, Licensor may freely assign or delegate any or all of its rights and/or obligations under this Agreement. If assigned as permitted under this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

#### Noncompetition

13. During and for two (2) years after the Term, Licensee shall not enter into an agreement or otherwise produce and/or distribute products under any other brands (with the exception of Licensed Product co-branded with retail stores) that are competitive with Licensor's brands set forth in Exhibit D which is attached hereto and incorporated by reference herein. Breach of this provision by Licensee will give Licensor the right to immediately terminate this Agreement upon written notice to Licensee.

#### Notices

14. All notices and other communications which either party is required or may desire to give to the other, except for payments and statements which shall be sent to the party designated by Licensor (i.e. Representative), shall be given by addressing the same to the other with a copy to Representative at the address set forth in this paragraph, or at such other address as may be designated in writing by any party in a notice to the other given in the manner prescribed in this paragraph. All such notices shall be deemed given when sent so addressed by certified or registered mail, postage prepaid or by hand delivery, with proof of receipt, or by a reputable express delivery company which requires proof of receipt, such as, but not limited to, Federal Express, UPS, DHL, USPS or Airborne. The addresses to which the foregoing shall be given are the following:

If to Licensor

Entenmann's Products, Inc.  
c/o Weston Foods, Inc.  
255 Business Center Drive  
Horsham, Pennsylvania 19044  
Attention: General Counsel

If to Licensee:

COFFEE HOLDING COMPANY, INC.  
4401 1st Avenue  
Brooklyn, NY 11232  
Attention: Mr. Andrew Gordon

with a copy to:

The Joester Loria Group, LLC  
860 Broadway, Third Floor,  
New York, New York 10003  
Attention: President

Miscellaneous

15.1 Remedy For Breach. A breach by Licensee (other than payment obligations) of any of the covenants, agreements or undertakings under this Agreement will cause Licensor irreparable injury that cannot be readily remedied in damages or solely by termination of this Agreement. Licensor, in addition to all other legal and equitable remedies including costs and reasonable attorneys' fees, shall have the right of injunction for any breach of this Agreement by Licensee.

15.2 Relationship Between Licensor and Licensee. Nothing in this Agreement shall create, be deemed to create or be construed as creating any partnership, employer-employee, franchise, joint venture, or agency relationship between the parties or shall be deemed to render Licensor (or its Representative)s liable for any of the debts or obligations of Licensee. Licensee shall in no way be considered an agent or representative of Licensor in any dealings which Licensee may have with any third party and neither of the parties nor any of their employees or agents shall have the power or authority to bind or obligate the other party.

15.3 Survival of Provisions. The expiration or termination of this Agreement shall not affect those provisions, and the rights and obligations in them, set forth in this Agreement which either (i) by their terms state, or evidence the intent of the parties, that the provisions survive the expiration or termination of the Agreement, or (b) must survive to give effect to the provisions of this Agreement.

15.4 Effectiveness and Entirety of Agreement; Amendment. The submission of this form of license agreement for examination and/or execution does not constitute an option and shall vest no right in either party. No rights of any kind to use the Intellectual Property shall vest in Licensee, and Licensor shall have no obligations to Licensee under this Agreement, unless and until (i) this Agreement has been executed by an authorized signatory of each party and (ii) the Advance payment has been paid in full. Licensee acknowledges that drafts of this Agreement and any oral negotiations preceding its execution are merely a proposal by Licensee to acquire a license, which Licensor is not obligated to consider or accept until the foregoing conditions are met. Once properly executed by authorized signatories of each party, this Agreement constitutes and contains the entire agreement of the parties relating to the subject matter of this Agreement, and no oral or written statements, representations, documents, promises or any other prior materials not embodied in it shall be of any force or effect. This Agreement cannot be amended, altered or modified except by a written instrument executed by both parties. Once so executed, such amendments shall become an integral part of this Agreement, subject to all its terms and conditions and shall have full force and effect.

15.5 No Waiver. The failure or delay of Licensor to exercise its rights under this Agreement or to complain of any act, omission or default on the part of Licensee, no matter how long the same may continue, or to insist upon a strict performance of any of the terms or provisions herein, shall not be deemed or construed to be a waiver by Licensor of its rights under this Agreement or a waiver of any subsequent breach or default of the terms or provisions of this Agreement.

15.6 Invalidity. If this Agreement is subject to the approval of any government or government agency or similar entity, and such approval is not obtained, or is obtained but later revoked, it is understood and agreed to by the parties that this Agreement is immediately rendered null and void and terminated (except with respect to any valid outstanding payment obligations and all obligations of confidentiality), with neither party liable for any resultant damages, costs or expenses of the other. But for the foregoing, if any term, covenant, condition or provision of this Agreement or the application thereof to any person, entity or circumstance, shall to any extent be held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement, or application of such term or provision to a person, entity or circumstance other than to those as to which it is held invalid, illegal or unenforceable, shall not be affected thereby, and each term, covenant, condition or provision of this Agreement shall be valid and shall be enforced to the fullest extent provided by law. In such case, the parties will immediately negotiate in good faith provision(s) with comparable terms and obligations to that stricken but that corrects the defect that led to the holding of invalidity, illegality or unenforceability.

15.7 Construction. This Agreement shall be governed by and construed in accordance with the federal trademark statute and the laws of the State of New York of the United States of America without regard to its conflicts of laws principles; and the Courts of the State of New York and/or the federal courts in New York shall have sole and exclusive jurisdiction over all disputes arising out of this Agreement.

15.8 Headings. The headings as to contents of particular provisions in this Agreement are inserted only for convenience and are in no way to be construed as part of this Agreement or as a modification of the scope of any terms or provisions of this Agreement.

15.9 Force Majeure. In the event of a force majeure event (i.e., act of God, war, natural disaster, strike or boycott) that prevents or hinders performance under this Agreement, no default or liability for noncompliance occasioned by such event during the continuance thereof shall exist or arise; provided that, the prevented or hindered party resumes full performance under this Agreement promptly upon the cessation of the force majeure event; and provided further, that the other party shall have the right to terminate the Agreement with no further obligation if the force majeure event continues for a period in excess of two months.

15.10 Miscellaneous. This Agreement is the result of negotiation, and all parties had opportunity to involve legal counsel. Therefore, there is no presumption against the drafter with respect to interpretation of any of the provisions. If this Agreement is executed by more than one person as Licensee, any liability on the part of such persons shall be joint and several.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**ENTENMANN'S PRODUCTS, INC.**

By: /s/ \_\_\_\_\_

Name:

Title:

Date:

**COFFEE HOLDING COMPANY, INC.**

By: /s/ Andrew Gordon \_\_\_\_\_

Name: Andrew Gordon

Title: President & Chief Executive Officer

Date:

**EXHIBIT A**

**Intellectual Property**

ENTENMANN'S

## EXHIBIT B

### Terms

#### Licensed Products:

ENTENMANN'S® brand ground and whole bean coffee. Estimated retail price \$1.99 to \$3.99 (per 11.5 to 12 oz.).

**Territory:** United States of America, its territories and possessions including United States Military Exchanges worldwide

#### Channels of Distribution:

Supermarkets  
Grocery Stores  
Membership clubs  
Specialty stores  
Vending machines

**Royalties:** 5% of Net Sales

Notwithstanding the foregoing, 20% of gross sales of all Licensed Products bearing the Intellectual Property that have not been approved pursuant to the Agreement; of gross sales outside the Territory without Licensor's prior approval and of gross sales outside the Channels of Distribution specifically allowed herein. Such royalties may not be credited toward Minimum Guaranteed Royalty Payments due herein.

The parties agree that:

- (1) distribution of Licensed Products bearing the Intellectual Property that have not been approved by Licensor pursuant to the Agreement and distribution of Licensed Products bearing the Intellectual Property outside the Territory or outside the Channels of Distribution specifically granted under this Agreement is a material violation of the Agreement and subject to termination under Paragraph 10 hereof;
- (2) even if the increased royalty is reported and/or paid, such Licensed Products are still deemed unauthorized use of the Intellectual Property and therefore, Licensee remains responsible for the indemnification and defense of third party claims, as set forth in Paragraph 9.7 herein; and
- (3) the increased royalty payable on unauthorized sales shall not limit Licensor's rights and remedies for damages.

**Marketing/Advertising:**

Licensee agrees to spend no less than three percent (3%) of total annual Net Sales or total annual Minimum Net Sales Revenue, whichever is greater, each contract year in accordance with the terms specified in Section 5.3 herein.

**Advance:** \$75,000.00 to be paid upon execution of this Agreement.

**Guaranteed Minimum Royalties (including Advance):** \$300,000.00 to be paid as follows:

<b>DUE DATES:</b>	<b>AMOUNTS:</b>	<b>REMARKS:</b>
Due Upon Signing	\$ 75,000.00	Advance
Due on or before July 30, 2008	\$ 25,000.00	Guarantee
Due on or before January 30, 2009	\$ 50,000.00	Guarantee
Due on or before July 30, 2009	\$ 50,000.00	Guarantee
Due on or before January 30, 2010	\$ 50,000.00	Guarantee
Due on or before July 30, 2010	\$ 50,000.00	Guarantee

**Minimum Sales Revenue (annual):**

Licensee shall achieve Minimum Net Sales Revenue for the Licensed Products during the Term of this Agreement as follows:

\$2,000,000.00	Contract Year 1: 04/01/2007 - 12/31/2008
\$2,000,000.00	Contract Year 2: 01/01/2009 - 12/31/2009
\$2,000,000.00	Contract Year 3: 01/01/2010 - 12/31/2010

**EXHIBIT C**

**ROYALTY STATEMENT**

Quarter Ending \_\_\_\_\_

<b>Licensee Name:</b>	<b>COFFEE HOLDING COMPANY, INC.</b>
<b>Licensed Intellectual Property:</b>	<b>ENTENMANN'S</b>
<b>Contract Ref.#:</b>	<b>17065</b>
<b>Date:</b>	

<b>Customer Name (Retailer)</b>	<b>Product Description</b>	<b>Wholesale price per Unit</b>	<b>FOB or other price* per unit</b>	<b>Quantity Shipped</b>	<b>Discount Allowance (if contractually allowed) Please specify</b>	<b>Returns (if contractually allowed)</b>	<b>Sales Total (as defined in contract)</b>

**TOTAL SALES REVENUE**  
**ROYALTY RATE %**

Royalty reporting due each quarter even if sales are zero.

Send check and applicable statement to:

**The Joester Loria Group**  
860 Broadway, 3<sup>rd</sup> Floor  
New York, NY 10003

**GROSS ROYALTIES \$**

**LESS UNEARNED  
ADVANCE/GUARANTEES  
(IF APPLICABLE)  
ROYALTY DUE**

<input checked="" type="checkbox"/>
(      )

EXHIBIT D

**BRAND**

ARCHWAY  
BIMBO  
BLUE BIRD  
CINNABON  
CLOVERHILL BAKERIES  
DANISH KITCHENS DOLLY  
MADISON BAKERY  
DRAKE'S  
DUNKIN DONUTS  
DUTCH MAID  
FAMOUS AMOS  
FLOWERS/MRS. FRESHLEY  
GRANDMA'S COOKIES  
HEINEMANN'S  
HOSTESS  
INTERSTATE  
JOEY'S KRISPY  
KREME LADY  
LINDA  
LIL' DUTCH MAID  
LITTLE DEBBIE  
LU  
MARINELA  
MCKEE FOODS  
MERITA  
MOTHER'S  
MRS. FIELDS  
MURRAY  
NELLIE DUNCAN  
NEMO'S  
OTIS SPUNKMEYER  
PANERA CAFÉ  
PEAK FREANS SARA  
LEE  
STELLA D'ORO  
SVENHARD'S  
TABLE TALK  
TASTYKAKE  
UNCLE WALLY'S  
VOORTMAN

**FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT**

Agreement dated July 23, 2010 between Sterling National Bank, a national banking association having an address at 500 Seventh Avenue, New York, New York 10018 ("Secured Party") and Coffee Holding Co., Inc. a Nevada corporation and Organic Products Trading Company LLC, a Delaware limited liability company with its principal and executive offices located at 3475 Victory Boulevard, Staten Island, New York 10314 ("Debtor").

**RECITALS**

1. Debtor and Secured Party have entered into a Loan and Security Agreement February 17, 2009 (the "Security Agreement"), as modified by that certain Loan Modification Agreement dated July 22, 2010 (the "Loan Modification Amendment," and together with the Loan and Security Agreement, the "Security Documents"). All capitalized terms used in this Amendment and not defined in this Amendment shall have the meanings ascribed to them in the Loan and Security Agreement.

2. Pursuant to the Security Documents, Debtor has obtained loans and advances from Secured Party from time to time.

3. Debtor desires to continue to obtain such loans from Secured Party and Secured Party is willing to continue to make such loans.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings hereinafter set forth, it is hereby agreed, by and between parties hereto, as follows:

**AGREEMENT**

1. Paragraph 6.4.5, is hereby amended to state that Debtor, Coffee Holding Co., Inc., shall be permitted to declare and pay a quarterly dividend of not more than 3 cents per share per quarter.

2. Except as set forth herein, all terms and provisions of the Security Documents shall remain unchanged.

**COFFEE HOLDING CO., INC.**

By:   
Name: Andrew Gordon  
Title: President

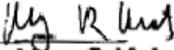
**ORGANIC PRODUCTS TRADING  
COMPANY LLC**

By:   
Name: Andrew Gordon  
Title: Manager

um 10-2

ACCEPTED on July 23, 2010

**STERLING NATIONAL BANK**

By:   
Name: Murray R. Markowitz  
Title: First Vice President

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## Coffee Holding Co., Inc. and Subsidiary

## Computation of Per Share Earnings (Loss)

	Years Ended October 31,	
	2010	2009
Net income (loss)	\$ <u>2,389,361</u>	\$ <u>3,291,066</u>
<b>BASIC EARNINGS (LOSS):</b>		
Weighted average number of common shares outstanding	<u>5,463,837</u>	<u>5,441,462</u>
Basic earnings (loss) per common share	\$ <u>.44</u>	\$ <u>.60</u>
<b>DILUTED EARNINGS (LOSS):</b>		
Weighted average number of common shares outstanding	<u>5,463,837</u>	<u>5,441,462</u>
Contingent shares – common stock equivalents	<u>10,000</u>	<u>-</u>
Weighted average number of common shares outstanding – as adjusted	<u>5,468,439</u>	<u>5,441,462</u>
Diluted earnings (loss) per common share	\$ <u>.44</u>	\$ <u>.60</u>

## CERTIFICATION

I, Andrew Gordon, certify that:

1. I have reviewed this annual report on Form 10-K for the period ended October 31, 2010 of Coffee Holding Co., 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. I am 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 my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal controls over financial reporting, or caused such internal control over financial reporting to be designed under my 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 my 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 period covered by the quarterly report that has materially affected, or is reasonably likely to materially affect, the registrant internal control over financial reporting; and
5. I have disclosed, based on my 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: January 31, 2011

/s/ Andrew Gordon

\_\_\_\_\_  
Andrew Gordon  
President, Chief Executive Officer and Chief Financial  
Officer  
(Principal Executive and Accounting Officer)

**STATEMENT FURNISHED PURSUANT TO SECTION 906 OF THE  
SARBANES-OXLEY ACT OF 2002, 18 U.S.C. SECTION 1350**

The undersigned, Andrew Gordon, is the President, Chief Executive Officer and Chief Financial Officer of Coffee Holding Co., Inc. (the "Company").

This statement is being furnished in connection with the filing by the Company of the Company's Annual Report on Form 10-K for the period ended October 31, 2010 (the "Report").

By execution of this statement, I certify that:

- A) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- B) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods covered by the Report.

This statement is authorized to be attached as an exhibit to the Report so that this statement will accompany the Report at such time as the Report is filed with the Securities and Exchange Commission, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350. It is not intended that this statement be deemed to be filed for purposes of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 has been provided to Coffee Holding Co., Inc. and will be retained by Coffee Holding Co., Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Date: January 31, 2011

/s/ Andrew Gordon

\_\_\_\_\_  
Andrew Gordon  
President, Chief Executive Officer and Chief Financial  
Officer  
(Principal Executive and Accounting Officer)