

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 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, 2024**

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:

Trading Symbol

Name of each exchange on which registered:

**Common Stock, Par Value \$0.001 Per Share**

**JVA**

**NASDAQ Capital Market**

Securities registered under Section 12(g) 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 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 such files). Yes  No

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller Reporting Company

Emerging Growth Company

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

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

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

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

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

The aggregate market value of the 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 April 30, 2024, was \$8,185,554.

As of January 22, 2025, the registrant had 5,708,599 shares of common stock, par value \$0.001 per share, outstanding.

**Documents incorporated by reference**

None.

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## PART I

### ITEM 1. BUSINESS

#### General Overview

**Products and Operations.** We are an integrated wholesale coffee roaster and dealer located 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 eight 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 certain countries in Asia to supermarkets, wholesalers, and individually owned and multi-unit retail customers. Our unprocessed green coffee, which includes over 90 specialty coffee offerings, is primarily sold to specialty gourmet roasters in the United States, Canada and multiple international countries.

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 almost 50 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 incorporated on October 9, 1995 under the laws of the State of Nevada under the name Transpacific International Group Corp (“Transpacific”). On April 16, 1998, Transpacific completed a merger with Coffee Holding Co., Inc., a New York corporation. Upon the consummation of the merger, Coffee Holding Co., Inc. was merged into Transpacific and Transpacific changed its name to Coffee Holding Co., Inc.

In June 2016, we acquired substantially all of the assets of Coffee Kinetics LLC (doing business as Sonofresco) through our wholly-owned subsidiary Sonofresco, LLC (“Sonofresco” or “SONO”), including equipment, inventory, customer lists, relationships and accounts payable. In addition to our wholesale green coffee, private label coffee and branded coffee product offerings, we currently sell tabletop coffee roasting equipment to our customers through Sonofresco.

On February 23, 2017, we purchased all the outstanding common stock of Comfort Foods, Inc. (“CFI”). CFI is a medium sized regional roaster, manufacturing both branded and private label coffee for retail and foodservice customers located predominantly in the northeast United States marketplace.

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). On our website, investors can obtain, free of charge, a copy of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Code of Conduct and Business Ethics, including disclosure related to any amendments or waivers thereto, other reports and any amendments thereto filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after we file such material electronically with, or furnish it to, the Securities and Exchange Commission, or the SEC. None of the information posted on our website is incorporated by reference into this Annual Report. The SEC also maintains a website at <https://www.sec.gov> that contains reports, proxy and information statements and other information regarding us and other companies that file materials with the SEC electronically.

All references in this Annual Report to “JVA,” the “Company,” “Coffee Holding,” “we,” “us,” or “our” mean Coffee Holding Co., Inc. and its subsidiaries unless stated otherwise or the context otherwise indicates.

#### Recent Developments

On November 11, 2024, the Company purchased all of the assets of Empire Coffee Company (“Empire Coffee”) for \$825,000 in a Uniform Commercial Code (“UCC”) Chapter 9 sale (the “Second Empire acquisition”). The assets purchased consisted of accounts receivable, inventory, equipment, the customer list and all intellectual property. To facilitate the purchase, Coffee Holding created a new wholly owned subsidiary named Second Empire, LLC (“Second Empire”). Operations will be conducted by Second Empire. The operations of Second Empire will include roasting and packing for current Coffee Holding customers as well as customers of Empire Coffee.

In connection with this transaction, the Company entered into a four-year lease with 21 Grace Church Street Realty LLC for the existing property at 21 Grace Church Street, Port Chester, NY 10573 where Empire Coffee had its offices and production facility.

## Our Competitive Strengths

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

**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;
- Single cup coffee pods;
- Food service;
- Instant coffees;
- Tea; and
- Tabletop coffee roasting equipment.

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. We are a charter member of the Specialty Coffee Association of America and one of the largest distributors of Swiss Water Processed Decaffeinated Coffees and Dattera specialty Brazil coffees in the United States. Our almost 50 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 eight proprietary name brands that are 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 and flavored coffees. In addition, we have entered into a licensing agreement with Del Monte Corporation for the exclusive right to use the S&W trademark 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. Our existing portfolio of differentiated brands combined with our management expertise serve as a platform for us 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.** Andrew Gordon, our President, Chief Executive Officer, Chief Financial Officer and Treasurer, and David Gordon, our Executive Vice President – Operations, have worked with Coffee Holding for 43 and 45 years, respectively. During this period, the Company has successfully navigated varying cycles in both the coffee industry and macro economy. 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, increasing penetration with existing customers by adding new products, developing our Harmony Bay brand and increasing the number of our wholesale green coffee customers. 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 have expanded our operations by acquiring coffee companies, entering into strategic alliances and acquiring or licensing brands, which complement our business objectives. We intend to continue to seek such opportunities.

**Grow Our Cafe Caribe and Cafe Supremo Products.** We believe the Latin 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 Latin 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, Latin consumers. Café Supremo is a specialty espresso coffee which is priced for the more price sensitive Latin 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:

- New licensing agreements;
- Specialty blends and foodservice opportunities; and
- Sales of our tabletop coffee roasting equipment.

### **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, medium 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 eight proprietary and licensed brand names in different segments of the market.

**Wholesale Green Coffee.** The specialty coffee market remains 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 approximately 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 and without venturing into the highly competitive retail specialty coffee environment. We believe that by utilizing our current strategy we can be as profitable as, 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. 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 North Andover, Massachusetts. 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 brand names 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**, a specialty espresso coffee that targets espresso coffee drinkers and, in particular, the Latin consumer market;

**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;

**S&W**, 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**, 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;

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

**Premier Roasters**, a line of high-quality Arabica coffees packed in composite cans and poly bags and single serve;

**Harmony Bay**, an upscale line of flavored beans in 11oz and 40oz bags, along with single serve offerings in a multitude of unique flavor profiles; and

**Café Femenino Coffee**, coffee beans produced from around the world from 100% women-owned coffee cooperative.

## Other Products

We also offer several niche products, including:

- tea; and
- table-top coffee roasters and grinders.

## 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 \$0.9270 to \$3.4835. The price for coffee beans on the commodities market as of October 31, 2024, and 2023 was \$2.46 and \$1.673 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 North Andover plant that is operated by our Comfort Foods division 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. 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 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, currency fluctuations and economics within the countries that export coffee. 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

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, and intend to continue to use in a limited capacity, short-term coffee futures and options contracts primarily for the purpose of partially hedging the effects of changing green coffee prices and to reduce our costs of sales. In addition, we acquired, and expect to continue to acquire, futures contracts with longer terms, generally three to four months, primarily 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 our cost of sales. Gains on options and futures contracts reduce our cost of sales and losses on options and futures contracts increase our cost of sales. The use of these derivative financial instruments has generally enabled us to mitigate the effect of changing prices. We believe that, in normal economic times, our hedging policies remain a vital element of 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 trying to minimize margin compression during a time of high coffee prices. However, no strategy can entirely eliminate pricing risks and we generally remain exposed to losses 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 in any one of our physical contracts. Although we have had net gains on options and futures contracts in the past, we have incurred significant losses on options and futures contracts during some reporting periods. In these cases, our cost of sales has increased, resulting in a decrease in our profitability or increase our losses. Such losses have and could in the future materially increase our cost of sales and materially decrease our profitability and adversely affect our stock price. See “Item 1A – Risk Factors - 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.” Failure to properly design and implement an effective hedging strategy may materially adversely affect our business and operating results. 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 or increased losses. As previously announced, as a result of the volatile nature of the commodities markets, we have and are continuing to scale back our use of hedging and short-term trading of coffee futures and options contracts, and intend to continue to use these practices in a limited capacity going forward. See “Quantitative and Qualitative Disclosures About Market Risk—Commodity Price Risks.”

## **Trademarks and Tradename**

We hold trademarks, registered with the United States Patent and Trademark Office, for all eight of our proprietary coffee brands and an exclusive license for S&W 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.

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 generally enabled us to mitigate the effect of changing prices, no strategy can entirely eliminate pricing risks or increased losses and we generally remain exposed to losses 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. See “Our Use of Derivatives.”

## **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 preferences for upscale canned, bagged and single cup coffees.

We evaluate opportunities for growth consistent with our business objectives. In addition, 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, and in Canada. We utilize our in-house sales personnel to market our private label brands. 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 tea and our own brands, filter packages and peripheral products.

## Charitable Activities

We are also a supporter of several coffee-oriented charitable organizations and during fiscal years 2024 and 2023, we donated approximately \$55,000 and \$24,000, respectively, to charities.

- For over 20 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 a licensed Fair Trade dealer of 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. It guarantees farmers a minimum price of \$1.40 per pound or fifteen cents above the current market price.

## 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 over 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 Organic Products Trading Company, LLC (“OPTCO”), Sonofresco, CFI as well as our external green coffee salespeople allows us to compete more effectively throughout the country and Canada.

**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 Massimo Zanetti Beverage Company. The Massimo Zanetti Beverage Company 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.

**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 two large companies: Kraft Foods, Inc. (owner of the Maxwell House brand), and J.M. Smucker Co. (owner of the Folgers and Café Bustelo brands). 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 and Café Supremo brands are competitive in the fast-growing Latin demographic, our Harmony Bay has a strong regional presence in the northeast and our S&W brand has been a recognizable brand on the west coast for over 80 years.

## 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 92 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 Annual 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.

### Risks 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.

***Adverse global conditions, including economic uncertainty, may negatively impact our financial results.***

Global conditions, dislocations in the financial markets, any negative financial impacts affecting United States corporations operating on a global basis as a result of tax reform or changes to existing trade agreements or tax conventions, or inflation, could adversely impact our business in a number of ways, including longer sales cycles, lower prices for our products, reduced licensing renewals, customer disruption or foreign currency fluctuations.

In addition, the global macroeconomic environment could be negatively affected by, among other things, the COVID-19 pandemic or other epidemics, instability in global economic markets, increased U.S. trade tariffs and trade disputes with other countries, instability in the global credit markets, supply chain weaknesses, instability in the geopolitical environment as a result of the withdrawal of the United Kingdom from the European Union, the Russian invasion of Ukraine and the resulting prolonged conflict and other political tensions, and foreign governmental debt concerns. Such challenges have caused, and may continue to cause, uncertainty and instability in local economies and in global financial markets.

***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, the 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. We have used and expect to continue to use to a lesser extent short-term coffee futures and options contracts for the purpose of hedging the effects of changing green coffee prices. In addition, we have acquired and expect to continue to acquire to a lesser extent 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 our cost of sales. Gains on options and futures contracts reduce our cost of sales and losses on options and futures contracts increase our cost of sales.

The use of these derivative financial instruments has generally enabled us to mitigate the effect of changing prices. However, no strategy can entirely eliminate pricing risks and we generally remain exposed to losses 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 in any one of our physical contracts. Historically, we generally have been able to pass green coffee price increases through to customers, thereby maintaining our gross profits, however, we may not be able to pass price increases through to our customers in the future. Failure to properly design and implement an effective hedging strategy may materially adversely affect our business and operating results. If the hedges that we enter do not adequately offset the risks of coffee bean price volatility or our hedging results in losses, our cost of sales may increase, resulting in a decrease in profitability or an increase in losses. Although we have had net gains on options and futures contracts in the past, we have incurred losses on options and futures contracts during some reporting periods. In these cases, our cost of sales has increased, resulting in a decrease in our profitability or an increase in losses. Such losses have and could in the future materially increase our cost of sales and materially decrease our profitability or increase losses and adversely affect our stock price.

***Any inability to successfully implement our strategy of growth through selective acquisitions, licensing arrangements and other strategic alliances, including joint ventures, 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 including joint ventures, 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;
- the incurrence of additional debt;
- restructuring charges; and
- the recognition of significant charges for depreciation and amortization related to intangible assets.

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. In addition, if these acquisitions, licensing opportunities or strategic alliances are not successful, our earnings could be materially adversely affected by increased expenses and decreased revenues.

***Our revenues and profitability could be adversely affected if our joint ventures or acquisitions are not successful.***

We have historically utilized joint ventures and acquisitions to grow our business and we intend to continue to seek opportunities for new joint ventures and acquisitions that will be complimentary to our business. While we believe that our joint ventures will be successful, losses in our joint ventures or any future joint ventures 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 also 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.

Acquisitions including strategic investments or alliances entail numerous risks, which may include:

- difficulties in integrating acquired operations or products, including the loss of key employees from, or customers of, acquired businesses;
- diversion of management's attention from our existing businesses;
- adverse effects on existing business relationships with suppliers and customers;
- adverse impacts of margin and product cost structures different from those of our current mix of business; and
- risks of entering distribution channels, categories or markets in which we have limited or no prior experience.

Our failure to successfully complete the integration of any acquired business, and any adverse consequences associated with our acquisition activities, could have a material adverse effect on our business, financial condition and operating results.

***The loss of any of our key customers, could negatively affect our revenues and decrease our earnings.***

We had one customer that accounted for greater than 10% of our net sales during our 2024 fiscal year. We generally do not enter long-term contracts with most of our customers. Accordingly, some of 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 any of our 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.

***Our indebtedness may adversely affect our ability to obtain additional funds and may increase our vulnerability to economic or business downturns.***

From time to time, we utilize borrowings under our credit facility in connection with operations. All amounts under this line of credit will become due on June 30, 2025. There is no assurance that it will be renewed. Outstanding debt could have significant negative consequences to the holders of our securities, including the following:

- a portion of our cash flow from operations will be needed to pay debt service and will not be available to fund future operations;
- having increased vulnerability to adverse general economic and coffee industry conditions;
- we may be vulnerable to higher interest rates because interest expense on borrowings under our revolving line of credit is based on variable rates; and
- we may be subject to covenants that could restrict our operations.

Our ability to make payments on our indebtedness and to fund our operations depends on our ability to generate cash in the future. Our future operating performance is subject to market conditions and business factors that are beyond our control. If we are unable to make payments on our debt, we may have to reduce or delay capital expenditures, sell assets, seek additional capital or restructure or refinance our debt.

There can be no assurance that we will be able to extend our line of credit or complete any financing transaction in a timely manner or on acceptable terms or otherwise. If we are not successful to extend our line of credit or to raise additional cash, we may be forced to suspend or curtail planned programs or cease operations altogether.

***If we fail to promote, enhance and maintain 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. 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 our products are processed in-house under strict quality control guidelines which have been in place for more than 40 years, 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.

The success of our brand also depends in part on our intellectual property. We rely on a combination of trademarks, copyrights, service marks, trade secrets and similar rights to protect our intellectual property. The success of our growth strategy depends on our continued ability to use our existing trademarks and service marks in order to increase brand awareness and further develop our brand in both domestic and international markets. If our efforts to protect our intellectual property are not adequate, or if any third party misappropriates or infringes on our intellectual property, the value of our brand may be harmed, which could have a material adverse effect on our business. We may become engaged in litigation to protect our intellectual property, which could result in substantial costs to us as well as diversion of management attention.

***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 or Massachusetts facilities, 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.***

We are dependent on the continued operations of our Colorado and Massachusetts coffee roasting and distribution facilities. Our operations depend on our ability to maintain our computer and telecommunications equipment in effective working order and to protect against damage from fire, natural disaster, power loss, telecommunications failure or similar events. In addition, growth of our customer base may strain or exceed the capacity of our systems and lead to degradations in performance or systems failure. Although we continually review and consider upgrades to our order fulfillment infrastructure and provide for system redundancies to limit the likelihood of systems overload or failure, substantial damage to our systems or a systems failure that causes interruptions for a number of days could adversely affect our business. Additionally, if we are unsuccessful in updating and expanding our order fulfillment infrastructure, our ability to grow may be constrained. As a result, our revenues and earnings could be materially adversely affected.

***There may be limitations on the effectiveness of our internal controls, and a failure of our control systems to prevent error or fraud may materially harm our company.***

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by our management on, among other things, the effectiveness of our internal control over financial reporting. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.

Effective internal control over financial reporting is necessary for us to provide reliable and timely financial reports and, together with adequate disclosure controls and procedures, are designed to reasonably detect and prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. Undetected material weaknesses in our internal control over financial reporting could lead to financial statement restatements and require us to incur the expense of remediation.

Moreover, we do not expect that disclosure controls or internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Failure of our control systems to detect or prevent error or fraud could materially adversely impact us.

***The failure of our suppliers or customers to adhere to the quality standards that we set for our products could lead to investigations, litigation, write-offs, recalls or boycotts of our products, which could damage our reputation and our brand, increase our costs, and otherwise adversely affect our business. Unfavorable allegations, government investigations and legal actions surrounding our products and/or our business could harm our reputation, impair our ability to grow or sustain our business, and adversely affect our business, financial condition and operating results.***

We do not control the operations of our suppliers or customers, and we cannot guarantee that our suppliers or customers will comply with applicable laws and regulations or operate in a legal, ethical and responsible manner. Additionally, it is possible that we may not be able to identify noncompliance by our suppliers or customers notwithstanding any precautionary measures we implement. Violation of applicable laws and regulations by our suppliers or customers, or their failure to operate in a legal, ethical or responsible manner, could expose us to legal risks, cause us to violate laws and regulations and reduce demand for our products if, as a result of such violation or failure, we attract negative publicity. In addition, the failure of our suppliers and customers to adhere to the quality standards that we set for our products could lead to government investigations, litigation, write-offs and recalls, which could damage our reputation and our brand, increase our costs, and otherwise adversely affect our business.

We rely on our reputation for offering great value, superior service and a broad assortment of high-quality, safe products. If we become subject to unfavorable allegations, government investigations or legal actions involving our products or us, such circumstances could harm our reputation and our brand and adversely affect our business, financial condition and operating results. If this negative impact is significant, our ability to grow or sustain our business could be jeopardized.

Negative publicity surrounding product matters, including publicity about other retailers, may harm our reputation and affect the demand for our products. In addition, if more stringent laws or regulations are adopted in the future, we may have difficulty complying with the new requirements imposed by such laws and regulations, and in turn, our business, financial condition, and operating results could be adversely affected. Moreover, regardless of whether any such changes are adopted, we may become subject to claims or governmental investigations alleging violations of applicable laws and regulations. Any such matter may subject us to fines, penalties, and/or litigation. Any one of these results could negatively affect our business, financial condition, and operating results and impair our ability to grow or sustain our business.

## **Risks 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:

- outside speculative influences such as indexed and algorithmic commodity funds;
- weather patterns in coffee-producing countries;
- economic and political conditions affecting coffee-producing countries, including acts of terrorism in such countries;
- foreign currency fluctuations;
- disruptions in our supply chain; 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, pest damage, economic conditions, acts of terrorism, as well as efforts by coffee growers to expand or form cartels or associations. In addition, the political situation in many of the Arabica coffee growing regions, including Africa, Indonesia, and Central and South America, can be unstable, and such instability could affect our ability to purchase coffee from those regions. If Arabica coffee beans from a region become unavailable or prohibitively expensive, we could be forced to discontinue particular coffee types and blends or substitute coffee beans from other regions in our blends. Frequent substitutions and changes in our coffee product lines could lead to cost increases, customer alienation and fluctuations in our gross margins.

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.

***Increases in shipping costs, long lead times, supply shortages, and supply changes could disrupt our supply chain and factors such as wage rate increases and inflation can have a material adverse effect on our business, financial condition, and operating results.***

We may experience supply delays and shortages due to a variety of macroeconomic factors, including disruptions on the global supply chain. We have been able to make alternative delivery arrangements for limited quantities of goods, at increased cost.

While we have not yet experienced material shortages in supply as a result of these disruptions and our alternative delivery arrangements, if they were to be prolonged or expanded in scope, there could be resulting supply shortages that could impact our ability to deliver our products to our customers. Accordingly, such supply shortages and delivery limitations could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

Furthermore, increases in compensation, wage pressure, and other expenses for our employees and the employees of our suppliers, may adversely affect our profitability. These cost increases may be the result of inflationary pressures that could further reduce our sales or profitability. Increases in other operating costs, including changes in energy prices and lease and utility costs, may increase our cost of products sold or selling, general, and administrative expenses. Our competitive price model and pricing pressures in the industry may inhibit our ability to reflect these increased costs in the prices of our products, in which case such increased costs could have a material adverse effect on our business, financial condition, and results of operations.

***Increased severe weather patterns may increase commodity costs, damage our facilities and disrupt our production capabilities and supply chain.***

There is increasing concern that a gradual increase in global average temperatures due to increased concentration of carbon dioxide and other greenhouse gases in the atmosphere have caused and will continue to cause significant changes in weather patterns around the globe and an increase in the frequency and severity of extreme weather events. Major weather phenomena are dramatically affecting coffee growing countries. The wet and dry seasons are becoming unpredictable in timing and duration, causing improper development of the coffee cherries. Decreased agricultural productivity in certain regions as a result of changing weather patterns may affect the quality, limit the availability or increase the cost of key agricultural commodities, which are important ingredients for our business. Increased frequency or duration of extreme weather conditions could damage our facilities, impair production capabilities, disrupt our supply chain or impact demand for our products. As a result, the effects of climate change could have a long-term adverse impact on our business and results of operations.

***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 increasing popularity and growth of the coffee industry. 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 Foods, Inc. (owner of the Maxwell House brand), and J.M. Smucker Co. (owner of the Folgers and Café Bustelo brands), 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.

***Besides coffee, we face exposure to other commodity cost fluctuations, which could impair our profitability.***

In addition to the increase in coffee costs discussed in the risk factor above, we are exposed to cost fluctuation in other commodities, including, in particular, steel, natural gas and gasoline. In addition, an increase in the cost of fuel could indirectly lead to higher electricity costs, transportation costs and other commodity costs. Much like coffee costs, the costs of these commodities depend on various factors beyond our control, including economic and political conditions, foreign currency fluctuations, and global weather patterns. To the extent we are unable to pass along such costs to our customers through price increases, our margins and profitability will decrease.

***Adverse public or medical opinion about caffeine may harm our business.***

Coffee contains caffeine and other active compounds, the health effects of some of which are not fully understood. A number of research studies conclude or suggest that excessive consumption of caffeine may lead to increased heart rate, nausea and vomiting, restlessness and anxiety, depression, headaches, tremors, sleeplessness and other adverse health effects. An unfavorable report on the health effects of caffeine or other compounds present in coffee could significantly reduce the demand for coffee, which could harm our business and reduce our sales and profits. In addition, we could become subject to litigation relating to the existence of such compounds in our coffee; litigation that could be costly and could divert management attention.

#### **Risks Related to our Common Stock**

***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.

***The Gordon family has the ability to influence action requiring stockholder approval.***

Members of the Gordon family, including Andrew Gordon, our President, Chief Executive Officer, Chief Financial Officer and Treasurer, and David Gordon, our Executive Vice President and Secretary, own, in the aggregate, approximately 23.1% of our outstanding shares of common stock. As a result, the Gordon family is able to influence the actions that require stockholder approval, including:

- the election of a majority of our directors;
- the amendment of our charter documents; and
- the approval of mergers, sales of assets or other corporate transactions or matters submitted for stockholder approval.

As a result, our other stockholders may have reduced influence over matters submitted for stockholder approval. In addition, the Gordon family's influence could preclude any unsolicited acquisition of us and consequently materially adversely affect the price of our common stock.

***The market price of our common stock has been volatile over the year and may continue to be volatile.***

The market price and trading volume of our common stock has been volatile over the past year, and it may continue to be volatile. Over the past fiscal year, our common stock has traded as low as \$0.68 and as high as \$3.88 per share. We cannot predict the price at which our common stock will trade in the future, and the price of our common stock may decline. The price at which our common stock trades may fluctuate significantly and may be influenced by many factors, including our financial results, developments generally affecting the coffee industry, general economic, industry and market conditions, the depth and liquidity of the market for our common stock, fluctuations in coffee prices, investor perceptions of our business, reports by industry analysts, negative announcements by our customers, competitors or suppliers regarding their own performances, and the impact of other "Risk Factors" discussed in this Annual Report.

***Provisions in our articles of incorporation, bylaws and of Nevada law have anti-takeover effects that could prevent a change in control that could be beneficial to our stockholders, which could depress the market price of shares of our common stock.***

Our articles of incorporation, bylaws and Nevada corporate law contain provisions that could delay, defer or prevent a change in control of us or our management that could be beneficial to our stockholders. These provisions could also discourage proxy contests and make it more difficult for our stockholders to elect directors and take other corporate actions. These provisions might also discourage a potential acquisition proposal or tender offer, even if the acquisition proposal or tender offer is at a price above the then-current market price for shares of our common stock. These provisions:

- provide that directors may only be removed upon a vote of at least eighty percent of the shares outstanding;
- establish advance notice requirements for nominating directors and proposing matters to be voted on by stockholders at stockholder meetings;
- limit the right of our stockholders to call a special meeting of stockholders;
- authorize our board of directors to issue preferred stock and to determine the rights and preferences of those shares, which would be senior to our common stock, without prior stockholder approval;
- require amendments to our articles of incorporation to be approved by the holders of at least eighty percent of our outstanding shares of common stock;
- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors; and
- provide a prohibition on stockholder action by written consent, thereby only permitting stockholder action to be taken at an annual or special meeting of our stockholders.

We are also subject to certain anti-takeover provisions under Nevada law. Under Nevada law, a corporation may not, in general, engage in a business combination with any “interested stockholder” for two (2) years after the date the person first became an interested stockholder, unless the combination meets all of the requirements of our articles of incorporation and (i) the purchase of shares by the interested stockholder is approved by our board of directors before that date or (ii) the combination is approved by our board of directors and, at or after that time, the combination is approved at an annual or special meeting of our stockholders, and not by written consent, by the affirmative vote of the holders of stock representing at least sixty percent (60%) of our outstanding voting power not beneficially owned by the interested stockholder or the affiliates or associates of the interested stockholder.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 1C. CYBERSECURITY**

Cybersecurity risk management is part of the Company’s overall risk management. Our cybersecurity risk management is designed to provide a framework for handling cybersecurity threats and incidents, including threats and incidents associated with the use of services provided by third-party service provider. We rely on the cybersecurity protections of our third-party service provider. Our third-party service provider utilizes two (2) factor authorization as well as login and password protections with email verifications.

Our Board has overall oversight responsibility for our risk management, including our cybersecurity risk management. Management is responsible for identifying, considering and assessing material cybersecurity risks on an ongoing basis, establishing processes to ensure that such potential cybersecurity risk exposures are monitored. We believe that we have not experienced any cybersecurity incidents in the fiscal year ended October 31, 2024.

Despite our efforts, we cannot eliminate all risks from cybersecurity threats or provide assurances that we have not experienced an undetected cybersecurity incident.

#### **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 ranging from \$118,381 to \$133,237 under the terms of the lease, which expires on April 30, 2029.

We lease production, warehouse and office space in North Andover, MA. We pay an annual rent of \$168,288 under the terms of a lease, which expires in May 2028.

We lease production, warehouse and office space in Burlington, Washington. We pay an annual rent of \$45,000 under the terms of a lease, which expires in December 2026.

We own a 50,000 square foot facility located at 27700 Frontage Road in La Junta, Colorado used for office and warehouse space.

In connection with the acquisition of Empire Coffee on November 6, 2024, we entered into a lease located at 21 Grace Church Street, Port Chester, New York. We pay an annual rent of approximately \$600,000 under the terms of the lease which expires November 2028.

We also use a variety of independent, bonded commercial warehouses to store our green coffee beans. The Company pays for these warehouses based on the specific square footage used and can adjust depending on storage needs. 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**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

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

Our common stock trades on the NASDAQ Capital Market under the symbol "JVA." We do not currently pay cash dividends on our common stock. Our board of directors does not have any intention of paying a dividend in the future.

As of January 22, 2025, we had 170 holders of record.

**Unregistered Sales of Equity Securities**

There were no sales of unregistered equity securities in the fiscal year ended October 31, 2024.

**Securities Authorized for Issuance under Equity Compensation Plans**

See "Item 11. Executive Compensation" for information regarding shares of our common stock authorized for issuance under our stock compensation plans, which information is incorporated herein by reference.

**ITEM 6. [RESERVED]****ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS****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:

- our dependency on a single commodity could affect our revenues and profitability;
- our success in expanding our market presence in new geographic regions;
- the effectiveness of our hedging policy may impact our profitability;
- the success of our joint ventures;
- our success in implementing our business strategy or introducing new products;
- our ability to attract and retain customers;
- our ability to obtain additional financing;
- our ability to comply with the restrictive covenants we are subject to under our current financing;

- the effects of competition from other coffee manufacturers and other beverage alternatives;
- the impact to the operations of our Colorado facility;
- general economic conditions and conditions which affect the market for coffee;
- the macro global economic environment;
- our ability to maintain and develop our brand recognition;
- the impact of rapid or persistent fluctuations in the price of coffee beans;
- fluctuations in the supply of coffee beans;
- the volatility of our common stock; 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,” “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 eight brands of coffee; and sales of our tabletop coffee roasting equipment.

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;
- our hedging policy;
- 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, and will continue to evaluate, strategic decisions to invest in measures that are expected to increase net sales. These transactions include our acquisition of Premier Roasters, LLC, including equipment and a roasting facility in La Junta, Colorado, the addition of a west coast sales manager to increase sales of our private label and branded coffees to new customers and the transaction with OPTCO. On June 29, 2016, we purchased substantially all the assets, including equipment, inventory, customer lists and relationships of Coffee Kinetics, LLC., a Washington limited liability company. On February 24, 2017, we acquired 100% of the capital stock of Comfort Foods, Inc. (“CFI”), a Massachusetts based medium sized coffee roaster, manufacturing both branded and private label coffee for retail and foodservice customers. On November 11, 2024, we acquired substantially all of the assets of Empire Coffee, a NY based long-running private-label roaster.

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, irrespective of sales volume.

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, and intend to continue to use in a limited capacity, short-term coffee futures and options contracts primarily for the purpose of partially hedging the effects of changing green coffee prices, as further explained in Note 2 of the Notes to the Consolidated Financial Statements in this Annual Report. In addition, we acquired, and expect to continue to acquire, futures contracts with longer terms, generally three to four months, primarily 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 our cost of sales. Gains on options and futures contracts reduce our cost of sales and losses on options and futures contracts increase our cost of sales. The use of these derivative financial instruments has generally enabled us to mitigate the effect of changing prices. We believe that, in normal economic times, 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 trying to minimize margin compression during a time of historically high coffee prices. However, no strategy can entirely eliminate pricing risks and we generally remain exposed to losses 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 of our futures contracts. Although we have had net gains on options and futures contracts in the past, we have incurred significant losses on options and futures contracts during some recent reporting periods. In these cases, our cost of sales has increased, resulting in a decrease in our profitability or increase our losses. Such losses have and could in the future materially increase our cost of sales and materially decrease our profitability and adversely affect our stock price. See "Item 1A – Risk Factors - 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." Failure to properly design and implement an effective hedging strategy may materially adversely affect our business and operating results. 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 or increased losses. As previously announced, as a result of the volatile nature of the commodities markets, we have and are continuing to scale back our use of hedging and short-term trading of coffee futures and options contracts, and intend to continue to use these practices in a limited capacity going forward.

#### *Recent Events*

See description of recent events of the Company in Item 1 – "Recent Developments".

#### **Critical Accounting Policies and Estimates**

We prepare our consolidated financial statements in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"). Our significant accounting policies are described in **Note 2 – Summary of Significant Accounting Policies** to our consolidated financial statements attached hereto. We believe the following critical accounting policies involve the most significant judgements and estimates used in the preparation of our consolidated financial statements.

We recognize revenue in accordance with the five-step model as prescribed by the Financial Accounting Standards Board ("FASB") Accounting Codification ("ASC") Topic 606 ("ASC 606") in which we evaluate the transfer of promised goods or services and recognizes revenue when our customer obtains control of promised goods or services in an amount that reflects the consideration which we expect to be entitled to receive in exchange for those goods or services. To determine revenue recognition for the arrangements that we determine are within the scope of ASC 606, we perform the following five steps: (1) identify the contract(s) with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

We have intangible assets consisting of our customer lists and relationships and trademarks acquired from Comfort Foods, OPTCO and SONO. At October 31, 2024 our balance sheet reflected intangible assets as set forth below:

	<b>October 31, 2024</b>
Customer list and relationships, net	\$ 154,250
Trademarks and tradenames	327,000
	<u>\$ 481,250</u>

The trademarks which are deemed to have indefinite lives are subject to annual impairment tests. We assess the potential impairment of indefinite lived intangible assets 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 and a recoverability test is performed whenever events or changes in circumstances indicate that the carrying value may not be recoverable.

Because we are a single reporting unit, we used a hybrid approach to determine our fair market value, which included an income approach to conduct the annual impairment assessment. Indefinite lived intangible assets are 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.

## RESULTS OF OPERATIONS

### Year Ended October 31, 2024 (Fiscal Year 2024) Compared to the Year Ended October 31, 2023 (Fiscal Year 2023)

**Net Sales.** Net sales totaled \$78,562,298 for the fiscal year ended October 31, 2024, an increase of \$10,388,894, or 15%, from \$68,173,404 for the fiscal year ended October 31, 2023. The increase in net sales was due to an increase of sales to our legacy customers along with incremental sales to several significant new customers during the second half of the year.

**Cost of Sales.** Cost of sales for the fiscal year ended October 31, 2024 was \$62,520,529, or 80% of net sales, as compared to \$57,214,382, or 84% of net sales, for the fiscal year ended October 31, 2023. Cost of sales consists primarily of the cost of green coffee and packaging materials and realized and unrealized gains or losses on hedging activity. For the fiscal year ended October 31, 2024, the net result of our hedging activities resulted in a gain of approximately \$1.6 million, and for the fiscal year ended October 31, 2023, the net result of our hedging activities resulted in a loss of approximately \$189,000. The increase in the cost of sales was due to higher sales volume, salaries and packaging materials offset by the hedging activities discussed above.

**Gross Profit.** Gross profit for the fiscal year ended October 31, 2024 was \$16,041,769 an increase of \$5,082,747 from \$10,959,022 for the fiscal year ended October 31, 2023. Gross profit as a percentage of net sales increased to 20% for the fiscal year ended October 31, 2024, from 16% for the fiscal year ended October 31, 2023. The increase in gross profit percentage was attributable to higher sales volume during the current year.

**Operating Expenses.** Total operating expenses increased by \$787,494 to \$13,078,211 for the fiscal year ended October 31, 2024, from \$12,290,717 for the fiscal year ended October 31, 2023. Selling and administrative expenses increased from \$11,680,782 for the year ended October 31, 2023, to \$12,457,268 for the fiscal year ended October 31, 2024. Officers' salaries increased from \$609,935 for the fiscal year ended October 31, 2023 to \$620,943 for the fiscal year ended October 31, 2024. Operating expenses increased primarily due to an increase in freight charges relating to our increase in sales.

**Other Income (Expense).** Other income for the fiscal year ended October 31, 2024 was \$104,341, a decrease of \$123,558 from other income of \$227,899 for the fiscal year ended October 31, 2023. The decrease in other income of \$123,558 was attributable to other income in the prior year of \$634,181 due to an insurance claim and a \$650,000 gain from the sale of an investment offset by a decrease of \$322,961 of interest expense, decrease from a loss from equity method investments of \$511,878, and an increase from the gain from an extinguishment of a lease of \$210,567 in the current year.

**Income Before Provision For Income Taxes.** We had an income of \$3,135,145 before income taxes for the fiscal year ended October 31, 2024 compared to a loss of \$1,103,796 for the fiscal year ended October 31, 2023, resulting in a net change of \$4,238,941 for the year ended October 31, 2024.

**Income Taxes.** Our expense for income taxes for the fiscal year ended October 31, 2024 totaled \$849,885, compared to a benefit of \$268,220 for the fiscal year ended October 31, 2023. The change was attributable to the difference in the income for the fiscal year ended October 31, 2024 versus the fiscal year ended October 31, 2023.

**Net Income (Loss).** We had net income of \$2.2 million, or \$0.39 of per share basic and diluted, for the fiscal year ended October 31, 2024 compared to a net loss of (\$835,576), or (\$0.15) per share basic and diluted, for the fiscal year ended October 31, 2023. The decrease in net loss was due to our results of operations as described above.

### **Liquidity and Capital Resources**

As of October 31, 2024, we had working capital of \$21,526,983, which represented a \$2,926,721 increase from our working capital of \$18,600,262 as of October 31, 2023. Our working capital increase was primarily due to the outstanding balance on our line of credit of \$0 as of October 31, 2024, compared to \$9,620,000 as of October 31, 2023.

On April 25, 2017 we and OPTCO (together with us, collectively referred to herein as the “Borrowers”) entered into an Amended and Restated Loan and Security Agreement (the “A&R Loan Agreement”) and Amended and Restated Loan Facility (the “A&R Loan Facility”) with Sterling National Bank (“Sterling”), which was later acquired by Webster Financial Corp. (“Webster”), which consolidated (i) the financing agreement between us and Sterling, dated February 17, 2009, as modified, (the “Company Financing Agreement”) and (ii) the financing agreement between us, as guarantor, OPTCO and Sterling, dated March 10, 2015 (the “OPTCO Financing Agreement”), amongst other things.

On March 17, 2022, we reached an agreement for a new loan modification agreement and credit facility which extended the maturity date to June 29, 2022. All other terms of the A&R Loan Agreement and A&R Loan Facility remained the same.

On June 28, 2022, we reached an agreement for a new loan modification agreement and credit facility with Webster. The terms of the new agreement, among other things: (i) provided for a new maturity date of June 30, 2024, and (ii) changed the interest rate per annum to SOFR plus 1.75% (with such interest rate not to be lower than 3.50%). All other terms of the A&R Loan Agreement and A&R Loan Facility remained the same.

On June 27, 2024, we reached an agreement for a new loan modification agreement with Webster which (i) provided for a new loan maturity date of June 29, 2025, (ii) provided that the applicable margin requirement for any revolving loan outstanding under the A&R Loan Agreement to 2.25%, (iii) provided that the maximum facility amount shall be \$10,000,000 and (iv) to adjusted certain definitions and terms related to the borrowing base and leverage ratios applicable to the A&R Loan Agreement.

For the fiscal year ended October 31, 2024, our operating activities provided net cash of \$5,431,211 as compared to the fiscal year ended October 31, 2023 when operating activities used net cash of \$652,083. The increased cash flow from operations for the fiscal year ended October 31, 2024 was primarily due to our increased net income.

For the fiscal year ended October 31, 2024, our investing activities provided net cash of \$2,843,069 as compared to the fiscal year ended October 31, 2023 when net cash used by investing activities was \$857,760. The increase in our uses of cash in investing activities was due to our proceeds from the sale of our investment during the fiscal year ended October 31, 2024.

For the fiscal year ended October 31, 2024 our financing activities had net cash used of \$9,627,234 compared to net cash provided by financing activities of \$423,781 for the fiscal year ended October 31, 2023. The change in cash flow from financing activities for the fiscal year ended October 31, 2024 was primarily due to our pay down of our line of credit.

We expect to fund our operations, including paying our liabilities, funding capital expenditures and making required payments on our indebtedness, through October 31, 2025 with cash provided by operating activities and the use of our credit facility.

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

Not applicable.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

See pages F-1 through F-22 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 our 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 Annual Report. Based upon that evaluation, our President, Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures were not effective. We believe the financial information presented herein is materially correct and fairly presents the financial position and operating results of the fiscal year ended October 31, 2024 in accordance with U.S. GAAP.

***Management Report on Internal Control Over Financial Reporting.*** Our management is responsible for establishing and maintaining adequate internal control over our financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our executive management and effected by our board of directors, to provide reasonable assurance regarding the reliability of financial reporting and the preparations of financial statements for external purposes in accordance with U.S. GAAP. Based on this assessment, our management has determined that our internal control over financial reporting was not effective as of October 31, 2024 and the periods covered under this Annual Report on Form 10-K due to the material weaknesses described below. A material weakness is a control deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented or detected and corrected on a timely basis.

We determined that our controls were inadequate to prevent and detect misstatements of quantities of inventory at one of our subsidiaries. Accordingly, management has determined that this control deficiency constituted a material weakness.

We determined that there were inappropriate system access controls over the financial reporting system. These controls were not designed to prevent or detect unauthorized changes to source information or implement an appropriate level of segregation of duties. Accordingly, management has determined that this control deficiency constituted a material weakness.

We determined that we lacked adequate controls with respect to identifying and accounting for material contracts. This was evidenced by our failure to properly identify and account for a material lease amendment. Accordingly, management has determined that this was a control deficiency that constituted a material weakness.

We determined that we lacked adequate controls with respect to physical custody of certain hardware, electronic and hard copy records of Generations Coffee and its component operation known as Steep and Brew following the Company relocation or vacating of certain premises used in the operations of that business unit. Accordingly, management has determined that this is a control deficiency that constituted a material weakness.

We concluded that we lacked adequate controls with respect to the preparation and review of journal entries and account reconciliations during the year-end financial statement closing process. Accordingly, management has determined that this control deficiency constituted a material weakness.

We concluded, after discussion with management, that our financial statements inaccurately accounted for certain intercompany eliminations in our consolidated statements of operations for the fiscal year ended October 31, 2020. As a result, we determined that there was an overstatement of net sales and cost of sales in the consolidated statement of operations of approximately \$8.3 million in our financial statements during the fiscal year ended October 31, 2020, which required a restatement of the previously issued financial statements for the fiscal year ended October 31, 2020. This was due to inadequate design and implementation of controls to evaluate and monitor the presentation and compliance with accounting principles generally accepted in the United States of America related to the statement of operations. Accordingly, management has determined that this control deficiency constituted a material weakness.

We concluded that we lacked adequate controls with respect to recording year end accruals for vendor liabilities and properly calculating required loan covenants. Accordingly, management has determined that this control deficiency constituted a material weakness.

Notwithstanding these material weaknesses, management has concluded that our audited financial statements included in this Annual Report on Form 10-K are fairly stated in all material respects in accordance with GAAP for each of the periods.

#### ***Remediation Plan for the Material Weakness***

To remediate the material weaknesses identified above, we are initiating controls and procedures in order to:

- educating control owners concerning the principles and requirements of each control, with a focus on those related to user access to our financial reporting systems impacting financial reporting;

- developing and maintaining documentation to promote knowledge transfer upon personnel and function changes;
- developing enhanced controls and reviews related to our financial reporting systems;
- performing an in-depth analysis of who should have access to perform key functions within our financial reporting system that impact financial reporting and redesigning aspects of the system to better allow the access rights to be implemented;
- cross referencing analysis to be completed on a quarterly basis; and
- implementing additional levels of internal review of financial statements and any adjustments made thereto.

The material weaknesses identified above will not be considered remediated until our remediation efforts have been fully implemented and we have concluded that these controls are operating effectively.

Management does not expect that our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control systems are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in a cost-effective control system, no evaluation of internal control over financial reporting can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been or will be detected.

Changes in Control Over Financial Reporting. Based on the evaluation of our management and except as described above, we believe that there were no changes in our internal control over financial reporting that occurred during the quarter ended October 31, 2024 that have materially affected, or are reasonably likely to materially affect, our 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 the Dodd-Frank Wall Street Protection Act that permits us to provide only management's report in this annual report.

#### ITEM 9B. OTHER INFORMATION

None.

#### ITEM 9C. DISCLOSURES REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

### PART III

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

##### Information About our Board of Directors and Management

Name	Age <sup>(1)</sup>	Term Expires	Position(s) Held With Coffee Holding	Director Since
Andrew Gordon	63	2027	President, Chief Executive Officer, Chief Financial Officer, Treasurer and Director	1997
Daniel Dwyer	68	2027	Director	1998
Barry Knepper	74	2027	Director	2005
Gerard DeCapua	63	2025	Director	1997
George F. Thomas	76	2025	Director	2016
David Gordon	59	2026	Executive Vice President — Operations, Secretary and Director	1995
John Rotelli	66	2026	Director	2005

(1) As of January 22, 2025

The principal occupation and business experience of each director are set forth below. Unless otherwise indicated, each of the following persons has held his present position for at least the last five years.

**Andrew Gordon** has been the Chief Executive Officer, President, Treasurer and a director of Coffee Holding since 1997 and its Chief Financial Officer since November 2004. He is responsible for managing Coffee Holding's overall business and has worked for Coffee Holding for over 37 years, previously as a Vice President from 1993 to 1997. Mr. Gordon has worked in all capacities of Coffee Holding's business and serves as the direct contact with its major private label accounts. Mr. Gordon received his Bachelor of Business Administration degree from Emory University. He is the brother of David Gordon. Through his experience as President and Chief Executive Officer of the Company, as well as his over 35 years of service with the Company, Mr. Gordon has demonstrated the requisite qualifications and skills necessary to serve as an effective director. We believe Mr. Gordon's extensive experience with, and institutional knowledge of, Coffee Holding and the industry is an integral contribution to Coffee Holding's current successes and its ability to grow and flourish in the industry.

**Daniel Dwyer** has served as a director of Coffee Holding since 1998. Mr. Dwyer was the Chief Executive Officer at Rothfos Corporation, a green coffee bean supplier, and prior to that, had been a senior coffee trader at Rothfos, since 1995. Mr. Dwyer was responsible for our account with Rothfos. We believe that Mr. Dwyer's experience with the coffee industry will enable him to provide the Board with beneficial insight for Coffee Holding's business development and strategy.

**Barry Knepper** has served as a director of Coffee Holding since 2005. From July 2004 to the present, Mr. Knepper has been the President and Chief Executive Officer of Royalty Recovery Group, Inc., management consultant and auditors. Mr. Knepper was the Chief Financial Officer for TruFoods Corporation, a growth oriented franchise management company from April 2001 through June 2004. From January 2000 through March 2001, he was the Chief Financial Officer of Offline Entertainment, an early stage television and motion picture production company. From 1982 through 1999, he served as the Chief Financial Officer of Unitel Video, Inc., a formerly publicly-traded nationwide high tech service company in the television, film and new media fields. We believe that Mr. Knepper's diversified financial, accounting and business expertise provide him with the qualifications and skills to serve as a director.

**Gerard DeCapua** has served as a director of Coffee Holding since 1997. Mr. DeCapua has had his own law practice in Rockville Centre, New York since 1986. Mr. DeCapua received his law degree from Pace University. We believe that Mr. DeCapua's legal experience brings significant knowledge regarding the legal issues Coffee Holding faces and provide him with the skills and qualifications to serve as a director.

**George F. Thomas** has served as a director of Coffee Holding since February 2016. Mr. Thomas has over 38 years of domestic and international corporate business experience in top management positions. Since February 2007, Mr. Thomas has served as a Principal at Radix Consulting Corporation, a consulting firm which provides specialized advice in the field of electronic payments. From 1981 through 2007, Mr. Thomas served in a number of positions at The Clearing House Payments Company L.L.C., a limited liability company which operates electronic payment systems, including such positions as Executive Vice President of the Payments Services Division, President of the Electronic Payments Network, Senior Vice President of Business Development and Information Technology and Vice President of Technical Services and Systems Development. Since 2007, Mr. Thomas has served as a director of eGistics, Inc., a provider of cloud-based document and data management solutions which was acquired by Top Image Systems, Ltd. in 2014. We believe that Mr. Thomas' financial and business experience provide him with the qualifications and skills to serve as a director.

**David Gordon** has been the Executive Vice President — Operations, Secretary and a director of Coffee Holding since 1995. He is responsible for managing all aspects of Coffee Holding's roasting and blending operations, including quality control, and has worked for Coffee Holding for 39 years, previously as an Operating Manager from 1989 to 1995. He is a charter member of the Specialty Coffee Association of America, or SCAA. Mr. Gordon attended Baruch College in New York City. He is the brother of Andrew Gordon. Through his 38 years of service with the Company, Mr. Gordon has demonstrated the requisite qualifications and skills necessary to serve as an effective director. We believe Mr. Gordon's extensive institutional knowledge and leadership are invaluable to Coffee Holding's current and future successes. Mr. Gordon's leadership, as demonstrated by the launch of the Specialty Green segment of the business as well as the founding of the SCAA, is a valuable resource for Coffee Holding's business development and future strategy.

**John Rotelli** has served as a director of Coffee Holding since 2005. Mr. Rotelli has over 40 years of experience in the green coffee industry business consisting of procurement from growing countries, every aspect of traffic and warehousing, quality analysis, and knowledge of both suppliers and competitors. Mr. Rotelli is currently the Vice President of L.J. Cooper Company, one of the largest green coffee brokers and agents in North America. He also formerly served as a director of the Green Coffee Association. Mr. Rotelli's industry and business experience provides the Board with valuable expertise within the coffee industry as well as beneficial relationships that can help form new beneficial relationships for Coffee Holding.

#### **Family Relationships**

Andrew Gordon and David Gordon are brothers. Other than Messrs. Gordon, there are no family relationships among any of the directors or executive officers.

#### **Corporate Governance**

The Board oversees our business and monitors the performance of our management. In accordance with our corporate governance procedures, the Board does not involve itself in the day-to-day operations of Coffee Holding. Our executive officers and management oversee our day-to-day operations. Our directors fulfill their duties and responsibilities by attending meetings of the Board, which are usually held on a quarterly basis. Our directors also discuss business and other matters with other key executives and our principal external advisers (legal counsel, auditors, financial advisors and other consultants).

The Board held one meeting during the fiscal year ended October 31, 2024. Except as set forth below, each director serving during the fiscal year ended October 31, 2024 attended at least 75 percent of the meetings of the Board, plus meetings of committees on which each such director served during the fiscal year ended October 31, 2024. Barry Knepper did not attend at least 75 percent of the meetings of the Board during the fiscal year ended October 31, 2024.

Coffee Holding is committed to establishing and maintaining high standards of corporate governance. Our executive officers and the Board have worked together to construct a comprehensive set of corporate governance initiatives that we believe will serve the long-term interests of our stockholders and employees. We believe these initiatives comply fully with the Sarbanes-Oxley Act of 2002 and the rules and regulations of the SEC adopted thereunder. In addition, we believe our corporate governance initiatives fully comply with the rules of the Nasdaq Stock Market LLC ("Nasdaq"). The Board will continue to evaluate, and improve upon as appropriate, our corporate governance principles and policies.

#### **Board Leadership Structure and Role in Risk Oversight**

Andrew Gordon serves as both our principal executive officer and chairman at the pleasure of the Board. The directors have determined that Mr. Gordon's experience in our industry and in corporate transactions, and his personal commitment to Coffee Holding as an investor and employee, make him uniquely qualified to supervise our operations and to execute our business strategies. The Board is also cognizant of Coffee Holding's relatively small size compared to its publicly traded competitors. We do not have a lead independent director. Management's activities are monitored by standing committees of the Board, principally the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee. Each of these committees is comprised solely of independent directors. For these reasons, the Board deems this leadership structure appropriate for us.

## Code of Ethics

The Board has adopted a Code of Conduct and Ethics that applies to each of our directors, officers and employees. The Code of Conduct and Ethics sets forth our policies and expectations on a number of topics, including:

- Acceptance of gifts;
- Financial responsibility regarding both personal and business affairs, including transactions with Coffee Holding;
- Personal conduct, including ethical behavior and outside employment and other activities;
- Affiliated transactions, including separate identities and usurpation of corporate opportunities;
- Preservation and accuracy of Coffee Holding's records;
- Compliance with laws, including insider trading compliance;
- Preservation of confidential information relating to our business and that of our clients;
- Conflicts of interest;
- The safeguarding and proper use of our assets and institutional property;
- Code administration and enforcement;
- Reporting, investigating and resolving of all code violations; and
- Code-related training, certification of compliance and maintenance of code-related records.

The Audit Committee of our Board reviews the Code of Conduct and Ethics on a regular basis, and will propose or adopt additions or amendments to the Code of Conduct and Ethics as appropriate. The Code of Conduct and Ethics is available on our website at [www.coffeeholding.com](http://www.coffeeholding.com) under "Investor Relations - Corporate Governance." A copy of the Code of Conduct and Ethics may also be obtained free of charge by sending a written request to:

David Gordon, Secretary  
Coffee Holding Co., Inc.  
3475 Victory Boulevard  
Staten Island, NY 10314

We intend to satisfy the disclosure requirement under Section 5.05(c) of Form 8-K regarding an amendment to, or waiver from, a provision of our Code of Ethics by posting such information on our website.

## Independent Directors

Our Board currently consists of seven directors, four of whom our Board has determined are independent directors. The standards relied on by the Board in affirmatively determining whether a director is "independent," in compliance with Nasdaq's rules, are comprised of those objective standards set forth in the rules promulgated by Nasdaq. The Board is responsible for ensuring that independent directors do not have a relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

The Board has determined that Gerard DeCapua, Barry Knepper, John Rotelli and George F. Thomas, comprising a majority of the Board, are "independent" directors under Nasdaq's rules.

Nasdaq's rules, as well as SEC rules, impose additional independence requirements for all members of the Audit Committee. Specifically, in addition to the "independence" requirements discussed above, "independent" audit committee members must: (1) not accept, directly or indirectly, any consulting, advisory, or other compensatory fees from Coffee Holding or any subsidiary of Coffee Holding other than in the member's capacity as a member of the Board and any Board committee; (2) not be an affiliated person of Coffee Holding or any subsidiary of Coffee Holding; and (3) not have participated in the preparation of the financial statements of Coffee Holding or any current subsidiary of Coffee Holding at any time during the past three years. In addition, Nasdaq's rules require that all audit committee members be able to read and understand fundamental financial statements, including Coffee Holding's balance sheet, income statement, and cash flow statement. The Board believes that the current members of the Audit Committee meet these additional standards.

Furthermore, at least one member of the Audit Committee must be financially sophisticated, in that he or she has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including but not limited to being or having been a chief executive officer, chief financial officer, other senior officer with financial oversight responsibilities. Additionally, the SEC requires that Coffee Holding disclose whether the Audit Committee has, and will continue to have, at least one member who is a "financial expert." The Board has determined that Barry Knepper meets the SEC's definition of an audit committee financial expert.

#### **Committees of the Board**

The Board of Coffee Holding has established the following committees:

**Audit Committee.** The Audit Committee oversees and monitors our financial reporting process and internal control system, reviews and evaluates the audit performed by our registered independent public accountants and reports to the Board any substantive issues found during the audit. The Audit Committee is directly responsible for the appointment, compensation and oversight of the work of our registered independent public accountants. The Audit Committee reviews and approves all transactions with affiliated parties. The Board has adopted a written charter for the Audit Committee, which is available on our website at [www.coffeeholding.com](http://www.coffeeholding.com) under "Investor Relations - Corporate Governance." All members of the Audit Committee are independent directors as defined under Nasdaq's listing standards. Gerard DeCapua, Barry Knepper and George F. Thomas serve as members of the Audit Committee with Barry Knepper serving as its chairman. The Board has determined that Barry Knepper qualifies as an audit committee financial expert as that term is defined by SEC regulations. The Audit Committee held four meetings during the fiscal year ended October 31, 2024, and acted by written consent on two occasions.

**Compensation Committee.** The Compensation Committee provides advice and makes recommendations to the Board in the areas of employee salaries, benefit programs and director compensation. The Compensation Committee also reviews the compensation of the President and Chief Executive Officer of Coffee Holding and makes recommendations in that regard to the Board as a whole. The Board has adopted a written charter for the Compensation Committee, which is available on our website at [www.coffeeholding.com](http://www.coffeeholding.com) under "Investor Relations - Corporate Governance." All members of the Compensation Committee are independent directors as defined under Nasdaq's listing standards. Barry Knepper, John Rotelli and George F. Thomas serve as members of the Compensation Committee, with John Rotelli serving as its chairman. The Compensation Committee held one meeting during the fiscal year ended October 31, 2024, and acted by written consent once.

**Nominating and Corporate Governance Committee.** The Nominating and Corporate Governance Committee nominates individuals to be elected to the full Board by our stockholders. The Nominating and Corporate Governance Committee considers recommendations from stockholders if submitted in a timely manner in accordance with the procedures set forth in Article II, Section 11 of our Bylaws and applies the same criteria to all persons being considered. All members of the Nominating and Corporate Governance Committee are independent directors as defined under the Nasdaq listing standards. Gerard DeCapua, John Rotelli and George F. Thomas serve as members of the Nominating and Corporate Governance Committee, with Gerard DeCapua serving as its chairman. The Board has adopted a written charter for the Nominating and Corporate Governance Committee, which is available on our website at [www.coffeeholding.com](http://www.coffeeholding.com) under "Investor Relations - Corporate Governance." The Nominating and Corporate Governance Committee held one meeting during the fiscal year ended October 31, 2024, and acted by written consent once.

There are no minimum qualifications that must be met by a Nominating and Corporate Governance Committee-recommended nominee. It is the policy of the Nominating and Corporate Governance Committee to recommend individuals as director nominees who have the highest personal and professional integrity, who have demonstrated exceptional ability and judgment and who will be most effective, in conjunction with the other members of the Board, in collectively serving the long-term interests of our stockholders.

#### **Stockholder Communication with the Board of Directors and Attendance at Annual Meetings**

The Board maintains a process for stockholders to communicate with the Board and its committees. Stockholders of Coffee Holding and other interested persons may communicate with the Board or the chairperson of the Audit Committee, Compensation Committee or Nominating and Corporate Governance Committee by writing to the Secretary of Coffee Holding at 3475 Victory Boulevard, Staten Island, NY 10314. All communications that relate to matters that are within the scope of the responsibilities of the Board will be presented to the Board no later than the next regularly scheduled meeting. Communications that relate to matters that are within the responsibility of one of the Board committees will be forwarded to the chairperson of the appropriate committee. Communications that relate to ordinary business matters that are not within the scope of the Board's responsibilities, such as customer complaints, will be forwarded to the appropriate officer. Solicitations, junk mail and obviously frivolous or inappropriate communications will not be forwarded, but will be made available to any director who wishes to review them.

Directors are expected to prepare themselves for and attend all Board meetings, the Annual Meeting of Stockholders and the meetings of the committees on which they serve, with the understanding that, on occasion, a director may be unable to attend a meeting. All of our directors who served as directors during the 2024 fiscal year attended the 2024 Annual Meeting of Stockholders.

**ITEM 11. EXECUTIVE COMPENSATION**

The summary compensation table below summarizes information concerning compensation for the fiscal years ended October 31, 2024 and 2023 of the individuals who served as President, Chief Executive Officer, Chief Financial Officer and Treasurer (Andrew Gordon) and Executive Vice President — Operations and Secretary (David Gordon). We refer to these individuals as the “Named Executive Officers.”

**SUMMARY COMPENSATION TABLE**

The following table sets forth information with respect to the compensation of our Named Executive Officers for services in all capacities to us and our subsidiaries.

<b>Name and Principal Position</b>	<b>Year</b>	<b>Salary<sup>(1)</sup> (\$)</b>	<b>Bonus (\$)</b>	<b>Stock Option Awards (\$)</b>	<b>Non-Equity Incentive Plan Compensation (\$)</b>	<b>Nonqualified Deferred Compensation Earnings (\$)</b>	<b>All Other Compensation<sup>(2)</sup> (\$)</b>	<b>Total (\$)</b>
<b>Andrew Gordon,</b> President, Chief Executive Officer, Chief Financial Officer and Treasurer	2024	288,000	20,000	0	0	0	36,432	344,432
	2023	304,535	20,000	0	0	0	55,111	379,646
<b>David Gordon,</b> <b>Executive Vice President –</b> Operations and Secretary	2024	268,000	15,000	0	0	0	69,684	352,684
	2023	270,400	0	0	0	0	73,138	358,538

(1) The figures shown represent amounts earned for the fiscal year, whether or not actually paid during such year.

(2) The Named Executive Officers participate in certain group life, health, disability insurance and medical reimbursement plans, not disclosed in the Summary Compensation Table, that are generally available to salaried employees and do not discriminate in scope, terms and operation. The figures shown for Andrew Gordon include \$10,996 and \$10,279 in employer contributions to the 401(k) plan for 2024 and 2023, respectively; life insurance premiums of \$0 and \$0 for 2024 and 2023, respectively, business car expenses of \$0 and \$22,227 for 2024 and 2023, respectively, and health insurance premiums of \$25,436 and \$22,605 for 2024 and 2023, respectively. The figures shown for David Gordon include \$9,554 and \$14,256 for business car expenses in 2024 and 2023, respectively; \$7,951 and \$8,680 in employer contributions to the 401(k) plan for 2024 and 2023, respectively, life insurance premiums of \$0 and \$3,000 for 2024 and 2023, respectively, and health insurance premiums of \$52,179 and \$47,202 for 2024 and 2023, respectively.

## Narrative to Summary Compensation Table

### Overview

Our Compensation Committee has responsibility for establishing, implementing and monitoring adherence with our compensation philosophy. In that regard, the Compensation Committee provides advice and makes recommendations to the Board in the areas of employee salaries and benefit programs. The Compensation Committee ensures that the total compensation paid to our executive leadership team is fair and reasonable. Generally, the types of compensation and benefits provided to members of the executive leadership team, including the Named Executive Officers, are similar to those provided to our other officers and employees.

### Compensation Components

Our compensation program for Named Executive Officers consists generally of base salary, annual bonuses and equity-based incentive compensation. These elements are intended to provide an overall compensation package that is commensurate with our financial resources, that is appropriate to assure the retention of experienced management personnel, and that aligns their financial interests with those of our stockholders. We pay our Named Executive Officers commensurate with their experience and responsibilities.

**Base Salary.** Each of our Named Executive Officers receives a base salary to compensate him for services performed during the year. The base salaries of our Named Executive Officers are established annually by the Board upon recommendation by the Compensation Committee. When determining the base salary for each of our Named Executive Officers, the Compensation Committee considers the performance of the Named Executive Officer, the duties of the Named Executive Officer, the experience of the Named Executive Officer in his position and salary levels of the companies in our peer group. Salary levels are also intended to reflect our financial performance. We have entered into employment agreements with each of the Named Executive Officers that provide for minimum annual base salaries. The Named Executive Officers are eligible for annual increases in their base salaries as a result of company performance, individual performance and any added responsibility since their last salary increase.

**Annual Bonus.** Our Named Executive Officers are eligible to receive annual cash bonuses. These bonuses are intended to reward the achievement of corporate goals and individual performance objectives. The bonus levels are intended to be competitive with those typically paid by the companies in our peer group and commensurate with the Named Executive Officers' successful execution of duties and responsibilities.

**Equity Compensation.** At the 2013 Annual Meeting of Stockholders, our stockholders approved the 2013 Equity Compensation Plan. Through the 2013 Equity Compensation Plan, we provide our employees, including our Named Executive Officers, with equity incentives that help align their interests with those of our stockholders by tying the value delivered to our Named Executive Officers to the value of our shares of common stock. We also believe that stock option grants to our Named Executive Officers provide them with long-term incentives that will aid in retaining executive talent by providing opportunities to be compensated through the Company's performance and rewarding executives for creating shareholder value over the long-term.

As the 2013 Equity Compensation Plan does not allow for grants to be made after the 10<sup>th</sup> anniversary of the plan, no new grants have been permitted since February 2023 and, therefore, during the years ended October 31, 2024, and October 31, 2023 we did not grant any stock option awards to the Named Executive Officers.

## Implementation for Fiscal Year 2024

For the 2024 fiscal year, Andrew Gordon received a base salary of \$288,000 and an annual bonus of \$20,000. David Gordon received a base salary of \$268,000 and an annual bonus of \$15,000.

## Compensation Decision-Making Policies and Procedures

**Decision-Making and Policy-Making.** As a Nasdaq listed company, we must observe governance standards that require executive officer compensation decisions to be made by the independent director members of our Board or by a committee of independent directors. Consistent with these requirements, our Board has established a Compensation Committee which is comprised entirely of independent directors.

The Compensation Committee provides advice and makes recommendations to our Board in the areas of employee salaries and benefit programs. Compensation may consist of three components: (1) base salary; (2) bonuses; and (3) long-term incentives (*e.g.*, deferred compensation and fringe benefits).

The Compensation Committee generally meets at least once each year or acts by written consent. It considers the expectations of the Chief Executive Officer with respect to his own compensation and his recommendations with respect to the compensation of more junior executive officers, as well as empirical data on compensation practices at peer group companies. The Compensation Committee does not delegate its duties to others.

## Employment Agreements

We have entered into employment agreements with Andrew Gordon to secure his continued service as President, Chief Executive Officer, Chief Financial Officer and Treasurer (the “Andrew Gordon Employment Agreement”) and with David Gordon to secure his continued service as Executive Vice President — Operations and Secretary (the “David Gordon Employment Agreement”, and together with the Andrew Gordon Employment Agreement, the “Employment Agreements”). These Employment Agreements have rolling five-year terms that each began on May 6, 2005. The term of the Employment Agreements may be converted to a fixed five-year term by the decision of our Board or the applicable executive. The Employment Agreements provide for minimum annual salaries, discretionary cash bonuses, and participation on generally applicable terms and conditions in other compensation and fringe benefit plans for the executive. The Employment Agreements also guarantee customary corporate indemnification and errors and omissions insurance coverage for the executives throughout the employment term and thereafter for so long as the executives are subject to liability for such service as an executive, to the extent permissible by the Nevada Revised Statutes.

The terms of the Employment Agreements provide that each executive will be entitled to severance benefits if his employment is terminated without “cause” or if he resigns for “good reason” or following a “change in control” (as such terms will be defined in the Employment Agreements) equal to the value of the cash compensation and fringe benefits that he would have received if he had continued working for the remaining unexpired term of the agreement. The Employment Agreements also provide the executives with uninsured disability benefits. During the term of the Employment Agreements and, in case of discharge of such executive with “cause” or resignation by such executive without “good reason,” for a period of one year thereafter, the executives are subject to (1) restrictions on competition with us; and (2) restrictions on the solicitation of our customers and employees. For all periods during and after the term of the employment agreements, the executives are subject to nondisclosure and restrictions relating to our confidential information and trade secrets.

The Employment Agreements provide that in the event an executive’s employment is terminated in connection with a change in control under circumstances entitling him to severance benefits, and it is determined that the executive would be subject to a 20% excise tax imposed by Section 4999 of the Code which applies to certain “excess parachute payments” (the “Excise Tax”), we will pay the executive a “Tax Indemnity Payment” such that the net amount received by the executive after payment of such Excise Tax, and any federal, Medicare and state and local income taxes and Excise Tax upon the Tax Indemnity Payment, will be equal to the payments the executive would have retained had there been no Excise Tax. The effect of this provision is that we, and not the executives, bear the financial cost of the Excise Tax. In accordance with Section 280G of the Code, we cannot claim a federal income tax deduction for payments subject to the Excise Tax, including the Tax Indemnity Payment.

## **Potential Payments Upon a Change of Control**

Under the 2013 Equity Compensation Plan, in the event of a change in control (as defined in the 2013 Equity Compensation Plan), the Compensation Committee may, at the time of the grant of an award provide for, among other things, the (i) accelerating or extending the time periods for exercising, vesting in, or realizing gain from any award, (ii) eliminating or modifying the performance or other conditions of an award, or (iii) providing for the cash settlement of an award for an equivalent cash value, as determined by the Compensation Committee. The Compensation Committee may, in its discretion and without the need for the consent of any recipient of an award, also take one or more of the following actions contingent upon the occurrence of a change in control: (a) cause any or all outstanding options and stock appreciation rights to become immediately exercisable, in whole or in part; (b) cause any other awards to become non-forfeitable, in whole or in part; (c) cancel any option or stock appreciation right in exchange for a substitute option; (d) cancel any award of restricted stock, restricted stock units, performance shares or performance units in exchange for a similar award of the capital stock of any successor corporation; (e) redeem any restricted stock, restricted stock unit, performance share or performance unit for cash and/or other substitute consideration with a value equal to the fair market value of an unrestricted share of our common stock on the date of the change in control; (f) cancel any option or stock appreciation right in exchange for cash and/or other substitute consideration based on the value of our common stock on the date of the change in control, and cancel any option or stock appreciation right without any payment if its exercise price exceeds the value of our common stock on the date of the change in control; or (g) make such other modifications, adjustments or amendments to outstanding awards as the Compensation Committee deems necessary or appropriate. To date, there have been 689,000 options granted under the 2013 Equity Compensation Plan to the Named Executive Officers.

Other than the severance benefits described under “Employment Agreements” and the potential payments described under “Potential Payments Upon a Change of Control” above, we do not maintain contracts, agreements, plans or arrangements that provide for payments to the Named Executive Officers at, following, or in connection with any termination of employment.

## **Deferred Compensation Plan for Executive Officers**

In January 2005, we established the Coffee Holding Co., Inc. Non-Qualified Deferred Compensation Plan for Named Executive Officers. Currently, Andrew Gordon is the only participant in the plan. Each Named Executive Officer who participates in the plan may defer receipt of all or a portion of his annual cash compensation received from Coffee Holding. The deferred amounts are allocated to a deferral account and credited with interest according to the investment classifications made available by the Board. The plan is an unfunded, non-qualified plan that provides for distribution of the amounts deferred to participants or their designated beneficiaries upon the occurrence of certain events. The amounts deferred, and related investment earnings, are held in a corporate account for the benefit of participating Named Executive Officers until such amounts are distributed pursuant to the terms of the plan.

The deferred compensation payable represents the liability due to the Chief Executive Officer of the Company. The amounts were \$121,386 and \$120,523 as of October 31, 2024, and October 31, 2023, respectively, and are included in Deposits and other amounts in the accompanying balance sheets.

## Other Compensation and Benefits

### Retirement Savings, Health, and Welfare Benefits

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.

### Outstanding Equity Awards at Fiscal Year-End

The following table sets forth information regarding outstanding stock options awarded to each of our Named Executive Officers as of October 31, 2024.

Name	Number of Securities Underlying Unexercised Options		Option exercise price (\$)	Option expiration date
	Exercisable	Unexercisable		
Andrew Gordon	349,000(1)	0	\$ 5.43	4/18/2029
David Gordon	281,000(1)	0	\$ 5.43	4/18/2029

(1) Represents outstanding stock options granted to current or former employees and directors of the Company pursuant to its 2013 Equity Compensation Plan.

### Equity Compensation Plan Information

The following table sets forth information regarding outstanding stock options and rights and shares reserved for future issuance under our existing equity compensation plans as of October 31, 2024.

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	(Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a)))
Equity compensation plans approved by stockholders	921,000	\$ 5.43	0
Equity compensation plans not approved by stockholders	—	\$ —	—
Total	921,000	\$ 5.43	0

\*During the year ended October 31, 2024, employees forfeited 79,000 stock options.

## DIRECTOR COMPENSATION

Non-employee directors receive \$800 per Board meeting and committee meeting attended in person and \$400 per each Board meeting and committee meeting attended telephonically. Non-employee directors are also reimbursed for travel expenses and other out-of-pocket costs incurred in connection with attendance at Board and committee meetings.

Total directors' meeting and committee fees for the fiscal year ended October 31, 2024, were \$13,600. We do not compensate our employee directors for service as directors. Directors are also entitled to the protection of certain indemnification provisions in our Amended and Restated Articles of Incorporation and Bylaws.

The following table sets forth information regarding compensation earned by our non-employee directors during the 2024 fiscal year.

### DIRECTOR COMPENSATION TABLE

Name	Fees Earned or Paid in Cash (\$) <sup>(1)</sup>	Stock Options <sup>(2)</sup>	All Other Compensation (\$)	Total (\$)
Gerard DeCapua	\$ 3,600	\$ 0	\$ 0	\$ 3,600
Daniel Dwyer	\$ 1,600	\$ 0	\$ 0	\$ 1,600
Barry Knepper	\$ 3,600	\$ 0	\$ 0	\$ 3,600
John Rotelli	\$ 1,600	\$ 0	\$ 0	\$ 1,600
George F. Thomas	\$ 3,200	\$ 0	\$ 0	\$ 3,200

(1) Meeting fees earned during the fiscal year, whether such fees were paid currently or deferred.

(2) The total number of shares of common stock covered by stock options held by each non-employee director at October 31, 2024 were as follows:

	No. of Shares
Gerard DeCapua	100
Daniel Dwyer	5,900
Barry Knepper	22,172
John Rotelli	6,548
George F. Thomas	4,000

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

### Security Ownership of Certain Beneficial Owners and Management

The following table shows the number of shares of Coffee Holding's common stock, par value \$0.001 per share, beneficially owned by (i) each person known to be the owner of 5% or more of our common stock, (ii) each director, (iii) the Named Executive Officers and (iv) all directors and executive officers of Coffee Holding as a group, as of January 22, 2025. The percent of common stock outstanding was based on a total of 5,708,599 shares of Coffee Holding's common stock outstanding as of January 22, 2025. Except as otherwise indicated, each person shown in the table has sole voting and investment power with respect to the shares of common stock listed next to his name. The address for each person shown in the table is c/o Coffee Holding Co., Inc., 3475 Victory Boulevard, Staten Island, New York 10314, unless otherwise indicated.

Name	Position	Amount and Nature of Beneficial Ownership	Percent of Common Stock Outstanding (%) <sup>(1)</sup>
<b>Directors and Executive Officers</b>			
	President, Chief Executive Officer, Chief Financial Officer,		
Andrew Gordon	Treasurer and Director	661,750 <sup>(2)</sup>	11.6%
	Executive Vice President — Operations, Secretary and Director		
David Gordon		655,037 <sup>(3)</sup>	11.5%
Gerard DeCapua	Director	14,100 <sup>(4)</sup>	*
Daniel Dwyer	Director	19,900 <sup>(5)</sup>	*
Barry Knepper	Director	36,172 <sup>(6)</sup>	*
John Rotelli	Director	20,548 <sup>(7)</sup>	*
George F. Thomas	Director	8,600 <sup>(8)</sup>	*
All directors and executive officers as a group (7 persons)		1,391,107	24.4%
<b>5% or More Holders</b>			
Renaissance Technologies LLC		315,964 <sup>(9)</sup>	5.5%

\* Less than 1%

- (1) Beneficial ownership includes shares of common stock as to which a person or group has sole or shared voting power or investment power. Shares of common stock subject to stock options that are exercisable currently or within 60 days of the January 22, 2025, are deemed outstanding for purposes of computing the number of shares beneficially owned and percentage ownership of the person or group holding such stock options, warrants or convertible securities, but are not deemed outstanding for computing the percentage of any other person.
- (2) Includes 39,000 shares owned by Mr. A. Gordon directly, a stock option to purchase 349,000 shares held directly by Mr. A. Gordon, and 273,750 shares owned indirectly by Mr. A. Gordon through A. Gordon Family Ventures LLC.
- (3) Includes 374,037 shares of common stock owned by Mr. D. Gordon directly, and a stock option to purchase 281,000 shares of common stock owned directly by Mr. D. Gordon.
- (4) Includes 100 shares of common stock and an option to purchase 14,000 shares owned directly by Mr. DeCapua.
- (5) Includes 5,900 shares of common stock and an option to purchase 14,000 shares of common stock owned directly by Mr. Dwyer.
- (6) Includes 22,172 shares of common stock and an option to purchase 14,000 shares of common stock owned directly by Mr. Knepper.
- (7) Includes 6,548 shares of common stock and an option to purchase 14,000 shares of common stock owned directly by Mr. Rotelli.
- (8) Includes 5,000 shares of common stock owned by Mr. Thomas directly, an option to purchase 3,000 shares of common stock owned by Mr. Thomas directly, and 600 shares owned by Mr. Thomas' wife.
- (9) Includes shares of common stock beneficially owned by Renaissance Technologies Holdings Corporation ("RTHC") because of RTHC's majority ownership of Renaissance Technologies LLC ("RTC"). The principal business address of both RTHC and RTC is 800 Third Avenue, New York, New York 10022. All information regarding RTHC is based on information disclosed in a statement on Schedule 13G/A filed with the SEC on February 13, 2024.

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

The following is a summary of transactions since November 1, 2022 and all currently proposed transactions, to which JVA has been a participant, in which:

- The amounts exceeded or will exceed the lesser of \$120,000 or one percent of the average of JVA's total assets at year-end for the last two completed fiscal years; and
- Any of the directors, executive officer or holders of more than 5% of our common capital stock, or any member of the immediate family of the foregoing persons, had or will have a direct or indirect material interest.

JVA has engaged its 40% partner in Generations Coffee Company, LLC ("GCC"), with which JVA has a joint venture, as an outside contractor. JVA is the 60% equity owner of the joint venture and Caruso's Coffee Company ("Caruso's") owns the other 40% equity interest. Payments to Caruso's during the years ended October 31, 2024 and October 31, 2023 amounted to \$0, and \$56,851, respectively, for the processing of finished goods. As of the fiscal period ended January 31, 2022, the parties to the joint venture have agreed not to continue with this joint venture.

#### Director Independence

See Part III, Item 10. "Corporate Governance."

### ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

#### Fees Billed to the Company in fiscal years 2024 and 2023

The following table summarizes the fees for professional services rendered by Marcum, our independent registered public accounting firm, for the fiscal years ended October 31, 2024 and 2023:

	Fiscal Year	
	2024	2023
Audit Fees (1)	\$ 265,000	\$ 150,000
Tax Fees	40,000	-
All Other Fees	\$ 50,000	-
Total	\$ 355,000	\$ 150,000

(1) Audit fees consisted of work performed in connection with the audit of the consolidated financial statements as well as work generally only the independent auditors can reasonably be expected to provide, such as quarterly reviews and review of our Annual Reports on Form 10-K.

#### Audit Committee Pre-Approval Policy

The Audit Committee, or a designated member of the Audit Committee, shall preapprove all auditing services and permitted non-audit services (including the fees and terms) to be performed for Coffee Holding by our registered independent public accountants, subject to the de minimis exceptions for non-audit services that are approved by the Audit Committee prior to completion of the audit, provided that: (1) the aggregate amount of all such services provided constitutes no more than five percent of the total amount of revenues paid by Coffee Holding to its registered independent public accountant during the fiscal year in which the services are provided; (2) such services were not recognized by Coffee Holding at the time of the engagement to be non-audit services; and (3) such services are promptly brought to the attention of the Audit Committee and approved prior to the completion of the audit by the Audit Committee or by one or more members of the Audit Committee who are members of the Board to whom authority to grant such approvals has been delegated by the Audit Committee. All of the services set forth in the table above were preapproved by the Audit Committee.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

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

(1) Financial Statements

The financial statements and related notes, together with the report of Marcum LLP appear at pages F-1 through F-22 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.

<u>Exhibit No.</u>	<u>Description</u>
2.1	<a href="#"><u>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)).</u></a>
2.2	<a href="#"><u>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)).</u></a>
3.1	<a href="#"><u>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)).</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws of the Company (incorporated herein by reference to Exhibit 3.1 to the Company’s Current Report on Form 8-K filed September 20, 2023).</u></a>
4.1	<a href="#"><u>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)).</u></a>
4.2	<a href="#"><u>Description of Capital Stock (incorporated herein by reference to Exhibit 4.2 to the Company’s Annual Report on Form 10-K filed on February 9, 2024).</u></a>

- 10.1 [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 \(File No. 333-00588-NY\)\) as amended by that First Amendment to Trademark License Agreement, dated January 4, 2013.](#)
- 10.2 [First Amendment to Trademark License Agreement, dated January 4, 2013, by and between Del Monte Corporation and Coffee Holding Co., Inc. Certain portions of Exhibit 10.4 are omitted based upon approval of the Company's request for confidential treatment through January 28, 2023. The omitted portions were filed separately with the SEC on a confidential basis \(incorporated herein by reference to Exhibit 10.4 to the Company's Annual Report on Form 10-K for the year ended October 31, 2012 filed on January 28, 2013 \(File No. 001-32491\)\).](#)
- 10.3 [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 \(File No. 001-32491\)\).](#)
- 10.4 [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 \(File No. 001-32491\)\).](#)
- 10.5 [Coffee Holding Co., Inc. Non-Qualified Deferred Compensation Plan \(incorporated herein by reference to Exhibit 10.19 of the Company's Quarterly Report on Form 10-QSB filed on June 14, 2005 \(File No. 001-32491\)\).](#)
- 10.6 [Placement Agency Agreement, dated as of September 27, 2011, by and among Coffee Holding Co., Inc., the selling stockholders named therein, Roth Capital Partners, LLC and Maxim Group, LLC \(incorporated herein by reference to Exhibit 10.1 to the Company's Report on Form 8-K filed on September 27, 2011 \(File No. 001-32491\)\).](#)
- 10.7 [Subscription Agreement, dated as of September 27, 2011, by and among Coffee Holding Co., Inc., the selling stockholders named therein and each of the purchasers identified on the signature pages thereto \(incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on September 27, 2011 \(File No. 001-32491\)\).](#)
- 10.8 [2013 Equity Compensation Plan \(incorporated by reference to Annex A of the Company's Definitive Proxy Statement filed on February 28, 2013 \(File No. 13653320\)\).](#)
- 10.9 [Amended and Restated Loan and Security Agreement, dated April 25, 2017, by and among Coffee Holding Co., Inc., Organic Products Trading Company LLC and Sterling National Bank \(incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 28, 2017\).](#)
- 10.10 [Guaranty Agreement, dated April 25, 2017, made by each of Sonofresco, LLC and Comfort Foods, Inc in favor of Sterling National Bank \(incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on April 28, 2017\).](#)
- 10.11 [Lease, dated December 6, 2000, by and between Comfort Foods, Inc. and One Clark Street North Andover LLC \(incorporated herein by reference to Exhibit 10.20 to the Company's Annual Report on Form 10-K filed January 29, 2018\).](#)
- 10.12 [Second Amendment to Lease, dated March 23, 2017, by and between Coffee Holding Co., Inc. and 25 COMM NAM, LLC \(incorporated herein by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K filed January 29, 2018\).](#)

- 10.13 [Loan Modification Agreement and Waiver, dated March 23, 2018, by and among Coffee Holding Co., Inc., Organic Products Trading Company LLC and Sterling National Bank \(incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 27, 2018\).](#)
- 10.14 [Form of Incentive Stock Option Agreement to the Company's 2013 Equity Compensation Plan \(incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on June 29, 2019\).](#)
- 10.15 [Form of Non-Qualified Stock Option Award Agreement to the Company's 2013 Equity Compensation Plan \(incorporated herein by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on June 29, 2019\).](#)
- 10.16 [Loan Modification Agreement and Waiver, dated March 13, 2020, by and among Coffee Holding Co., Inc., Organic Products Trading Company LLC and Sterling National Bank \(incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on March 16, 2020\).](#)
- 10.17 [Lease, dated September 22, 2021, by and among Coffee Holding Co., Inc. and Our Two Buddies, LLC, TANJ Properties, LLC and VGM Realty Services, LLC \(incorporated herein by reference to Exhibit 10.26 \(listed as Exhibit 10.6\) to the Company's Annual Report on Form 10-K filed on January 31, 2022\).](#)
- 10.18 [Loan Modification Agreement, dated June 28, 2022, by and among Coffee Holding Co., Inc., Organic Products Trading Company LLC and Webster Bank \(incorporated herein by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K filed on February 9, 2024\).](#)
- 10.19 [Loan Modification Agreement, dated March 15, 2023, by and among Coffee Holding Co., Inc., Organic Products Trading Company LLC and Webster Bank \(incorporated herein by reference to Exhibit 10.28 to the Company's Annual Report on Form 10-K filed on February 9, 2024\).](#)
- 10.20 [Loan Modification Agreement, dated June 27, 2024, by and among Coffee Holding Co., Inc., Organic Products Trading Company LLC and Webster Bank \(incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 2, 2024\).](#)
- 10.21 [Lease, dated November 7, 2024, by and between Coffee Holding Co., Inc. and 21 Grace Church Street Realty LLC.\\*](#)
- 10.22 [Commencement Date Agreement, dated November 7, 2024, by and between Coffee Holding Co., Inc. and 21 Grace Church Street Realty LLC.\\*](#)
- 10.23 [Secured Creditor Sale Agreement, dated November 6, 2024, by and between Second Empire, LLC and Bridge Business Credit, LLC.\\*](#)
- 21.1 [List of Significant Subsidiaries.\\*](#)
- 23.1 [Consent of Marcum LLP.\\*](#)
- 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 906 of the Sarbanes-Oxley Act of 2002.\\*\\*](#)
- 97 [Coffee Holding Co., Inc. Compensation Recovery Plan \(incorporated herein by reference to Exhibit 97 to the Company's Annual Report on Form 10-K filed on February 9, 2024\).](#)
- 101.INS Inline XBRL Instance Document.
- 101.SCH Inline XBRL Taxonomy Extension Schema Document.
- 101.CAL Inline XBRL Taxonomy Extension Calculation Linkbase Document.
- 101.LAB Inline XBRL Taxonomy Extension Label Linkbase Document.
- 101.PRE Inline XBRL Taxonomy Extension Presentation Linkbase Document.
- 101.DEF Inline XBRL Taxonomy Extension Definition Linkbase Document.
- 104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Filed herewith

\*\*Furnished herewith

#### ITEM 16. FORM 10-K SUMMARY

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on January 31, 2025.

### COFFEE HOLDING CO., INC.

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

Pursuant to the requirements of 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>Signature</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, 2025
<u>/s/ David Gordon</u> David Gordon	Executive Vice President – Operations, Secretary and Director	January 31, 2025
<u>/s/ Gerard DeCapua</u> Gerard DeCapua	Director	January 31, 2025
<u>/s/ Daniel Dwyer</u> Daniel Dwyer	Director	January 31, 2025
<u>/s/ Barry Knepper</u> Barry Knepper	Director	January 31, 2025
<u>/s/ John Rotelli</u> John Rotelli	Director	January 31, 2025
<u>/s/ George Thomas</u> George Thomas	Director	January 31, 2025

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of  
Coffee Holding Co, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Coffee Holding Co., Inc. (the “Company”) as of October 31, 2024 and 2023, the related consolidated statements of operations, changes in stockholders’ equity and cash flows for each of the two years in the period ended October 31, 2024, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of October 31, 2024 and 2023, and the results of its operations and its cash flows for each of the two years in the period ended October 31, 2024, in conformity with accounting principles generally accepted in the United States of America.

### Basis for Opinion

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

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

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

### Critical Audit Matters

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

/s/ Marcum LLP

Marcum LLP

We have served as the Company’s auditor from 2013 to 2021 and subsequently reappointed as the Company’s auditor in 2022.

New York, New York  
January 31, 2025

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**OCTOBER 31, 2024 AND 2023**

	2024	2023
<b>- ASSETS -</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 1,381,023	\$ 2,733,977
Accounts receivable, net of allowances for credit losses of \$144,000 for 2024 and 2023	9,367,338	7,983,032
Receivable from sale of investment	-	3,150,000
Inventories	15,705,984	18,986,539
Due from broker	1,466,059	345,760
Prepaid expenses and other current assets	167,207	413,752
Prepaid and refundable income taxes	285,439	365,876
<b>TOTAL CURRENT ASSETS</b>	<b>28,373,050</b>	<b>33,978,936</b>
Building, machinery and equipment, net	3,221,865	3,494,450
Customer list and relationships, net of accumulated amortization of \$285,750 and \$255,250 for 2024 and 2023, respectively	154,250	184,750
Trademarks and tradenames	327,000	327,000
Equity method investments	39,651	39,676
Right of use asset	1,166,537	2,696,159
Deferred income tax assets – net	592,398	1,341,407
Deposits and other assets	135,937	129,523
<b>TOTAL ASSETS</b>	<b>\$ 34,010,688</b>	<b>\$ 42,191,901</b>
<b>- LIABILITIES AND STOCKHOLDERS' EQUITY -</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable and accrued expenses	\$ 5,743,899	\$ 5,206,442
Line of credit	-	9,620,000
Due to broker	794,804	292,407
Note payable – current portion	-	4,200
Lease liability – current portion	307,364	255,625
<b>TOTAL CURRENT LIABILITIES</b>	<b>6,846,067</b>	<b>15,378,674</b>
Lease liabilities – long term	865,668	2,974,579
Note payable – long term	-	3,034
Deferred compensation payable	121,386	120,523
<b>TOTAL LIABILITIES</b>	<b>7,833,121</b>	<b>18,476,810</b>
Commitments and Contingencies (Note 8)		
<b>STOCKHOLDERS' EQUITY:</b>		
Coffee Holding Co., Inc. stockholders' equity:		
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, 6,633,930 shares issued for 2024 and 2023; 5,708,599 shares outstanding for 2024 and 2023	6,634	6,634
Additional paid-in capital	19,094,618	19,094,618
Retained earnings	11,709,875	9,491,861
Less: Treasury stock, 925,331 common shares, at cost for 2024 and 2023	(4,633,560)	(4,633,560)
Total Coffee Holding Co., Inc. stockholders' equity	26,177,567	23,959,553
Non-controlling interest	-	(244,462)
<b>TOTAL EQUITY</b>	<b>26,177,567</b>	<b>23,715,091</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 34,010,688</b>	<b>\$ 42,191,901</b>

See Notes to Consolidated Financial Statements

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**YEARS ENDED OCTOBER 31, 2024 AND 2023**

	<b>2024</b>	<b>2023</b>
<b>NET SALES</b>	\$ 78,562,298	\$ 68,173,404
<b>COST OF SALES</b>	62,520,529	57,214,382
<b>GROSS PROFIT</b>	16,041,769	10,959,022
<b>OPERATING EXPENSES:</b>		
Selling and administrative	12,457,268	11,680,782
Officers' salaries	620,943	609,935
<b>TOTAL</b>	13,078,211	12,290,717
<b>INCOME (LOSS) FROM OPERATIONS</b>	2,963,558	(1,331,695)
<b>OTHER INCOME (EXPENSE):</b>		
Interest income	34,430	18,947
Loss from equity method investment	-	(511,878)
Gain on sale of investment	-	650,000
Gain on extinguishment of lease	210,567	-
Other income	99,734	634,181
Interest expense	(240,390)	(563,351)
<b>TOTAL</b>	104,341	227,899
<b>INCOME (LOSS) BEFORE INCOME TAX (BENEFIT)</b>	3,067,899	(1,103,796)
Income Provision (benefit)	849,885	(268,220)
<b>NET INCOME (LOSS) BEFORE ADJUSTMENT</b>	2,218,014	(835,576)
<b>NET INCOME (LOSS)</b>	\$ 2,218,014	\$ (835,576)
Basic and diluted income (loss) per share	\$ 0.39	\$ (0.15)
Weighted average common shares outstanding:		
Basic and diluted	5,708,599	5,708,599

See Notes to Consolidated Financial Statements

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
**YEARS ENDED OCTOBER 31, 2024 AND 2023**

	<u>Common Stock</u>		<u>Treasury Stock</u>		<u>Additional Paid-in Capital</u>	<u>Retained Earnings</u>	<u>Non- Controlling Interest</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balance, November 1, 2022	5,708,599	\$ 6,634	925,331	\$ (4,633,560)	\$18,688,797	\$14,471,222	\$ 837,226	\$29,370,319
Net loss						(835,576)		(835,576)
Balance, October 31, 2023	5,708,599	\$ 6,634	925,331	\$ (4,633,560)	\$19,094,618	\$ 9,491,861	\$ (244,462)	\$23,715,091
Write-off of investments in Generations							244,462	244,462
Net income						2,218,014		2,218,014
Balance, October 31, 2024	5,708,599	\$ 6,634	925,331	\$ (4,633,560)	\$19,094,618	\$11,709,875	\$ -	\$26,177,567

See Notes to Consolidated Financial Statements

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**YEARS ENDED OCTOBER 31, 2024 AND 2023**

	2024	2023
<b>OPERATING ACTIVITIES:</b>		
Net income (loss)	\$ 2,218,014	\$ (835,576)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	610,016	593,600
Unrealized gain on commodities – net	(617,902)	(758,024)
Loss on equity method investments	25	314,768
Gain on sale of investment	-	(650,000)
Gain on extinguishment of lease liability	(210,567)	-
Amortization of right of use asset	315,414	322,030
Write off in investment of Generations	(99,734)	-
Deferred income taxes	749,009	(268,220)
Changes in operating assets and liabilities:		
Accounts receivable	(1,384,306)	(166,559)
Inventories	3,280,555	265,675
Prepaid expenses and other current assets	246,545	18,374
Prepaid and refundable income taxes	80,437	500,279
Deposits and other assets	(6,414)	197,110
Accounts payable and accrued expenses	538,321	1,391,578
Change in lease liability	(288,202)	(272,952)
<b>Net cash provided by operating activities</b>	<u>5,431,211</u>	<u>652,083</u>
<b>INVESTING ACTIVITIES:</b>		
Purchases of building, machinery and equipment	(306,931)	(857,760)
Proceeds from sale of investment	3,150,000	-
<b>Net cash provided by (used in) investing activities</b>	<u>2,843,069</u>	<u>(857,760)</u>
<b>FINANCING ACTIVITIES:</b>		
Advances under bank line of credit	-	3,034,783
Cash overdraft	-	(876,148)
Principal payment on note payable	(7,234)	(6,071)
Principal payments under bank line of credit	(9,620,000)	(1,728,783)
<b>Net cash (used in) provided by financing activities</b>	<u>(9,627,234)</u>	<u>423,781</u>
<b>NET INCREASE (DECREASE) IN CASH</b>	(1,352,954)	218,104
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	<u>2,733,977</u>	<u>2,515,873</u>
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	<u>\$ 1,381,023</u>	<u>\$ 2,733,977</u>

See Notes to Consolidated Financial Statements

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**YEARS ENDED OCTOBER 31, 2024, AND 2023**

	<u>2024</u>	<u>2023</u>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW DATA:</b>		
Cash paid for income taxes	\$ 112,294	\$ -
Interest paid	<u>\$ 286,754</u>	<u>\$ 538,363</u>
<b>SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>		
Initial recognition of operating lease right of use asset	\$ 633,824	\$ 146,416
Initial recognition of operating lease liabilities	\$ 632,490	\$ 146,416
Sale of investment	\$ -	\$ 3,150,000

See Notes to Consolidated Financial Statements

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

**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 also manufactures and sells coffee roasters. 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 eight 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 and certain countries in Asia. 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 with limited sales in Australia, Canada, England and China.

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.

On September 29, 2022, the Company entered into a Merger and Share Exchange Agreement (the “Merger Agreement”), by and among the Company, Delta Corp Holdings Limited, a Cayman Islands exempted company (“Pubco”), Delta Corp Holdings Limited, a company incorporated in England and Wales (“Delta”), CHC Merger Sub Inc., a Nevada corporation and wholly owned subsidiary of Pubco (“Merger Sub”), and each of the holders of ordinary shares of Delta as named therein. Upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub would merge with and into the Company, with the Company surviving as a direct, wholly-owned subsidiary of Pubco (the “Merger”). As a result of the Merger, each issued and outstanding share of the Company’s common stock, \$0.001 par value per share, would be cancelled and converted for the right of the holder thereof to receive one ordinary share, par value \$0.0001 of Pubco. There was a shareholder vote in April 2024 on the Merger Agreement that did not pass. On June 21, 2024, the Company terminated the Merger Agreement. No early termination penalties were payable by the Company upon termination of the Merger Agreement.

*Going Concern and Liquidity*

The Company’s line of credit will become due June 29, 2025 (see Note 6). The agreement requires the Company to maintain compliance with certain financial covenants computed on a quarterly and annual basis. In previous periods, the Company was not in compliance with these requirements. However, a waiver of all past defaults was received on May 24, 2024. As of October 31, 2024, the Company is in compliance with those financial covenants. The Company has paid down the full balance of the line of credit as of October 31, 2024. Additionally, the Company is in a net income position for the year ended October 31, 2024 of \$2.2 million, cash from operating activities of \$5.4 million, and a net working capital surplus of \$21.5 million. As a result, the Company does not believe that substantial doubt is raised regarding the Company’s ability to continue as a going concern and the ability to meet its obligations as they become due within the twelve months from the date the condensed consolidated financial statements are issued.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

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

**BASIS OF PRESENTATION:**

The consolidated financial statements include the accounts of the Company, Organic Products Trading Company, LLC (“OPTCO”), Sonofresco LLC (“SONO”), and Comfort Foods, Inc. (“CFI”). All inter-company balances and transactions have been eliminated in consolidation. The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and comply with SEC reporting requirements.

**USE OF ESTIMATES:**

The preparation of the Company’s financial statements in conformity with accounting principles generally accepted in the United States of America (GAAP) requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Significant estimates include depreciable lives for long-lived assets, and valuation of indefinitely lived intangible assets impairment testing. These estimates may be adjusted as more current information becomes available, and any adjustment could have a significant impact on recorded amounts.

**CASH AND CASH EQUIVALENTS:**

Cash and cash equivalents consists primarily of unrestricted cash on deposit and securities with an original maturity of 3 months or less at financial institutions and brokerage firms.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

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

**ACCOUNTS RECEIVABLE:**

Trade accounts receivable are stated at the amount the Company expects to collect. The Company maintains allowances for credit losses for estimated losses resulting from the inability of its customers to make required payments. Management considers the following factors when determining the collectability of specific customer accounts: customer credit-worthiness, past transaction history with the customer, current customer conditions, reasonable forecasts, current economic industry trends, and changes in customer payment terms. Past due balances over 60 days and other higher risk amounts are reviewed individually for collectability. If the financial condition of the Company's customers were to deteriorate, adversely affecting their ability to make payments, additional allowances would be required. Based on management's assessment, the Company provides for estimated credit losses through a charge to earnings and a credit to a valuation allowance. Balances that remain outstanding after the Company has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to accounts receivable.

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:

	<b>2024</b>	<b>2023</b>
Allowance for credit losses	\$ 65,000	\$ 65,000
Reserve for other allowances	35,000	35,000
Reserve for sales discounts	44,000	44,000
<b>Totals</b>	<b>\$ 144,000</b>	<b>\$ 144,000</b>

**INVENTORIES:**

Inventories are stated at the lower of cost (first in, first out basis) or net realizable value, including provisions for obsolescence commensurate with known or estimated exposures. There are no reserves for obsolescence as of October 31, 2024, and 2023.

**BUILDING, MACHINERY AND EQUIPMENT:**

Building, machinery and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful lives of the assets. Purchases of buildings, 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 which are depreciated over the shorter of the useful life of the improvement or the lease term.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

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

**COMMODITIES HELD BY BROKER:**

The commodities held at broker represent the market value of the Company's trading account, which consists of option and future contracts for coffee held with a brokerage firm. 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 level 1 investments recognized at fair value in the consolidated financial statements with current recognition of gains and losses on such positions. The Company's accounting for options and futures contracts may impact earnings volatility in any particular period. We record all open contract positions on our consolidated balance sheets at fair value in the due from and due to broker line items and typically do not offset these assets and liabilities.

The Company classifies its options and future contracts as trading securities and accordingly, unrealized holding gains and losses are included in the statement of operations as a component of cost of sales.

The Company recorded realized and unrealized gains and losses on these contracts as follows:

	<b>Year Ended October 31,</b>	
	<b>2024</b>	<b>2023</b>
Gross realized gains	\$ 1,968,168	\$ 1,034,966
Gross realized (losses)	(1,005,616)	(1,603,746)
Unrealized gains (losses)	617,902	758,024
Total	\$ 1,580,454	\$ 189,244

**CUSTOMER LIST AND RELATIONSHIPS:**

Customer list and relationships consist of a specific customer lists and customer contracts obtained by the Company in the acquisition of OPTCO, Comfort Foods and Sonofresco which are being amortized on the straight-line method over their estimated useful life of twenty years. Amortization expense for the years ended October 31, 2024, and 2023 was \$30,500.

**TRADEMARKS:**

The Company has determined that its trademarks, which consist of product lines, trade names and packaging designs have indefinite useful lives. Trademarks are tested for impairment at least annually or when circumstances indicate that the carrying amount of the trademarks exceed fair value. The Company performs its annual impairment test on October 31 of each year by first performing a qualitative assessment to determine if it is more likely than not that the carrying amounts exceed the fair values. Depending on the outcome of our qualitative assessment, we may perform a quantitative assessment to determine if the carrying amounts exceed the fair values on the assessment date.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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**NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont'd):**

During the years ended October 31, 2024 and 2023, the Company's management concluded that no impairment charge was necessary during the years then ended.

**IMPAIRMENT OF LONG-LIVED ASSETS:**

The Company assesses the impairment of long-lived assets used in operations, primarily buildings, machinery and equipment as well as intangible assets subject to amortization, when events and circumstances indicate that the carrying value amounts of these assets might not be recoverable. For purposes of evaluating the recoverability of buildings, machinery and equipment and amortizable intangible assets, the undiscounted cash flows estimated to be generated by those assets are compared to the carrying amounts of those assets. If and when the carrying amounts of the assets exceed the undiscounted cashflows, then the related assets will be written down to fair value, if less. During the years ended October 31, 2024 and 2023, the Company recorded no impairment charges of its amortizable intangible assets, buildings, machinery and equipment.

**ADVERTISING:**

The Company expenses the cost of advertising and promotion as incurred. Advertising costs charged to operations totaled \$32,455 and \$35,369 for the years ended October 31, 2024 and 2023, 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.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

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

**(LOSS) EARNINGS PER SHARE:**

Basic (loss) earnings per common share was computed by dividing net (loss) income by the sum of the weighted-average number of common shares outstanding. Diluted (loss) earnings per common share is computed by dividing the net (loss) 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. The Company has 921,000 options outstanding which have not been included in the calculation of diluted (loss) earnings per share because they are anti-dilutive.

The weighted average common shares outstanding used in the computation of basic and diluted (loss) earnings per share were 5,708,599 for the years ended October 31, 2024 and 2023.

**FAIR VALUE OF FINANCIAL INSTRUMENTS:**

The carrying amounts of cash, accounts receivable, notes due to/(from) broker and accounts payable approximate fair value because of the short-term nature of these instruments. The carrying amount of the bank line of credit 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.

The Company measures fair value as required by Accounting Standards Codification ("ASC") Topic 820 "Fair Value Measurements and Disclosures" ("ASC Topic 820"). ASC Topic 820 defines fair value, establishes a framework and gives guidance regarding the methods used for measuring fair value, and expands disclosures about fair value measurements. ASC Topic 820 clarifies that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, there exists a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

- A) Level 1 – unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access as of the measurement date.
- B) Level 2 – inputs other than quoted prices included within Level 1 that are directly observable for the asset or liability or indirectly observable through corroboration with observable market data.
- C) Level 3 – unobservable inputs for the asset or liability only used when there is little, if any, market activity for the asset or liability at the measurement date.

The hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

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

**REVENUE RECOGNITION:**

The Company recognizes revenue in accordance with the five-step model as prescribed by the Financial Accounting Standards Board (“FASB”) Accounting Codification (“ASC”) Topic 606 (“ASC 606”) in which the Company evaluates the transfer of promised goods or services and recognizes revenue when its customer obtains control of promised goods or services in an amount that reflects the consideration which the Company expects to be entitled to receive in exchange for those goods or services. To determine revenue recognition for the arrangements that the Company determines are within the scope of ASC 606, the Company performs the following five steps: (1) identify the contract(s) with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

The following table presents revenues by product line for the years ended October 31, 2024 and 2023.

	<b>2024</b>	<b>2023</b>
Green	\$ 31,177,003	\$ 30,582,179
Packaged	47,385,295	37,591,225
Totals	<u>\$ 78,562,298</u>	<u>\$ 68,173,404</u>

Revenue for these product lines is recognized upon shipment to the customer.

**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 \$2,700,000 and \$2,539,000 for the years ended October 31, 2024 and 2023, respectively, is included in cost of sales.

**CONCENTRATION OF RISK:**

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash deposits at financial institutions and brokerage firms.

Accounts at each institution are insured by the Federal Deposit Insurance Corporation (FDIC) up to certain limits. At October 31, 2024 and 2023, the Company had approximately \$780,000 and \$2,092,000 in excess of FDIC insured limits, respectively.

The accounts at the brokerage firm contain cash and securities. Balances are insured up to \$500,000, with a limit of \$100,000 for cash, by the Securities Investor Protection Corporation (SIPC).

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

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

**EQUITY METHOD OF ACCOUNTING:**

Investee companies that are not consolidated, but over which the Company exercises significant influence, are accounted for under the equity method of accounting. Whether or not the Company exercises significant influence with respect to an Investee depends on an evaluation of several factors including, among others, representation on the Investee company's board of directors and ownership level, which is generally a 20% to 50% interest in the voting securities of the Investee company. Under the equity method of accounting, an Investee company's accounts are not reflected within the Company's consolidated Balance Sheets and consolidated Statements of Operations; however, the Company's share of the earnings or losses of the Investee company is reflected in the caption "Loss from equity method investments" in the consolidated Statements of Operations. The Company's carrying value in an equity method Investee company is reflected in the caption "Equity method investments" in the Company's consolidated Balance Sheets.

The Company's equity method investments consist of the following:

- (1) 20% interest in Healthwise Gourmet Coffees, LLC, a distributor of low acidity coffees. The initial investment in this company amounted to \$100,000. The loss recognized amounted to \$25 and \$16,925 for the years ended October 31, 2024 and 2023, respectively. The carrying amount of this investment as presented on the consolidated balance sheet at October 31, 2024 and 2023 was \$39,651 and \$39,676, respectively.

**INVESTMENTS - OTHER:**

Investment – other represent investments made by the Company that do not qualify as equity method investments as the Company cannot exercise significant influence over the target. The Company accounts for these investments in accordance with ASC Topic 321 "Investments – Equity Securities" ("ASC 321"). In August 2021, the Company made an investment of \$2,500,000 in an entity that hold investments in the plant-based protein drink manufacturing industry. The Company has determined they do not have significant influence over the investee. Pursuant to ASC 321, the Company has elected an alternate measurement to account for this investment at cost less any impairment with adjustments to fair value if there are observable price changes. This investment was sold in October 2023. The sale price was \$3,150,000, which is presented as a receivable on our balance sheet as of October 31, 2023. We also reported the gain of \$650,000 on our statement of operations for the year ended October 31, 2023.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

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

**LEASES:**

Leases are accounted for under ASC 842. The Company determines if an arrangement is or contains a lease at inception. The Company's operating lease arrangements are comprised of real estate and facility leases. Right of use assets represent the Company's right to use the underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. Right of use assets and lease liabilities are recognized at the commencement date based on the present value of the lease payments over the lease term. As the Company's leases do not provide an implicit rate and the implicit rate is not readily determinable, the Company estimates its incremental borrowing rate based on the information available at the measurement date in determining the present value of the lease payments. Right of use assets also exclude lease incentives.

**ACCOUNTING PRONOUCEMENTS ADOPTED**

The Company follows the FASB Accounting Standard Update ("ASU") 2016-13, "Financial Instruments – Credit Losses (Topic 326)." This guidance requires entities to use a current expected credit loss impairment model rather than incurred losses. The Company considers factors such as credit quality, age of balances, historical experience and current and future economic conditions that may affect the Company's expectation of collectability in determining the allowance for credit losses. The standard became effective for the Company on November 1, 2023. The adoption of this new guidance did not have a material impact on the Company's consolidated financial statements and related disclosures.

**ACCOUNTING PRONOUCEMENTS NOT YET ADOPTED:**

In October 2023, the FASB issued ASU 2023-06, "Disclosure Improvements – Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative." This standard affects a wide variety of Topics in the Codification. The effective date for each amendment will be the date on which the SEC's removal of that related disclosure from Regulation S-X or Regulation S-K becomes effective. Early adoption is prohibited. The Company does not expect the adoption of this standard to have a material impact on the Company's consolidated financial statements and related disclosures.

In November 2023, the FASB issued ASU 2023-07, "Segment Reporting – Improving Reportable Segment Disclosures (Topic 280)." The standard is intended to improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant expenses. The standard requires disclosure to include significant segment expenses that are regularly provided to the chief operating decision maker ("CODM"), a description of other segment items by reportable segment, and any additional measures of a segment's profit or loss used by the CODM when deciding how to allocate resources. The standard also requires all annual disclosures currently required by ASC Topic 280 to be included in interim periods. This standard is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted, and requires retrospective application to all prior periods presented in the financial statements. The Company is currently evaluating the impact of this standard on its consolidated financial statements and related disclosures.

In December 2023, the FASB issued ASU 2023-09, "Improvements to Income Tax Disclosures," a final standard on improvements to income tax disclosures. The standard requires disaggregated information about a reporting entity's effective tax rate reconciliation as well as information on income taxes paid. The standard is effective for fiscal years beginning after December 15, 2024, with early adoption permitted and should be applied prospectively. The Company is currently evaluating the impact of this standard on its consolidated financial statements and related disclosures.

**NOTE 3 - INVENTORIES:**

Inventories at October 31, 2024, and 2023 consisted of the following:

	<b>2024</b>	<b>2023</b>
Packed coffee	\$ 2,025,335	\$ 3,582,935
Green coffee	11,252,118	13,151,993
Roaster parts	469,849	537,108
Packaging supplies	1,685,682	1,714,503
<b>Totals</b>	<b>\$ 15,705,984</b>	<b>\$ 18,986,539</b>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

**NOTE 4 – BUILDING, MACHINERY AND EQUIPMENT:**

Building machinery and equipment at October 31, 2024, and 2023 consisted of the following:

	Estimated Useful Life	<b>2024</b>	<b>2023</b>
Improvements	15-30 years	\$ 279,813	\$ 233,766
Building	31 years	900,321	900,321
Machinery and equipment	7 years	8,673,925	8,587,858
Furniture and fixtures	7 years	1,359,203	1,184,387
		<u>11,213,262</u>	<u>10,906,332</u>
Less, accumulated depreciation		7,991,397	7,411,882
		<u>\$ 3,221,865</u>	<u>\$ 3,494,450</u>

Depreciation expense totaled \$579,515 and \$563,100 for the years ended October 31, 2024, and 2023, respectively.

**NOTE 5 – ACCOUNTS PAYABLE AND ACCRUED EXPENSES:**

Accounts payable and accrued expenses at October 31, 2024, and 2023 consisted of the following:

	<b>2024</b>	<b>2023</b>
Accounts payable	\$ 2,944,905	\$ 3,681,123
Purchase accruals	2,408,749	1,051,685
Other accruals	390,245	473,634
Totals	<u>\$ 5,743,899</u>	<u>\$ 5,206,442</u>

**NOTE 6 - LINE OF CREDIT:**

On April 25, 2017 the Company and OPTCO (collectively referred to herein as the “Borrowers”) entered into an Amended and Restated Loan and Security Agreement (the “A&R Loan Agreement”) and Amended and Restated Loan Facility (the “A&R Loan Facility”) with Sterling National Bank (“Sterling”), which consolidated (i) the financing agreement between the Company and Sterling, dated February 17, 2009, as modified, (the “Company Financing Agreement”) and (ii) the financing agreement between Company, as guarantor, OPTCO and Sterling, dated March 10, 2015 (the “OPTCO Financing Agreement”), amongst other things.

On March 17, 2022, the Company reached an agreement for a new loan modification agreement and credit facility which extended the maturity date to June 29, 2022. The facility was then approved for a two-year extension. All other terms of the A&R Loan Agreement and A&R Loan Facility remain the same.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

**NOTE 6 - LINE OF CREDIT (cont'd):**

On June 28, 2022, the Company reached an agreement for a new loan modification agreement and credit facility with Webster. The terms of the new agreement, among other things: (i) provided for a new maturity date of June 30, 2024, and (ii) changed the interest rate per annum to SOFR plus 1.75% (with such an interest rate not to be lower than 3.50%). Interest rate at October 31, 2024, was 7.02%. All other terms of the A&R Loan Agreement and A&R Loan Facility remained the same. The credit facility is \$14,000,000. The unused line of credit as of October 31, 2024, was \$14,000,000. The collateral related to the outstanding debt is all assets of the company.

The Company is required to maintain certain financial covenants with respect to the A&R Loan Agreement. The Company was not in compliance with such requirements as of October 31, 2023. The Company received a waiver from the lender on May 24, 2024 for all past defaults. The A&R Loan Agreement was also modified on March 15, 2023 to, among other things: (i) provide for a requirement for subordination agreements, if necessary, (ii) change the terms of transactions with affiliates from a dollar limitation to allowable in the ordinary course of business, and (iii) established a new covenant for a fixed charge coverage ratio.

On June 27, 2024, the Borrowers entered into the Tenth Loan Modification Agreement with Webster which amended the A&R Loan Agreement to, among other things: (i) provide for a new loan maturity date of June 29, 2025, (ii) provide that the applicable margin requirement for any revolving loan outstanding under the A&R Loan Agreement to 2.25%, (iii) provide that the maximum facility amount shall be \$10,000,000 and (iv) to adjust certain definitions and terms related to the borrowing base and leverage ratios applicable to the A&R Loan Agreement.

Each of the A&R Loan Facility and A&R Loan Agreement contains covenants, subject to certain exceptions, that place annual restrictions on the Borrowers' operations, including covenants relating to debt restrictions, capital expenditures, indebtedness, minimum deposit restrictions, tangible net worth, net profit, leverage, employee loan restrictions, dividend and repurchase restrictions (common stock and preferred stock), and restrictions on intercompany transactions. The outstanding balance on the Company's line of credit was \$0 and \$9,620,000 as of October 31, 2024, and October 31, 2023, respectively.

**NOTE 7 - INCOME TAXES:**

The Company's provision (benefit) for income taxes in 2024 and 2023 consisted of the following:

	<u>2024</u>	<u>2023</u>
<b>Current</b>		
Federal	\$ 82,332	\$ -
State and local	18,544	-
	<u>100,876</u>	<u>-</u>
<b>Deferred</b>		
Federal	611,317	(223,120)
State and local	137,692	(45,100)
	<u>749,009</u>	<u>(268,220)</u>
<b>Provision (benefit) for income taxes</b>	<u>\$ 849,885</u>	<u>\$ (268,220)</u>

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

**NOTE 7 - INCOME TAXES (cont'd):**

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

	<b>2024</b>	<b>2023</b>
Expense (Benefit) from for tax at the federal statutory rate	\$ 644,259	\$ (231,797)
Goodwill impairment	-	-
Other permanent differences	23,718	(51,500)
Return to provision	29,959	51,500
Deferred Tax change in effective rate	6,838	
State and local tax, net of federal	145,112	(36,423)
Expense (Benefit from) income taxes	\$ 849,885	\$ (268,220)
Effective income tax rate	28%	25%

The tax effects of the temporary differences that give rise to the deferred tax assets and liabilities as of October 31, 2024 and 2023 are as follows:

	<b>2024</b>	<b>2023</b>
<b>Deferred tax assets:</b>		
Accounts receivable	\$ 37,051	\$ 34,539
Unrealized loss	-	-
Deferred rent	942	28,483
Deferred compensation	31,233	28,908
Net operating loss	503,413	1,039,047
Stock-based compensation	645,892	602,107
Inventory	93,879	105,794
<b>Total deferred tax asset</b>	<b>1,312,410</b>	<b>1,838,878</b>
<b>Deferred tax liabilities:</b>		
Intangible assets acquired	95,347	70,021
Unrealized gain	132,625	-
Buildings, machinery and equipment	492,040	427,450
<b>Total deferred tax liabilities</b>	<b>720,012</b>	<b>497,471</b>
<b>Net deferred tax asset</b>	<b>\$ 592,398</b>	<b>\$ 1,341,407</b>

A valuation allowance was not provided at October 31, 2024 or 2023. 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.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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**NOTE 7 - INCOME TAXES (cont'd):**

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.

As of October 31, 2024 and 2023, 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, 2024, and 2023, 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, Connecticut, Florida, Idaho, Illinois, Kansas, Louisiana, Michigan, Massachusetts, Montana, New Jersey, New York, New York City, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia 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 2021. The Company's California, Colorado and New Jersey and Texas income tax returns are no longer subject to examination by their respective taxing authorities for the years before fiscal 2021. The Company's Oregon, New York, Kansas, South Carolina, Rhode Island, Connecticut and Michigan income tax returns are no longer subject to examination by their respective taxing authorities for the years before fiscal 2021.

As of October 31, 2024, and 2023, the Company had cumulative net operating loss carryforwards of approximately \$1,956,523 and \$3,524,744 respectively, \$153,235 of which begin to expire in 2038 and \$1,803,288 of the net operating loss carryforwards that do not expire. In accordance with Section 382 of the Internal Revenue code, the usage of \$153,235 of the Company's net operating loss carryforwards is subject to an annual limitation of \$60,469, the remaining operating loss carryforwards of \$1,803,288 have no such limitations. These net operating loss carryforwards may be further limited in the event of a change in ownership.

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024 AND 2023**

**NOTE 8 - COMMITMENTS AND CONTINGENCIES:**

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 \$63,095 and \$80,994 for the years ended October 31, 2024, and 2023, respectively.

**NOTE 9 - LEASES:**

The following summarizes the Company's operating leases:

	<b>2024</b>	<b>2023</b>
Right-of-use operating lease assets	\$ 1,166,537	\$ 2,696,159
Current lease liability	307,364	255,625
Non-current lease liability	865,668	2,974,579
Total lease liability	\$ 1,173,032	\$ 3,230,204

The amortization of the right-of-use asset for the years ended October 31, 2024 and 2023 was \$315,414 and \$322,030, respectively.

Weighted average remaining lease term	3.76
Weighted average discount rate	6.4%

**COFFEE HOLDING CO., INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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**NOTE 9 – LEASES (cont’d):**

**Maturities of lease liabilities by year for our operating leases are as follows:**

2025	\$	371,784
2026		355,024
2027		303,562
2028		226,990
2029		66,619
Thereafter		-
Total lease payments	\$	1,323,979
Less: imputed interest		(150,947)
Present value of operating lease liabilities	\$	1,173,032

The aggregate cash payments under these leasing agreements were \$288,202 and \$429,027 for the years ended October 31, 2024, and 2023, respectively. Variable lease payments were \$131,490 and \$105,568 during the years ended October 31, 2024, and 2023, respectively. Operating lease costs were \$426,200 and \$475,346 for the years ended October 31, 2024, and 2023, respectively.

In May 2024, the Company modified its existing lease agreement pertaining to a portion of its office facility. The Company wrote off \$1,848,032 in right-of-use assets and \$2,058,599 lease liability associated with this agreement, resulting in a gain on extinguishment of lease of \$210,567. On May 1, 2024, the Company entered into an amended lease agreement for the remaining portion of its office facility in Staten Island, NY, which changed the lease modification date to April 30, 2029. The amended lease commenced on May 1, 2024. The Company recognized a right-of-use asset and lease liability associated with this modified agreement of \$547,975. As a result of the modification, the Company decreased its right-of-use asset by \$1,300,057 and lease liability by \$1,510,624 as of July 31, 2024.

As of October 31, 2024, the Company was reasonably certain that the option to extend the Sonofresco lease would be exercised through December 2026. As a result, the Company increased its right-of-use asset and lease liability by approximately \$85,000 as of October 31, 2024.

**NOTE 10 - RELATED PARTY TRANSACTIONS:**

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: the Company’s Chief Executive Officer. Within the plan guidelines, this employee is deferring a portion of his current salary and bonus. The assets are held in a separate trust. The deferred compensation payable represents the liability due to the Chief Executive Officer of the Company. The assets were \$121,386 and \$120,523 as of October 31, 2024, and October 31, 2023, respectively, and are included in Deposits and other assets in the accompanying balance sheets. The deferred compensation liability at October 31, 2024 and October 31, 2023 was \$121,386 and \$120,523, respectively.

**NOTE 11 - STOCKHOLDERS’ EQUITY:**

- a. *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 years ended October 31, 2024 and 2023.
- b. *Stock Options.* The Company has an incentive stock plan, the 2013 Equity Compensation Plan (the “2013 Plan”), and on April 19, 2019, has granted 1,000,000 stock options to employees, officers and non-employee directors from the 2013 Plan each with an exercise price of \$5.43. Options granted under the 2013 Plan may be Incentive Stock Options or Nonqualified Stock Options, as determined by the Administrator at the time of grant. During the year ended October 31, 2024, 79,000 stock options were forfeited. No options were granted or expired during the years ended October 31, 2024. No options were granted, forfeited or expired during the years ended October 31, 2023. As of October 31, 2024, and October 31, 2023, 921,000 and 1,000,000, were exercisable, respectively.

The Company recorded no stock-based compensation expense for the year ended October 31, 2024 and 2023, as all stock option awards were fully vested as of the beginning of the reporting period.

**NOTE 12 – CONCENTRATION OF CREDIT RISK**

The Company had one customer in fiscal year 2024 that individually exceeded 10% of consolidated net sales. Net sales to this one customer were approximately 12% of consolidated net sales or \$9.2 million.

**NOTE 13 – SUBSEQUENT EVENTS:**

The Company evaluated subsequent events and transactions that occurred after the balance sheet date up to the date that the financial statements were issued. Other than as described below, the Company did not identify any subsequent events that would have required adjustment or disclosure in the financial statements.

In November 2024, the Company purchased the remaining assets of Empire Coffee Company for \$825,000 in a Uniform Commercial Code (“UCC”) Chapter 9 sale (“Second Empire” acquisition). The assets purchased consisted of accounts receivable, inventories and equipment. Second Empire will operate as a 100% wholly owned subsidiary of Coffee Holding.

In connection with this transaction, Coffee Holding entered into a four-year lease with 21 Grace Church Street Realty LLC for the existing property at 21 Grace Church Street, Port Chester, NY 10573 where Empire Coffee has its offices and production facility.

Operations of Second Empire will include roasting and packing for current Coffee Holding customers as well as customers of Empire Coffee.

**LEASE**

**between**

**21 GRACE CHURCH STREET REALTY LLC,**

**Landlord**

**and**

**COFFEE HOLDING CO., INC.,**

**Tenant**

**Premises**

**Partial First Floor and Partial Second Floor**

**21 Grace Church Street  
Port Chester, New York 10573**

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## EXHIBITS

- Exhibit A** – Floor Plan of the Premises
- Exhibit B** – Form of Commencement Date Agreement
- Exhibit C** – Fixed Rent
- Exhibit D** – Rules and Regulations
- Exhibit E** – Parking Lot

**LEASE** dated as of November 7, 2024 (this “Lease”), by and between 21 GRACE CHURCH STREET REALTY LLC, a New York limited liability company (“Landlord”), having an address at 1250 Waters Place, PH1, Bronx, New York 10461, and COFFEE HOLDING CO., INC., a Nevada corporation (“Tenant”), having an address at 3475 Victory Boulevard, Staten Island, New York 10314.

**WITNESSETH:**

**ARTICLE 1 – Demise, Rent and Definitions**

1.01. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to all of the terms and conditions of this Lease, certain premises consisting of (i) approximately 31,819 rentable square feet on the first (1<sup>st</sup>) floor (the “1<sup>st</sup> Floor Premises”), and (ii) approximately 8,929 rentable square feet on the second (2<sup>nd</sup>) floor (the “2<sup>nd</sup> Floor Premises”, and, together with the 1<sup>st</sup> Floor Premises, collectively, the “Premises”) (for a total of approximately 40,748 rentable square feet) in the building (the “Building”) located on the property with an address of 21 Grace Church Street, Port Chester, New York 10573 (the “Land”), as such Premises is more particularly described on the site plan attached hereto as Exhibit A. Tenant shall have the non-exclusive right to use the Common Areas of the Building and the Land, in common with others, subject to the terms and conditions of this Lease and the present and future Rules and Regulations with respect to the Common Areas of the Property (as hereinafter defined). For purposes of this Lease, “Common Areas” shall mean, collectively: the sidewalks, entrances, vestibules, if any, lobbies, halls, corridors, elevators, public stairways and other portions of the Building and/or the Land that Landlord makes available from time to time for the common use of the tenants of the Building. The Building and the Land are collectively called the “Property”.

1.02. The term of this Lease (“Term”) shall commence on the date hereof (the “Commencement Date”) and shall end at 11:59 p.m. on the last day of the calendar month in which the fourth (4<sup>th</sup>) anniversary of the Commencement Date shall occur, unless the Commencement Date occurs on the first (1<sup>st</sup>) day of a calendar month, in which case this Lease shall end at 11:59 p.m. on the last day of the preceding calendar month (such date, the “Expiration Date”) or on such earlier date upon which this Lease shall terminate pursuant to the provisions hereof or law. The “Possession Date” shall be the date on which Landlord delivers the Premises to Tenant in its existing condition containing the Tenant Acquired Property (as defined below). The “Rent Commencement Date” shall be the same date as the Possession Date. Tenant’s obligation to pay Fixed Rent and any Additional Charges (each as defined below), including, without limitation, Operating Payments and Tax Payments (each as defined below), shall commence on the Rent Commencement Date. Upon the occurrence of the Possession Date, Landlord and Tenant shall enter into a Commencement Date Agreement, setting forth the Possession Date, the Rent Commencement Date and the Expiration Date

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of this Lease, in the form of **Exhibit B** annexed hereto. This Lease shall not constitute a binding contract until it has been executed and delivered by each of Tenant and Landlord.

1.03. The rents under this Lease shall consist of (a) fixed rent ("Fixed Rent") in the amounts per annum set forth in Exhibit C, and (b) additional rent ("Additional Charges") consisting of all other sums of money that become due from Tenant and payable to Landlord hereunder. Fixed Rent shall be payable in equal monthly installments in advance on the first day of each and every calendar month during the Term, beginning on the Rent Commencement Date. Additional Charges as provided in Article 15 shall be payable for the period beginning on the Possession Date. All Additional Charges unless otherwise provided herein shall be due and payable by Tenant within thirty (30) days after Landlord gives Tenant a statement therefor. All Fixed Rent and Additional Charges shall be paid in lawful money of the United States to Landlord at its office at 1250 Waters Place, PH-1, Bronx, New York 10461, or such other place as Landlord may designate or by wire transfer. Simultaneously with the execution and delivery of this Lease, Tenant is paying to Landlord the first installment of Fixed Rent for a full calendar month in the amount of Forty-Eight Thousand Five Hundred Forty-Five and 95/100 Dollars (\$48,545.95) and the Security Deposit set forth in Article 36 of this Lease in the amount of Ninety-Seven Thousand Ninety-One and 90/100 Dollars (\$97,091.90).

1.04. Tenant shall pay Fixed Rent and Additional Charges promptly when due without notice or demand therefor, without any abatement, deduction or setoff for any reason except, in each case, as otherwise expressly provided in this Lease. Landlord shall have the same remedies for default in payment of Additional Charges as Landlord has for default in payment of Fixed Rent. If the Rent Commencement Date is not the first day of a calendar month, or this Lease terminates on a day other than the last day of a calendar month, then Fixed Rent and Additional Charges under Articles 4 and 5 hereof for any partial calendar month shall be appropriately prorated based on the number of days in that month that occur within the Term, and shall be paid on the first day of such period.

1.05. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the correct Fixed Rent or Additional Charges shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept same without prejudice to Landlord's right to recover the balance or pursue any other remedy provided in this Lease or at law.

1.06. If Tenant fails to make any payment of Fixed Rent or Additional Charges by the due date thereof, Tenant shall pay to Landlord a late charge of 4% of the amount of such payment, and in addition, such unpaid amount shall bear interest at a rate per annum (the "Lease Interest Rate") equal to the lesser of

(a) the Prime Rate plus 5%, or (b) the maximum applicable rate allowed by law, from the date of expiration of any applicable grace period after such amount became due and payable to the date of payment thereof by Tenant. Such late charge and interest shall be due and payable on demand. Notwithstanding the foregoing, Tenant shall not be required to pay the foregoing late charge, and the Lease Interest Rate shall not apply to, the first (1<sup>st</sup>) instance in each Lease Year (as defined below) of the Term of this Lease that Tenant fails to make any payment of Fixed Rent or Additional Charges within five (5) days of the due date thereof.

1.07. The following terms, whenever used in this Lease (including all Exhibits attached hereto, all of which are hereby incorporated in this Lease by reference thereto), shall have the meanings indicated:

(a) The term "Business Days" shall mean Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, excluding holidays on which commercial banks in the State of New York are required or permitted to close.

(b) The term "Business Hours" shall mean 8:00 a.m. to 6:00 p.m. but only on Business Days.

(c) The term "emergency" shall mean a condition presenting imminent danger to health or safety of persons or property in or about the Property.

(d) The terms "herein" and "hereunder" and words of similar import shall be construed to refer to this Lease as a whole and not to any particular Article or Section unless expressly so stated.

(e) The term "including" shall mean "including, without limitation."

(f) The term "Insolvency Laws" shall mean the United States Bankruptcy Code, as the same may hereafter be amended or replaced, and any other federal, state or foreign law covering insolvency and similar matters.

(g) The term "Insurance Requirements" shall mean rules, regulations, orders and requirements of the board of fire underwriters and fire insurance rating organization having jurisdiction and any other similar body performing the same or similar functions, whether now or hereafter in force, and requirements of any insurance policy maintained by Landlord or Tenant at any time.

(h) The term "Landlord" shall mean only the owner at the time in question of the Property or of a lease of the Property, so that in the event of any transfer or transfers of title to the Property or of Landlord's interest in a

lease of the Property (as tenant thereunder), the transferor shall be relieved and freed of all obligations of Landlord under this Lease accruing after such transfer, and such transferee shall be deemed to have assumed and agreed to perform and observe all obligations of Landlord under this Lease during the period it is the holder of Landlord's interest under this Lease, subject to the provisions, terms and conditions of this Lease.

(i) The term "Legal Requirements" shall mean laws and ordinances of federal, state, city, town, county and village governments having jurisdiction over the Property and rules, regulations, orders, directives and requirements of all departments, subdivisions, bureaus, agencies or offices thereof, and of any other governmental, public or quasi-public authorities having jurisdiction over the Property, and the directions of any public officers pursuant thereto, whether now or hereafter in force.

(j) The term "person" shall mean a natural person, a partnership, a corporation, a limited liability company, an estate or trust, or any other form of business or legal association or entity.

(k) The term "Prime Rate" shall mean the interest rate identified by Citibank or its successor from time to time as its base or prime rate for unsecured ninety day loans. It is not necessarily the lowest rate charged by Citibank or such successor.

(l) The term "Tenant" shall mean the original Tenant herein named or any permitted assignee or other successor in interest (immediate or remote) of the original Tenant named herein that at the time in question is the owner of Tenant's interest in this Lease.

(m) The words "Tenant indemnifies Landlord against liability" or "Tenant shall indemnify Landlord against liability" and words of similar import, shall mean that Tenant agrees to indemnify, hold and save harmless Landlord, each Superior Lessor and Superior Mortgagee (each as defined below), and their respective partners, directors, officers, members, managers, trustees, agents and employees from and against all loss, cost, liability, claim, damage, fine, penalty and expense, including reasonable attorneys' fees and disbursements (whether incurred in resisting and defending any action or proceeding or incurred in enforcing the express indemnification rights under this Lease), and that in case any action or proceeding is brought against any indemnified person, Tenant shall resist and defend such action or proceeding by attorneys reasonably satisfactory to Landlord.

(n) The term “untenantable” shall mean a condition or event resulting in Tenant being unable to use all or a portion of the Premises for the normal conduct of Tenant’s business.

**ARTICLE 2 – Use, Compliance and Signs**

2.01. Tenant shall use and occupy the Premises for storage, roasting and processing of coffee beans and related products, and for associated retail and general administrative office use, and for no other purpose.

2.02. If any governmental licenses and permits are required for the proper and lawful conduct of Tenant’s business in the Premises (including, without limitation, any permits or approvals required by any state or municipal department of health), then Tenant, at its expense, shall procure and maintain such licenses and permits and submit the same to Landlord for inspection. Tenant shall at all times comply with the terms and conditions of each such license or permit. Tenant shall not use, or suffer or permit any person to use, the Premises, or any part thereof, in any manner which (a) violates the certificate of occupancy for the Premises or any other applicable permit or license, (b) causes injury to the Premises or the Property, (c) constitutes a violation of any Legal Requirements or Insurance Requirements, (d) impairs the character, reputation or appearance of the Premises or the Property as a warehouse building, or (e) impairs the maintenance, operation and repair of the Premises or the Property.

2.03. Except as may be approved by Landlord, which consent shall be given in Landlord’s sole discretion, Tenant may not place signs anywhere in or on the Property (including “way signage” in parking areas on the Property), except for signs within the Premises which are not visible from outside the Premises. Any sign shall be removed by Tenant upon the sooner of (i) termination of Tenant’s occupancy, and (ii) the expiration of this Lease. Tenant shall be responsible for and shall indemnify Landlord against all damage to the Building or the Property incurred in connection with the installation, maintenance and removal of any sign(s), which installation, maintenance and removal shall be performed at Tenant’s sole cost and expense.

2.04. Tenant shall access to the Premises 365 days per year, 24 hours per day.

2.05 (a) Tenant shall, at Tenant’s sole cost and expense, dispose of all garbage, ashes and waste arising from the conduct of its business in the Premises, daily so as to avoid any noxious or offensive smells or odors therefrom or otherwise interfering with the comfort and quiet enjoyment of the other tenants in the Property. Any and all other safeguards that, in Landlord’s reasonable judgment, may be necessary to prevent the accumulation of such garbage or refuse from becoming a nuisance shall, at Landlord’s reasonable discretion, be provided by Tenant at Tenant’s

sole cost and expense. Tenant covenants, at all times during the term of this Lease, to operate its business in the Premises in such manner that no noxious or offensive odors shall be permitted to emanate from or be projected beyond the Premises.

(b) Tenant shall operate its business in the Premises in a clean, orderly manner and shall provide all safeguards that in Landlord's reasonable judgment may be necessary to keep the Premises free from vermin, rats and mice and shall use all reasonable methods for the prevention and extermination of vermin, rats and mice in the Premises.

### **ARTICLE 3 – Preparation of Premises**

3.01. Landlord is delivering and Tenant shall accept the Premises "AS IS" and Landlord makes no representation as to the repair, condition or working order of the Premises. Tenant acknowledges and agrees that Landlord shall have no obligation to do any work in or to the Premises in order to make it suitable and ready for occupancy and use by Tenant. Tenant hereby acknowledges that as of the Commencement Date, there is certain equipment, trade fixtures, inventory and personal property located in the Premises (collectively, the "Tenant Acquired Property"), which was previously owned or controlled by the prior occupant of the Premises and which shall be deemed Tenant's Property (as defined below) for the purposes of this Lease. Tenant further acknowledges that Landlord makes no representations or warranties as to the condition or ownership status of the Tenant Acquired Property. Tenant agrees to use the Tenant Acquired Property at its own risk, and Tenant agrees to maintain the Tenant Acquired Property as more particularly set forth in Section 14.01 of this Lease. To the extent any of the Tenant Acquired Property requires maintenance, repair or replacement, the same shall be the obligation of Tenant, at Tenant's sole cost and expense. In the event that any of the Tenant Acquired Property requires replacement or is repossessed by any secured party, Tenant shall not be entitled to any credit, setoff or abatement as against Fixed Rent or Additional Charges under this Lease, nor shall Tenant be entitled to terminate this Lease.

3.02. (a) All disputes arising under this Article, including without limitation a dispute concerning the date the Possession Date shall have occurred (a "Construction Dispute"), shall be resolved by the arbitration procedure set forth below. In the event of a Construction Dispute, Tenant agrees to pay and perform all of its obligations which are the subject of such dispute, on or before the dates specified in this Lease, until such time as the Construction Dispute is so resolved by arbitration. During the period commencing on the Commencement Date and ending one hundred twenty (120) days after the Possession Date (the "Arbitration Period"), either Landlord or Tenant may request that any Construction Dispute be submitted to arbitration in accordance with this Section 3.02 by giving a Notice of Dispute (as defined below) to the other party. Failure of Landlord or Tenant to give a Notice of Dispute during the Arbitration Period shall be a waiver by Landlord or

Tenant of any claim arising from such dispute. All Construction Disputes shall be submitted to arbitration within thirty (30) days after either party receives, during the Arbitration Period, notice from the other that a dispute or disagreement exists and requesting that the dispute be submitted to arbitration (the "Notice of Dispute").

(b) The arbitrators shall be registered architects or construction company executives having at least ten (10) years' experience in construction matters in Westchester County, New York. Landlord and Tenant shall each designate an arbitrator within fifteen (15) days after the receipt of the Notice of Dispute. If either party fails to do so on or before such date, time being of the essence, the arbitrator designated by the other party shall be the sole arbitrator. If each party timely designates an arbitrator, such arbitrators shall within ten (10) days select a third arbitrator. In the event that the parties are unable to agree, for any reason, on the choice of the third arbitrator within such ten (10) day period, Landlord or Tenant may request the American Arbitration Association in Westchester County, New York to designate a registered architect or construction company executive to act as the third arbitrator and such choice shall be deemed consented to by all parties. The third arbitrator shall be designated in accordance with the American Arbitration Association Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes), in effect as of the date arbitration is commenced (the "Construction Arbitration Rules").

(c) The arbitrators shall conduct the arbitration under the Construction Arbitration Rules then in effect. The arbitrators shall award costs (including professional fees) to the prevailing party. Further, the arbitrators shall determine whether delays by Tenant attributable to the matter submitted to arbitration have delayed the Possession Date and shall allocate any such delay to Tenant. The determination of the arbitrators shall be conclusive and binding upon the parties and judgment upon any award may be entered in any court having jurisdiction over the subject matter of the controversy.

#### **ARTICLE 4 – Tax Payments**

4.01. For the purposes of this Article and other provisions of this Lease:

(a) (1) The term "Taxes" shall mean the aggregate amount of all real estate taxes, personal property taxes, city and school taxes, and any general or special assessments assessed or imposed upon or in respect of the Property, including but not limited to business improvement districts and assessments for public improvements or benefits to the Building, the Property, or the locality in which the Property is situated, and taxes, assessments and charges in respect of any fixtures, equipment, facilities, systems or personal property of Landlord used in connection with the Building or the Property, and all other municipal and

governmental charges of any nature whatsoever, whether general or special, ordinary or extraordinary, foreseen or unforeseen, which may be presently or in the future become due or payable or which may be levied, assessed or imposed by any taxing authority on or with respect to all or any part of the tax lot(s) for the Land, including, without limitation, all taxes and assessments for improving any streets, alleys, sidewalks, side vaults and alley vaults, if any, together with all expenses, including reasonable attorneys' fees and experts' fees and disbursements, incurred by Landlord in seeking to reduce the amount of any assessed valuation of the Property and/or Building, in contesting the amount or validity of any Taxes, or in seeking a refund of any Taxes.

(2) Income, estate, succession, inheritance, transfer and franchise taxes shall be excluded from Taxes; provided, however, that if the method of taxation of real estate is changed and as a result thereof any other tax or assessment, however denominated and including any franchise, income, profit, use, occupancy, gross receipts or rental tax, shall be imposed upon Landlord or the owner of the Property or the rents or income therefrom, in substitution for or in addition to, in whole or in part, any of the taxes or assessments listed in Section 4.01(a)(1) above, such other tax or assessment shall be included in and deemed part of Taxes, but calculated for this purpose as if the Property and all appurtenances thereto were the only property of Landlord.

(3) The amount of any special assessments for public improvements or benefits to be included in Taxes for any year, in the case where the same may at the option of the taxpayer be paid in installments, shall be limited to the amount of the installment due in respect of such year, together with any interest payable in connection therewith (other than interest payable by reason of the delinquent payment of such installments).

(b) The term "Tax Year" shall mean (i) with respect to school taxes, each period from July 1 through June 30 (or such other fiscal period as may hereafter be adopted by the applicable municipality in which the Building is located as the fiscal year for such charges as included in Taxes), and (ii) with respect to town/county taxes, each calendar year (or such other fiscal period as may hereafter be adopted by the applicable municipality in which the Building is located as the fiscal year for such charges as included in Taxes).

(c) The term "Tenant's Tax Percentage" shall mean 67.19% of the Taxes. Tenant's Tax Percentage shall be equitably adjusted if there is a change in the tax lots for the Property (whether as a result of subdivision, conversion of the Property to condominium ownership or otherwise) resulting in a reallocation or modification of Taxes.

4.02. From and after the Rent Commencement Date, for each Tax Year or portion thereof which occurs during the Term, Tenant shall pay to Landlord an

amount (the "Tax Payment") equal to Tenant's Tax Percentage of the amount of Taxes for such Tax Year. Such payments shall be made as provided in Section 4.03 of this Lease.

4.03. Landlord shall give Tenant, prior to or after commencement of each Tax Year, a notice setting forth Landlord's estimate of the Tax Payments on account of Taxes for such Tax Year. Tenant shall make such Tax Payments on the first day of each month during the Tax Year, in amounts sufficient to provide Landlord by the date that is 30 days prior to the time that any installment of Taxes shall be due, a sum equal to Tenant's Tax Percentage of the amount that will be due therefor. Such estimate on account of Taxes, as the same may be amended, shall be based on (a) Taxes for the then current Tax Year if the tax rate and tentative or actual assessment are then known or (b) if such information is not then available, 110% of Taxes for the Tax Year immediately prior to the then current Tax Year. Landlord may amend such estimate by notice given to Tenant from time to time to reflect additional information about Taxes that comes to Landlord's attention or to correct any error made in any prior estimate; said notice may require an increase in one or more monthly Tax Payments and the Tax Payments shall be adjusted or made as provided in said notice. If Landlord gives any such estimate for a Tax Year subsequent to the commencement thereof, then until the first day of the month following the month in which such estimate is given to Tenant, Tenant shall pay to Landlord on the first day of each month in such Tax Year a Tax Payment equal to 110% of the Tax Payment payable by Tenant under this Section in the last full month of the preceding Tax Year. Promptly after receipt by Landlord of bills for Taxes, Landlord shall give notice to Tenant of the amount thereof and the computation of the Tax Payments on account thereof, and (i) in the event of a deficiency, Tenant shall pay to Landlord the amount thereof within 10 days after demand therefor, or (ii) in the event of an overpayment, Landlord shall promptly refund to Tenant the amount thereof or, at Landlord's option permit Tenant to credit the amount thereof against subsequent payments under this Article.

4.04. If Landlord receives a refund of Taxes for any Tax Year, Landlord shall either pay to Tenant, or permit Tenant to credit against subsequent payments under this Article, Tenant's Tax Percentage of the net refund (after deducting from such refund the costs and expenses of obtaining same (including legal fees and expenses) to the extent that such costs and expenses were not included in Taxes); provided, however, such payment or credit to Tenant shall in no event exceed Tenant's Tax Payment paid for such Tax Year. Only Landlord, in Landlord's sole discretion, may commence, prosecute, discontinue or settle a tax reduction proceeding affecting the Property. Nothing contained in this Lease shall be deemed to obligate Landlord to do any of the foregoing or permit Tenant to request that Landlord do so.

4.05. If the Rent Commencement Date occurs other than on the first day of a Tax Year or a Tax Year ends after the Expiration Date, any Additional Charges in

respect thereof payable under this Article shall be equitably prorated to correspond to that portion of such Tax Year occurring within the Term. In addition, if the first day for which a Tax Payment is payable hereunder occurs during a Tax Year in respect of which Landlord already has paid any installments of Taxes, Tenant shall pay to Landlord upon demand Tenant's equitably prorated share of such installments.

#### **ARTICLE 5 – Operating Expense Payments**

5.01. For the purposes of this Article and other provisions of this Lease:

(a) (1) The term "Operating Expenses" shall mean all expenses incurred by Landlord in respect of the repair, maintenance, operation and cleaning of the Premises, including all expenses incurred as a result of Landlord complying with its obligations under this Lease. Operating Expenses shall include, but not be limited to, (i) salaries, wages, medical, surgical, union and general welfare benefits, including group life insurance and pension and welfare payments and contributions and all other fringe benefits paid to or in respect of all persons (whether employees of Landlord or its managing agent) engaged in the repair, maintenance, operation or cleaning of the Premises not above the level of Building Superintendent, (ii) payroll taxes, workers' compensation, uniforms, dry cleaning and related expenses for such persons, (iii) payments under service contracts, (iv) charges for gas, steam, electricity, (other than electricity furnished directly to actually rented rentable space in the Premises), heat, ventilation, air conditioning, water and other utilities furnished to all non-rentable or non-rented parts of the Premises (including the Common Areas), (v) the cost of lobby decoration and of painting and decorating the Common Areas or other non-rentable areas, (vi) the cost (purchase or rental) of tools, supplies, machinery and equipment used in the operation, maintenance, repair or cleaning of the Building and charges for telephone service for the Building, (vii) financial expenses in connection with the operation of the Premises, such as insurance premiums (including liability insurance, fire and other casualty insurance, rent insurance and any other insurance that is maintained by Landlord), attorneys' fees and disbursements, auditing and other professional fees and expenses, association dues and any other customary financial expenses incurred in connection with the ownership, maintenance and operation of the Premises, (viii) charges for window, office, common area and other cleaning, janitorial and security services and any other charges of independent contractors, (ix) the cost of repairs and replacements made by Landlord, (x) the cost of governmental licenses and permits, or renewals thereof, necessary for the operation of the Premises, (xi) management fees or, if no managing agent is employed by Landlord, a sum in lieu thereof equal to 4% of all rents and other income derived from the operation of the Premises, (xii) the cost of any capital improvements, calculated as follows: the cost of any capital improvement shall be included in Operating Expenses for the Operating Year in which such capital improvement was paid for except that the cost thereof shall be capitalized and such cost shall be amortized on a straight-line basis

over the useful life thereof and only the annual amortization of such capital improvement, together with interest on the unamortized balance of such cost at an annual rate two percent (2%) in excess of the Prime Rate, shall be included in Operating Expenses for the Operating Year in question, (xiii) the cost of removing rubbish from the Premises, and (xiv) all other charges incurred in connection with the operation, maintenance, repair and cleaning of the Premises. Notwithstanding anything to the contrary contained herein, "Operating Expenses" shall not include (A) depreciation, (B) interest on and amortization of any Superior Mortgage or other debt and the cost of consummating any financing or refinancing, (C) rents under any Superior Lease or other lease and the cost of consummating any Superior Lease or other lease, (D) the cost of preparing space for other tenants of the Premises, (E) brokerage commissions, (F) Taxes, and (G) attorney's fees, costs, and disbursements, and other expenses incurred in connection with negotiations of space leases with tenants or prospective tenants. Any cost or expense shall be included in Operating Expenses for any Operating Year no more than once, notwithstanding that such cost or expense may fall under more than one of the categories listed above.

(2) If less than 100% of the rentable area of the Property is occupied by tenants at any time during any Operating Year (or if Landlord is not providing to any tenants particular services generally provided to tenants in the Property), the amount of Operating Expenses used in calculating the Operating Payment for such Operating Year shall be the amount that Operating Expenses would normally have been expected to be had all of such rentable area of the Property been fully occupied throughout such Operating Year and Landlord were providing to all tenants in the Property all services generally provided by Landlord to tenants in the Property. Tenant acknowledges that certain Operating Expenses (the "Limited Operating Expenses"), such as cleaning, are not being provided to all tenants in the Property and that, accordingly, in determining the expenses to be included in Operating Expenses the Limited Operating Expenses shall be proportionately increased so that Tenant's Operating Percentage will more accurately include Tenant's share of the area over which such expense is being allocated.

(3) The term "Operating Year" shall mean each twelve (12) month period from January 1 through December 31 and each succeeding calendar year thereafter.

(4) The term "Tenant's Operating Percentage" shall mean 67.19%.

(b) Landlord may use related or affiliated persons to provide services or furnish materials for the Property, provided that the rates or fees charged by such persons are competitive with those charged by unrelated or unaffiliated persons in Westchester County for the same services or materials.

5.02. For each Operating Year any part of which occurs during the Term, Tenant shall pay to Landlord an amount (the "Operating Payment") equal to Tenant's Operating Percentage of the Operating Expenses for such Operating Year. Such payments shall be made as provided in Section 5.03. Notwithstanding anything to the contrary contained herein, Tenant shall be responsible for all Operating Expenses (and not Tenant's Operating Percentage of such Operating Expenses) or other costs and expenses for services provided by Landlord directly to Tenant or the Premises or areas or portions of the Property that Tenant, Tenant's employees and/or guests and invitees have direct access to and all such amounts, costs and expenses shall be deemed to be, and shall be paid as Additional Charges.

5.03. Landlord shall give Tenant, prior to or after the commencement of each Operating Year, a notice setting forth Landlord's estimate of the Operating Payment for such Operating Year. Tenant shall pay to Landlord on the first day of each month during such Operating Year an amount equal to 1/12th of Landlord's estimate of the Operating Payment for such Operating Year. Landlord may amend such estimate by notice given to Tenant from time to time to reflect additional information about Operating Expenses that comes to Landlord's attention or to correct any error made in any prior estimate; said notice may require an increase in monthly payments or a separate individual payment and Tenant's payments shall be adjusted or made as provided in said notice. If Landlord gives any such estimate for an Operating Year subsequent to the commencement thereof, then until the first day of the month following the month in which such estimate is given to Tenant, Tenant shall pay to Landlord on the first day of each month in such Operating Year an amount equal to 110% of the monthly sum payable by Tenant under this Section for the last full month of the preceding Operating Year.

5.04. Within two hundred seventy (270) days after the end of each Operating Year, Landlord shall give notice to Tenant containing a statement of the Operating Expenses for such Operating Year, the correct amount of the Operating Payment for such Operating Year and the computation of Tenant's payment on account thereof ("Operating Statement"), and (i) in the event of a deficiency Tenant shall pay to Landlord the amount thereof within ten (10) days after demand therefor, and (ii) in the event of an overpayment Landlord shall promptly refund to Tenant the amount thereof or, at Landlord's sole option, if the Expiration Date has not occurred, credit the amount thereof against subsequent Operation Payments. Notwithstanding the foregoing, the failure or delay by Landlord in issuing an Operating Statement shall not constitute a waiver of or adversely affect (i) Landlord's obligation to refund or credit for such overpayment or (ii) Tenant's obligation to pay such deficiency, each as due pursuant to this Section 5.04. Subject to Section 5.06, the statements thus furnished to Tenant shall constitute a final determination as between Landlord and Tenant of the Operating Expenses for the periods represented thereby, unless Tenant within thirty (30) days after they are furnished shall give notice to Landlord that it disputes their accuracy or their appropriateness, which notice shall specify the particular respects in which the

statement is inaccurate or inappropriate. Pending the resolution of any such dispute, Tenant shall pay the Operating Payment to Landlord in accordance with the statements furnished by Landlord.

5.05. If the Rent Commencement Date occurs other than on the first day of an Operating Year or an Operating Year ends after the Expiration Date, any Additional Charges in respect thereof payable under this Article shall be equitably prorated.

5.06. If the Operating Expenses for any Operating Year are redetermined by Landlord at any time after the date that Landlord gives an Operating Statement to Tenant for an Operating Year, then Landlord shall give to Tenant a revised Operating Statement that recalculates the Operating Payment for an Operating Year (using the Operating Expenses that reflects such redetermination for such Operating Year, as applicable). If such revised Operating Statement shows (i) a deficiency, then Tenant shall pay to Landlord the amount thereof within 10 days after demand therefor, and (ii) an overpayment, then Landlord shall promptly refund to Tenant the amount thereof or, at Landlord's sole option, if the Expiration Date has not occurred, credit the amount thereof against subsequent Operating Payments.

#### **ARTICLE 6 – Subordination to Mortgages and Superior Leases**

6.01. This Lease and all rights of Tenant hereunder shall be subject and subordinate to all ground and underlying leases of the Land and/or Property now or hereafter existing and to all mortgages now or hereafter existing affecting the Land and/or Property and/or any of such leases, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and mortgages, and consolidations of such mortgages. This Section shall be self-operative and no further instrument of subordination or priority (as described in the second sentence of this Section) shall be required. In confirmation of such subordination or priority Tenant shall promptly execute, acknowledge and deliver any commercially reasonable instrument that Landlord, the lessor under any such lease or the holder of any such mortgage may reasonably request to evidence such subordination or priority. Any lease to which this Lease is subject and subordinate is herein called a "Superior Lease," and the lessor of a Superior Lease is herein called a "Superior Lessor." Any mortgage to which this Lease is subject and subordinate is herein called a "Superior Mortgage" and the holder of a Superior Mortgage is herein called a "Superior Mortgagee." Landlord hereby represents to Tenant that Manufacturers and Traders Trust Company is a Superior Mortgagee as of the Commencement Date.

6.02. If any act or omission of Landlord would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right until

(a) Tenant gives notice of such act or omission to Landlord and to each Superior Mortgagee and Superior Lessor whose name and address were previously furnished to Tenant, and (b) a reasonable period of time for remedying such act or omission elapses following the time when such Superior Mortgagee or Superior Lessor becomes entitled under such Superior Mortgage or Superior Lease to remedy same (which period shall in no event be less than the period to which Landlord is entitled under this Lease or otherwise, after similar notice, to effect such remedy).

6.03. If any Superior Mortgagee or Superior Lessor succeeds to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party succeeding to Landlord's rights (a "Successor Landlord"), Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any commercially reasonable instrument that such Successor Landlord reasonably requests to evidence such attornment. Upon such attornment this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all of the terms and conditions set forth in this Lease except that the Successor Landlord shall not be (a) liable for any previous act or omission of Landlord under this Lease, (b) subject to any offset which had accrued to Tenant against Landlord, (c) obligated to complete any construction of the Premises, (d) obligated to make any payment to or on behalf of Tenant, (e) required to account for any security deposit other than any actually delivered to the Successor Landlord, or (f) bound by any previous modification of this Lease or by any prepayment of more than one month's Fixed Rent or Additional Charges unless such modification or prepayment was expressly approved in writing by the lessor of the Superior Lease or the holder of the Superior Mortgage.

6.04. If any prospective or actual Superior Mortgagee or Superior Lessor requires any modification of this Lease, Tenant shall, upon notice thereof from Landlord, promptly execute and deliver to Landlord the commercially reasonable instrument accompanying said notice from Landlord to effect such modification if such instrument does not adversely affect, except to a de minimis extent, any of Tenant's rights under this Lease and does not increase any of Tenant's monetary obligations under this Lease.

#### **ARTICLE 7 – Quiet Enjoyment**

7.01. So long as Tenant pays all Fixed Rent and Additional Charges and performs all of Tenant's other obligations under this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises without hindrance, ejection or molestation by Landlord or any person lawfully claiming through or under Landlord, subject to the provisions of this Lease, any Superior Lease and any Superior Mortgage.

## ARTICLE 8 – Assignment, Subletting and Mortgaging

8.01. Tenant shall not, voluntarily, involuntarily, by operation of law or otherwise, except with the prior consent of Landlord, which may be given or withheld in Landlord's sole discretion: (a) assign or otherwise transfer this Lease, (b) sublet the Premises or any part thereof, or allow same to be used, occupied or utilized by any person other than Tenant, (c) advertise or publicize the availability of the Premises or any part thereof or list the Premises or any part thereof for assignment or subletting with a broker, agent, representative or otherwise, or (d) mortgage, pledge, encumber or otherwise hypothecate this Lease. Notwithstanding the foregoing, Landlord acknowledges that Tenant intends to enter into a sublease, license agreement or other occupancy agreement for space in the Premises to BST106, LLC and Path Coffee Roasters, LLC (collectively, the "Permitted Occupant"), and that Landlord's consent shall not be required for such sublease, license agreement or other occupancy agreement ("Affiliate Occupancy Agreement") entered into between Tenant and the Permitted Occupant; provided that (a) Landlord is provided copies of the Affiliate Occupancy Agreement within thirty (30) days following the date hereof; (b) the Affiliate Occupancy Agreement is by its terms automatically subject and subordinate to this Lease and the Affiliate Occupancy Agreement and Permitted Occupant shall comply with any and all provisions of this Lease, including, without limitation, the contemplated use under the Affiliate Occupancy Agreement conforms to the requirements of Section 2.01, except for those provisions regarding the payment of Fixed Rent or Additional Charges, which shall be governed by the Affiliate Occupancy Agreement and any other obligations retained by Tenant as sublandlord under the Affiliate Occupancy Agreement; and (c) the Affiliate Occupancy Agreement complies with the other requirements of this Article 8, except to the extent expressly exempted therefrom.

8.02. If and so long as Tenant is a corporation, a partnership, a limited liability company or other legal entity, the following shall be deemed to be an assignment of this Lease under Section 8.01 of this Lease and prohibited by such Section 8.01 unless Tenant obtains the prior consent of Landlord in accordance with the terms of this Lease: one or more sales or transfers of stock, partnership interests, limited liability company interests or other interests, voluntarily, involuntarily, by operation of law or otherwise, or the issuance of new stock, partnership interests, limited liability company interests or other interests, as a result of which (x) an aggregate of fifty percent (50%) or more of Tenant's (or any subtenant's) stock, partnership interests, limited liability company interests or other interests, or (y) the ability to control the management of the applicable entity, shall become vested in a party or parties who are not stockholders, partners, members or owners of beneficial interests as of the date hereof. The foregoing provisions of this Section 8.02 and clause (a) of Section 8.01 of this Lease shall not apply to transactions with an entity into or with which Tenant is merged or consolidated or to which substantially all of Tenant's assets are transferred or to any entity which controls or is controlled by Tenant or is under common control

with Tenant if (a) the successor to Tenant has a tangible net worth computed in accordance with generally accepted accounting principles at least equal to the greater of (i) the tangible net worth of Tenant immediately prior to such merger, consolidation or transfer, or (ii) the tangible net worth on the Effective Date of the original Tenant herein named, and (b) proof satisfactory to Landlord of such tangible net worth is delivered to Landlord at least ten (10) days prior to the effective date of any such transaction. This Section 8.02 of this Lease shall not apply to any corporation all the outstanding voting stock of which is listed on a national securities exchange or is traded in the "over-the-counter" market. Tenant shall provide Landlord with a notice containing all the information required of an Offer Notice (as hereinafter defined) for any such transaction (which notice shall contain the prospective transferee's tangible net worth as required under this Section 8.02) no fewer than ten (10) days prior to the effective date of any transaction pursuant to this Section 8.02.

8.03. If this Lease is assigned, whether or not in violation of the provisions of this Lease, Landlord may collect rent from the assignee. If the Premises or any part thereof is sublet or occupied by any person other than Tenant, whether or not in violation of the provisions of this Lease, Landlord may, after default by Tenant, collect rent from the subtenant or occupant. In either such event, Landlord may apply the net amount collected to the rent reserved herein, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any of the provisions of this Article 8, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance by Tenant of Tenant's obligations under this Lease. The consent by Landlord to any assignment, mortgaging, subletting or occupancy by others shall not relieve Tenant of the obligation to obtain the consent of Landlord to any other or further assignment, mortgaging, subletting or occupancy by others not expressly permitted by this Article 8. References in this Lease to occupancy by others shall be construed as including subtenants, licensees and others claiming by, through or under Tenant, immediately or remotely.

8.04. Any assignment or transfer, whether or not Landlord's consent is required, shall be made only if and shall not be effective until the assignee executes, acknowledges and delivers to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee assumes the obligations of Tenant under this Lease and whereby the assignee agrees that the provisions of this Article 8 shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments and transfers. Notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of Fixed Rent or Additional Charges by Landlord from an assignee, transferee, or any other person, the original Tenant herein named and any and all successors in interest of the original Tenant herein named shall remain fully liable (jointly and severally with any immediate or remote successor-in-interest, including, without limitation, the then Tenant) for the payment of Fixed Rent and Additional Charges and for the other obligations of

Tenant under this Lease (including, if applicable, any extension or renewal of this Lease).

8.05. The liability under this Lease of the original Tenant herein named and any immediate or remote successor-in-interest of the original Tenant herein named shall not be discharged, released or impaired in any respect by any agreement or stipulation made by Landlord with the then Tenant extending the time of, or modifying any of the obligations under, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of Tenant under this Lease.

8.06. Neither the listing of any name other than that of Tenant, whether on the door of the Building or the Building directory or otherwise, nor the acceptance by Landlord of any check drawn by a person other than Tenant in payment of Fixed Rent or Additional Charges, shall operate to vest in any person any right or interest in this Lease or in the Premises, nor shall same be deemed to be the consent of Landlord to any assignment or transfer of this Lease or to any sublease of the Premises or to the occupancy thereof by any person other than Tenant.

8.07. (a) Except as specifically provided to the contrary in this Article 8, if Tenant desires to assign this Lease or sublet all or any part of the Premises, then Tenant shall submit to Landlord a notice (an "Offer Notice"), which Offer Notice shall contain (a) a conformed or photostatic copy of the proposed assignment or sublease, the effective date (as to an assignment) or commencement date (as to a sublease) of which shall be at least thirty (30) but not more than ninety (90) days after the date of the Offer Notice, (b) a statement setting forth in reasonable detail the name and address of the proposed assignee or subtenant, the nature of its business and its proposed use of the Premises, (c) current financial information in respect of proposed assignee or subtenant (including, without limitation, its most recent balance sheet and income statements certified by its chief financial officer or a certified public accountant), (d) the identity of any broker entitled to a commission in respect of such subletting or assignment and the commission, if any, payable to such broker, (e) a statement containing the terms of all other agreements, if any, relating to the proposed assignment or sublease and, if not fully disclosed in the aforementioned copy of the proposed assignment or sublease, a statement of all consideration to be received by Tenant for or in connection with such assignment or sublease (including, without limitation, any payment to be made for Tenant's Premises or any fixtures installed by Tenant (other than those fixtures installed by or at the expense of Landlord)) and the terms of payment therefor, and (f) any other information reasonably requested by Landlord.

(b) If Landlord's consent is required pursuant to the terms of this Article 8 for any assignment or subletting of all or substantially all of the Premises, then Tenant's giving of an Offer Notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may (i) terminate this Lease in

the case of a proposed assignment or a sublease of all or substantially all of the Premises (a "Total Transfer"), or (ii) terminate this Lease as to the portion proposed to be sublet, or any part thereof, in the case of a sublease of less than all or substantially all of the Premises (a "Partial Sublease"). Such option may be exercised by Landlord by notice to Tenant at any time within thirty (30) days after Landlord's receipt of such Offer Notice (and all materials required to be submitted therewith), and during such thirty (30) day period Tenant shall not assign this Lease, sublet such space to any person, or allow any third party to occupy the Premises or any portion thereof in violation of this Article 8. If Landlord exercises its option to terminate this Lease in the case of a Total Transfer, then this Lease shall terminate on the date that the assignment was to be effective or the sublet was to commence (as applicable), and Fixed Rent and Additional Charges shall be apportioned as of such date. If Landlord exercises its option to terminate this Lease as to the portion of the Premises proposed to be sublet in the case of a Partial Sublease, then as of the date that the Partial Sublease was to commence, the Premises for which Landlord elected its option to terminate shall be omitted from the Premises, and all amounts in this Lease based on the size of the Premises (including without limitation Fixed Rent, Tax Payments and Tenant's Tax Percentage) shall be equitably adjusted, on a square footage basis, to reflect the foregoing. Upon Landlord's request, the parties shall enter into a confirmatory amendment setting forth the adjusted terms. The foregoing termination right of Landlord shall not apply to both a proposed sublet of less than fifty percent (50%) of the floor area of the Premises and the Affiliate Occupancy Agreement; provided and so long as the Permitted Occupant complies with, and is subject to, the terms and provisions of this Lease in connection with such sublease, including, without limitation, the intended use complies with the requirements of Section 2.01 except for those provisions regarding the payment of Fixed Rent or Additional Charges, which shall be governed by the Affiliate Occupancy Agreement and any other obligations retained by Tenant as landlord under the Affiliate Occupancy Agreement.

8.08. If (x) Tenant complies with this Article 8, including, without limitation, Section 8.07(a) of this Lease, (y) Landlord does not exercise its option pursuant to Section 8.07(b) of this Lease to terminate this Lease, and (z) Tenant is not in default of any of its obligations under this Lease, then Landlord's consent (which consent, if given, shall be given on a form reasonably satisfactory to Landlord) to the proposed assignment of the Lease or sublease of the Premises shall not be unreasonably withheld, provided and upon condition that:

(a) Tenant has complied with the provisions of this Article 8;

(b) in Landlord's judgment, (i) the proposed assignee or subtenant is engaged in a business, and the Premises will be used in a manner, which is limited to the use expressly permitted under Section 2.01(a) and (ii) the proposed use is not in violation of the provisions of this Lease and is

permitted by Legal Requirements (including, without limitation, applicable zoning laws and any attendant regulations) and the Certificate of Occupancy for the Building and (iii) the proposed assignee or subtenant is a reputable person of good character and with sufficient financial worth considering the responsibility involved, and Landlord has been furnished with reasonable proof thereof;

(b) neither the proposed assignee or sublessee nor any person that, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or sublessee or any person who controls the proposed assignee or sublessee, is then an occupant of any part of the Premises;

(c) the proposed assignee or sublessee is not a person with whom Landlord is then negotiating or in the prior six-month period was negotiating to lease space in the Premises; and

(d) the form of any proposed sublease or assignment is (i) reasonably satisfactory to Landlord and (ii) complies with the applicable provisions of this Article 8.

8.09. Tenant shall reimburse Landlord on demand for any reasonable costs incurred by Landlord in connection with any proposed assignment or sublease, whether or not consented to by Landlord, including, without limitation, the cost of making investigations as to the acceptability of the proposed assignee or subtenant, and reasonable attorneys' fees and disbursements in connection with the granting of any requested consent.

8.10. Notwithstanding any subletting to Landlord or its designee or the consent by Landlord to any subletting to any subtenant or acceptance of rent or additional rent by Landlord from any subtenant, Tenant shall remain fully liable for the payment of Fixed Rent and Additional Charges due and to become due hereunder and for all of the other obligations of Tenant under this Lease. Tenant shall remain fully liable for all acts and omissions of any licensee or subtenant or any person claiming through or under any licensee or subtenant that are in violation of any of the obligations of Tenant under this Lease, and any such violation shall be deemed to be a violation by Tenant. Notwithstanding any such subletting, no other or further subletting of the Premises by Tenant or any person claiming through or under Tenant shall be made except in compliance with and subject to the provisions of this Article 8.

8.11. If Landlord's consent is required pursuant to this Article 8 and Landlord consents to a proposed assignment or sublease and Tenant fails to execute and deliver the assignment or sublease in connection with such transaction within thirty (30) days after the giving of such consent, then Tenant shall again be

required to comply with the provisions of this Article 8 (as if Tenant had not requested such consent) before assigning this Lease or subletting all or any part of the Premises.

8.12. In respect of every sublease:

(a) no sublease shall be for a term ending later than the day immediately prior to the Expiration Date,

(b) no sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until such sublease has been approved by Landlord and an executed counterpart of such sublease has been delivered to Landlord, and

(c) each sublease shall provide that it is subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and that in the event of termination, reentry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease and execute and deliver such instruments as Landlord may reasonably request to evidence and confirm such attornment, except that Landlord shall not be (i) liable for any previous act or omission of Tenant under such sublease, (ii) subject to any offset which had accrued to such subtenant against Tenant, (iii) bound by any previous modification of such sublease or by any prepayment of more than one month's rent or additional rent, (iv) obligated to make any payment to or on behalf of such subtenant or to perform any repairs or other work in the subleased space or the Premises beyond Landlord's obligations under this Lease, or (v) required to account for any security deposit other than any actually delivered to Landlord.

8.13. If (x) Landlord is required to provide consent pursuant to this Article 8 (with the understanding that, without limiting the foregoing, this provision shall not apply to assignments or subleases permitted without Landlord consent pursuant to Section 8.02), (y) Landlord gives its consent to any such assignment of this Lease or to any such sublease, and (z) Tenant consummates such assignment or sublease, then Tenant shall in consideration therefor pay to Landlord:

(a) in the case of an assignment, an amount equal to one-half (1/2) of that portion of the purchase price which is allocated to the value of the leasehold interest represented by this Lease, less Tenant's actual out of pocket expenditures for legal fees, brokerage, advertising, construction allowance and other expenses related to such assignment, and

(b) in the case of a sublease, one-half (1/2) of the amount of Sublease Profit. The term "Sublease Profit" shall mean (i) the sum of (A) any rents, additional charges or other consideration payable to Tenant, and (B) any sums paid for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property (less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns), less (ii) the sum of (A) the amount of Tenant's out-of-pocket expenditures for legal fees, and expenses advertising, construction allowance, brokerage commissions and other expenses incurred in connection with the sublease, and (B) Fixed Rent and Additional Charges accruing during the term of the sublease in respect of the subleased space (at the rate per rentable square foot payable by Tenant hereunder). The deduction in subclause (i)(B) of this Section 8.13(b) for the net unamortized or undepreciated cost in the case of a sale described therein, and the deduction in subclause (ii)(A) of this Section 8.13(b) for expenditures for legal fees and expenses and brokerage commissions, shall each be made in equal monthly installments over the term of the sublease.

(c) The sums payable to Landlord under this Section 8.13 shall be paid to Landlord as Additional Charges and shall be due when paid by the assignee, subtenant or any other person to Tenant.

(d) This Section 8.13 shall not apply to the Affiliate Occupancy Agreement.

8.14. Tenant shall indemnify and hold harmless Landlord against liability arising from any claims for brokerage commissions or other compensation in connection with any actual or proposed assignment or subletting, whether or not Landlord consents thereto. In the event that Landlord or any Superior Mortgagee or Superior Lessor declines or fails to give its consent to any proposed assignment or sublease, Tenant shall indemnify Landlord and any such Superior Mortgagee or Superior Lessor against liability in connection with any claims made against Landlord or such Superior Mortgagee or Superior Lessor by the proposed assignee or subtenant or any party claiming by, through or under such proposed assignee or subtenant. The indemnities contained in this Section 8.14 shall survive the Expiration Date or earlier termination of this Lease.

8.15. Notwithstanding the foregoing, this Article 8 shall be subject to the provisions of Section 33.01(g) of this Lease.

#### **ARTICLE 9 – Compliance With Legal and Insurance Requirements**

9.01. Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any Legal Requirements or Insurance Requirements in respect of

the Premises or the use or occupancy thereof. Tenant shall, at Tenant's expense, comply with all Legal Requirements and Insurance Requirements (including, without limitation, requirements of additional sprinkler heads or changes to the sprinkler system in or serving the Premises) that, in respect of the Premises or the use or occupancy thereof, or the abatement of any nuisance in, on or about the Premises, impose any violation, order or duty on Landlord or Tenant, by reason of or arising out of (a) Alterations, (b) Tenant's use of the Premises (as opposed to general use and occupancy), (c) the manner of conduct of Tenant's business or operation of its installations, equipment or other property therein, (d) any cause or condition created by or at the instance of Tenant, (e) Tenant's business, or the location of partitions, trade fixtures or other contents of the Premises, or (f) the breach of any of Tenant's obligations under this Lease, and Tenant shall pay all the costs, expenses, fines, penalties and damages imposed upon Landlord or any Superior Lessors or Superior Mortgagees by reason of or arising out of Tenant's failure to fully and promptly comply with and observe the provisions of this Section. However, Tenant need not comply with any Legal Requirement so long as Tenant is contesting the validity thereof or the applicability thereof to the Premises.

#### **ARTICLE 10 – Insurance**

10.01. Tenant shall not violate or permit the violation of any Insurance Requirements and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Premises which would subject Landlord or any Superior Lessor or Superior Mortgagee to liability or responsibility for bodily injury or death or property damage, or which would increase any insurance rate in respect of insurance maintained by Landlord over the rate which would otherwise then be in effect, or which would result in an insurance company refusing to insure all or any part of the Property or any contents thereof in amounts reasonably satisfactory to Landlord, or which would result in the cancellation of or the assertion of any defense by the insurer in whole or in part to claims under any policy of insurance maintained by Landlord.

10.02. If, by reason of (a) any failure of Tenant to comply with the provisions of Section 9.01 or Section 10.01, (b) Tenant's use of the Premises, or (c) any cause or condition created by or at the instance of Tenant, including, without limitation, the doing or failure to do any Alterations, or the making of or failure to make any Alterations or repairs, the premiums on any insurance maintained by Landlord shall be higher than they otherwise would be, Tenant shall reimburse Landlord on demand for that part of such premiums attributable to such use, action or failure on the part of Tenant. A schedule or "make up" of rates for any insurance maintained by Landlord issued by the fire insurance rating organization having jurisdiction or other similar body making rates shall be conclusive evidence of the facts therein stated and of the several items and charges in the insurance rate then applicable to such insurance.

10.03. Tenant assumes the liability for damage to Tenant's Property, regardless of the cause thereof. Tenant, at its expense, shall maintain, at its own expense, the following insurance policies in full force and effect during the term of the Lease: (a) property insurance under an ISO "Special Form" policy covering Tenant's Property and property of others for which Tenant is responsible, including, without limitation, all trade fixtures, fittings, installations, decorations, Alterations to a limit of not less than 100% of the replacement cost thereof; (b) commercial general liability insurance covering the operations of Tenant with limits of \$1,000,000 per occurrence Bodily Injury and Property Damage, \$1,000,000 per occurrence Personal & Advertising Injury, \$1,000,000 Products Liability and Completed Operations, \$1,000,000 Fire Damage Legal Liability and \$2,000,000 General Aggregate limit per location, which policy shall be written on an occurrence basis subject to no deductible, and which policy shall not contain exclusions relating to (1) contractual liability, (2) independent contractors, (3) gravity related injuries, (4) injuries sustained by employees of an insured or any insured, and (5) height limitations; (c) Worker's Compensation insurance affording coverage under the Worker's Compensation laws of the State of New York and Employer's Liability coverage subject to a limit of no less than \$500,000 each employee, \$500,000 each accident and \$500,000 policy limit; and (d) umbrella liability insurance with a limit of not less than \$5,000,000 providing excess coverage over all limits and coverage noted in clauses (b) and (c) above. The limits of such insurance shall not limit the liability of Tenant hereunder. All policies listed in this Section 10.03 shall be endorsed to name as an "additional insured" the following parties: (x) Landlord, (y) Landlord's managing agent and (z) all current Superior Lessors and Superior Mortgagees and any other Superior Lessors and Superior Mortgagees whose names and addresses shall have been furnished to Tenant. The definition of "additional insured" shall also include all partners, officers, directors, employees, agents and representatives of the named entity. Further, coverage for additional insureds shall apply on a primary basis to any insurance carried by Landlord, whether collectible or not. Tenant shall deliver to Landlord and all additional insureds duplicate original policies or binders for such insurance in form reasonably satisfactory to Landlord issued by the insurance company or its authorized agent no later than ten (10) days after the Commencement Date, but in any event prior to the commencement of any Alterations. All such policies shall be noncancellable in respect of Landlord and any additional insureds unless thirty (30) days' prior notice is given to Landlord and all additional insureds and all such policies shall provide that no act or omission of Tenant shall affect or limit the obligations of the insurer in respect of Landlord and the additional insureds. Tenant shall procure and pay for renewals of such insurance from time-to-time before the expiration thereof. Tenant shall deliver to Landlord and all additional insureds certificates and copies of the binders for renewal policies issued by the insurance company or its authorized agent at least thirty (30) days prior to the expiration of any existing policy. All such policies shall be issued by companies licensed to do business in the State of New York and have a "Best's" rating of A-X or higher in the most current

edition of A.M. Best's Property-Casualty Key Rating Guide (or the equivalent rating from a successor organization), or which are otherwise reasonably satisfactory to Landlord.

10.04. Each party shall have included in each of its casualty insurance policies (insuring the Premises and Landlord's property therein in the case of Landlord, and insuring Alterations and Tenant's Property in the case of Tenant) a waiver of the insurer's right of subrogation against the other party or, if such waiver is unobtainable or unenforceable, (a) an express agreement that such policy shall not be invalidated if the insured waives the right of recovery against any party responsible for a casualty covered by the policy before the casualty, or (b) any other form of permission for the release of the other party. If such waiver, agreement or permission is not, or ceases to be, obtainable from either party's then current insurance company, the insured party shall so notify the other party promptly after learning thereof, and shall use its best efforts to obtain same from another insurance company. If such waiver, agreement or permission is obtainable only by payment of an additional charge, the insured party shall so notify the other party promptly after learning thereof, and the insured party shall not be required to obtain said waiver, agreement or permission unless the other party pays the additional charge therefor. Each party hereby releases the other in respect of any claim (including a claim for negligence) which it might otherwise have against the other for loss, damage or destruction of or to its property to the extent to which it (i) is insured under a policy containing a waiver of subrogation or express agreement that such policy shall not be invalidated or permission to release liability, as provided above in this Section, or (ii) would have been insured had the party suffering the loss, damage or destruction insured its property in a commercially reasonable manner consistent with practices of a prudent commercial landlord in Westchester County, New York under a standard commercial policy containing a waiver of subrogation or express agreement permitting the release of liability. If notwithstanding the recovery of insurance proceeds by either party for loss, damage or destruction of or to its property, the other party is liable to the first party in respect thereof or is obligated under this Lease to make replacement, repair, restoration or payment, then, provided the first party's right of full recovery under its insurance policy is not thereby prejudiced or otherwise adversely affected, the amount of the net proceeds of the first party's insurance against such loss, damage or destruction shall be offset against the second party's liability to the first party therefor, or shall be made available to the second party to pay for replacement, repair or restoration, as the case may be (except that Landlord shall have no liability to Tenant for any of Tenant's Property (including leasehold improvements) if Tenant could have obtained insurance coverage for such property).

10.05. Landlord may from time to time, but not more frequently than once every year, require (a) that the amount of commercial general liability insurance to be maintained by Tenant under Section 10.03 be reasonably increased and/or additional coverage provided, provided that the increased amount or additional

coverage is consistent with amounts generally carried for comparable premises in Westchester, New York, and (b) Tenant to obtain such insurance coverage in form and amounts consistent with coverage and amounts in comparable buildings in Westchester, New York.

10.06 In connection with any Alterations, Tenant shall cause its contractors and subcontractors (collectively, "Contractors") to secure and keep in effect during the performance of the same, at Contractors' sole cost and expense, the following coverage:

(i) Property insurance upon tools, material, equipment and supplies, whether owned, leased or borrowed by the Contractor or its employees to the full replacement cost for all causes of loss included within "all risk" perils. Policy shall allow for a waiver of subrogation against Landlord.

(ii) Workers Compensation affording coverage under the laws of the State of New York and Employers Liability coverage subject to a limit of no less than \$1,000,000 each employee, \$1,000,000 each accident and \$1,000,000 policy limit.

(iii) Commercial General Liability, including contractual liability on an occurrence form with combined bodily injury and property damage limits of not less than \$5,000,000 per occurrence, \$5,000,000 per project general aggregate and \$5,000,000 Products Liability and Completed Operations. Products and Completed Operations coverage shall extend for three years beyond completion of any applicable Alteration. A policy shall not contain exclusions relating to (a) independent contractors (b) gravity related injuries (c) injuries sustained by an employee of an insured or any insured. Such insurance shall be primary and non-contributory, notwithstanding any insurance carried by Landlord or Tenant.

All such insurance shall be maintained with insurance companies licensed in New York with an AM Best's rating of not less than A- VIII. Said policies shall not be canceled, non-renewed or materially changed without at least thirty (30) days prior notice to Landlord. Each policy shall include Landlord as additional insured utilizing both forms CG2010 and CG2037 or their equivalents.

Tenant shall cause each Contractor execute an indemnification/hold harmless agreement in favor of Tenant, Landlord and Landlord's lender, if any, in form and substance reasonably acceptable to Landlord. No Contractor shall begin work unless and until it shall have furnished such agreement and Certificates of Insurance to Landlord on Accord Form 25 evidencing all terms noted above.

## **ARTICLE 11 – Rules and Regulations**

11.01. Tenant shall and shall cause its subtenants and licensees, and its and their respective employees, agents, contractors and invitees, to observe and comply with the rules and regulations attached hereto as **Exhibit D**, and such reasonable changes therein (whether by modification, elimination or addition) as Landlord at any time or times makes and notifies Tenant of which in Landlord's judgment are necessary or desirable for the reputation, safety, care or appearance of the Property, and other common areas of the Property or the preservation of good order therein, the operation or maintenance of the Property and other common areas of the Property, or the best interest of tenants generally. Such rules and regulations as changed from time to time are herein called the "Rules and Regulations." In case of any conflict, inapplicability or inconsistency between the provisions of this Lease and any of the Rules and Regulations, the provisions of this Lease shall control. Nothing in this Lease contained shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations against any other tenant or other person, Landlord shall not be liable to Tenant for violation of the Rules and Regulations by any other tenant or other person. Notwithstanding the foregoing, Landlord agrees to enforce the Rules and Regulations in a non-discriminatory manner.

## **ARTICLE 12 – Alterations**

12.01. Tenant may from time to time, at its expense, make such alterations ("Alterations") to the Premises as Tenant reasonably considers necessary for the conduct of its business in the Premises, provided and upon condition that: (a) the Alterations are non-structural and the structural integrity of the Building is not affected, (b) the Alterations are to the interior of the Premises, no part of the Building or Property outside of the Premises is affected, and the outside appearance of the Building is not affected, and (c) the proper functioning of the mechanical, electrical, sanitary and other service systems of the Building is not adversely affected and the usage of such systems by Tenant is not materially increased, as determined by Landlord in its reasonable discretion. Before proceeding with any Alteration, except those Alterations that are cosmetic in nature and will cost not more than \$20,000.00 to complete, Tenant shall submit to Landlord for Landlord's approval (which shall not be unreasonably withheld) plans and/or specifications and all changes thereto for the work to be done, and Tenant shall not proceed with such work until it obtains such approval. Tenant shall pay to Landlord on demand (A) the out-of-pocket actual costs and expenses of Landlord in (i) reviewing said plans and specifications and any changes thereto and (ii) inspecting the Alterations to determine whether the same are being performed in accordance with the approved plans and specifications and all Legal Requirements and Insurance Requirements, and (B) a supervisory fee equal to five percent (5%) of the cost of constructing any Alterations. Any review or approval by Landlord of any plans or specifications in respect of any Alterations is solely for Landlord's benefit and without any

representation or warranty to Tenant as to the adequacy, correctness or efficiency thereof or otherwise.

12.02. Tenant, at its expense, shall obtain all necessary governmental and other permits, approvals and certificates for the commencement and prosecution of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith and with all applicable Legal Requirements and Insurance Requirements. Alterations shall be diligently performed in a good and workmanlike manner, using materials and equipment at least equal in quality and class to those initially installed in the Premises. Alterations shall be performed by contractors approved by Landlord prior to the commencement of any Alterations, which approval shall not be unreasonably withheld, conditioned or delayed. Any initial work at the Premises or Alterations shall be performed in such a manner as not to violate union contracts affecting the Property, or to create any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant of the Property. Throughout the performance of Alterations, Tenant shall carry, or cause its contractors to carry, the insurance specified in Section 10.06 hereof. Tenant shall furnish Landlord with reasonably satisfactory evidence that such insurance is in effect before the commencement of Alterations. Any Alterations involving the mechanical, electrical, sanitary, heating, ventilating, air-conditioning or other systems shall be performed only by contractors approved by Landlord.

12.03. Tenant, at its expense, shall promptly procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations, or any other work, labor, services or materials done for or supplied to Tenant or any person claiming through or under Tenant which are issued by the municipal authorities of the City of Rye or any other public authority having or asserting jurisdiction. Tenant shall indemnify Landlord against liability in connection with any and all mechanics' and other liens and encumbrances filed in connection with Alterations or any other work, labor, services or materials done for or supplied to Tenant or any person claiming through or under Tenant, including security interests in any materials, fixtures or articles so installed in the Premises. Tenant, at its expense, shall bond over or procure the satisfaction or discharge of record of all such liens and encumbrances filed in connection with Alterations or any other work, labor, services or materials done for or supplied to Tenant or any person claiming through or under Tenant within fifteen (15) days after the filing thereof.

### **ARTICLE 13 – Landlord's and Tenant's Property**

13.01. Except as provided in Section 13.02, all fixtures, equipment, improvements and appurtenances, including utility lines and equipment, attached to or built into the Premises before or after the Possession Date, whether by or at

the expense of Landlord or Tenant, shall be and remain a part of the Premises, shall be deemed the property of Landlord and shall not be removed by Tenant.

13.02. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to or built into the Premises, which are installed in the Premises by Tenant at any time during the Term without expense to Landlord and which can be removed without structural damage to the Building, and all furniture, furnishings, and all other articles of movable personal property owned by Tenant and located and used in the Premises at any time during the Term (collectively, "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term, provided that if any Tenant's Property is installed or removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Property resulting from the installation and/or removal thereof.

13.03. At or before the Expiration Date, or within seven (7) days after an earlier termination date, Tenant, at its expense, shall remove from the Premises all Tenant's Property, and any Alterations and any fixtures, equipment, improvements and appurtenances which Landlord may direct Tenant to remove. Tenant shall repair and be liable for any damage to the Premises and the Property resulting from any installation and/or removal of any such items. Any items of Tenant's Property which remain in the Premises after the Expiration Date, or after fifteen (15) days following an earlier termination, may, at the option of Landlord, be deemed to have been abandoned, and in such case such items may be retained by Landlord as its property or disposed of by Landlord in such manner as Landlord shall reasonably determine at Tenant's expense.

#### **ARTICLE 14 – Repairs and Maintenance**

14.01. (a) Tenant shall, at its expense, take good care of (i) the Premises, which includes, without limitation, the loading docks adjacent thereto; (ii) the fixtures and appurtenances therein, including, without limitation, the load levelers located in the loading docks (the "Load Levelers"); (iii) all mechanical, electrical, sanitary, heating, ventilating, air-conditioning and other fixtures and equipment therein, including, without limitation, the elevator exclusively serving the Premises ("Tenant's Elevator") and, subject to Section 16.01 of this Lease, Tenant's HVAC Unit; (iv) Tenant's Property; (v) subject to Section 17.03 of this Lease, the Parking Lot (as defined below); and (vi) the floor of the Premises. Tenant shall maintain a maintenance contract ("Elevator Contract") with respect to Tenant's Elevator during the Term, which Elevator Contract shall be reasonably acceptable to Landlord and with an elevator servicer reasonably acceptable to Landlord. Prior to the Possession Date, Tenant shall deliver to Landlord such Elevator Contract, and, during the Term, Tenant shall deliver to Landlord any changes to or renewals of such Elevator Contract promptly after Tenant's receipt. Tenant shall be responsible

for the replacement of Tenant's Elevator. Tenant shall be responsible for and shall promptly make all nonstructural repairs, interior and exterior, ordinary and extraordinary, in and to the Premises and the Property, including, without limitation, the Parking Lot, the need for which arises out of (a) the performance or existence of any Alterations or other work by Tenant, (b) the installation, use or operation of Tenant's Property, (c) the moving of Tenant's Property in or out of the Premises or the Property, or (d) the act, omission, misuse or neglect of or by Tenant or any subtenant or licensee, or their respective employees, agents, contractors or invitees. Tenant, at its expense, shall promptly replace all scratched, damaged or broken doors and glass in and about the Premises and shall be responsible for all repairs, painting, maintenance and replacement of wall and floor coverings in the Premises, and for the repair, maintenance and replacement of all mechanical, electrical, sanitary, heating, ventilating, air-conditioning and other fixtures and equipment therein, including, without limitation, the Tenant Acquired Property. Any repairs and replacements required to be made by Tenant to the mechanical, electrical, sanitary, heating, ventilating, air-conditioning or other systems shall be performed only by contractors approved by Landlord. Tenant shall also be responsible for the cost of any structural damage in and to the Premises or the Property caused by the act, omission, misuse or neglect of or by Tenant or any subtenant or licensee, or their respective employees, agents, contractors or invitees.

(b) Tenant shall be responsible, as Additional Charges hereunder, for any costs incurred by Landlord regarding structural repairs, interior and exterior, ordinary and extraordinary, in and to the Premises and the Property, the need for which arises out of (a) the installation, use or operation of Tenant's Property, or (b) the act, omission, misuse or neglect of or by Tenant or any subtenant or licensee, or their respective employees, agents, contractors or invitees.

14.02. Tenant, at its sole cost and expense, shall be responsible for removing snow, ice, dirt, debris, and otherwise clean, the areas leading to any entrance, exit or other means of egress or ingress to the Premises, including, without limitation, the loading docks, with the understanding that Landlord shall contract directly with a vendor to handle snow removal from the Common Areas of the Property (which shall be treated as Operating Expenses hereunder).

14.03. Landlord shall have no liability to Tenant, nor shall Tenant's obligations under this Lease be reduced or abated in any manner, by reason of any inconvenience, annoyance, interruption or injury to Tenant's business arising from Landlord's making any repairs or changes which Landlord is required or permitted to make hereunder or pursuant to Legal Requirements or Insurance Requirements. Landlord agrees to use commercially reasonable efforts to minimize interference with Tenant's business. In no event may Tenant offset or attempt to offset any damage resulting from a breach of the preceding sentence, or any other agreement or obligation of Landlord, from Fixed Rent or Additional Charges payable under this Lease.

## ARTICLE 15 – Electric Energy

15.01. Tenant shall apply for and pay for its supply of electric current by direct application to and arrangement with the public utility company serving the Building. Landlord shall use commercially reasonable efforts to have electric service provided directly to Tenant by the utility company providing electric service to the Property. In the event Tenant obtains such direct application to and arrangement with the public utility company serving the Building, Tenant shall pay for its consumption of electricity serving the Premises as measured by direct meter(s) installed by Landlord at Landlord's expense. If Landlord is unable to obtain or to assist Tenant in obtaining such direct electric service for Tenant, Landlord shall provide redistributed electricity to the Premises hereunder on a sub-metered basis, and Tenant agrees to purchase the same from Landlord at charges for such computed in the manner hereinafter described, to wit, a sum equal to Landlord's cost for such electricity ("Landlord's Cost"). Landlord's Cost for such redistributed electricity shall be equal to (a) Landlord's cost for the relevant billing period as hereinafter defined ("Landlord's Cost Rate") multiplied by Tenant's electricity consumption for the relevant billing period as hereinafter defined ("Tenant's Electrical Consumption") measured and calculated as hereinafter provided (but never less than Landlord's actual cost for the electricity so redistributed), and (b) and all taxes paid by Landlord (except and to the extent that an exemption from sales tax applies to Landlord). In addition, Tenant shall reimburse Landlord hereunder for the costs incurred by Landlord for measuring, calculating and reporting Tenant's electricity charges, including the fees of Landlord's electrical consultant.

Landlord's Cost Rate shall mean the average cost for the Building electrical usage calculated on a kilowatt hour (i.e., "KWH") and kilowatts (i.e., "KW") basis, and shall be determined as follows: (i) the total dollar amount billed to Landlord by the public utility and/or service providers for the Building's consumption for the relevant billing period for energy (i.e. "KWH") shall be divided by the total kilowatt hours consumed by the Building for that billing period, and (ii) the total dollar amount billed to landlord by the public utility and/or service providers for the relevant billing period for demand (i.e. "KW") for the Building's demand for such billing period shall be divided by the total demand (kilowatts) of the Building for such billing period. Tenant's Electrical Consumption shall mean the total KWH and KW used by Tenant at the Premises measured by meters or submeters installed to measure same. Where more than one meter or submeter measures the service of Tenant in the Building, the service measured by each such meter shall be computed and billed collectively in accordance with the rates herein specified. Notwithstanding the foregoing, in no event shall Tenant pay less than Landlord's actual cost of the electricity consumed by Tenant.

If required under the terms of this Lease, Landlord shall install direct meters or submeters at its cost and expense to measure Tenant's Electrical Consumption.

Bills therefor shall be rendered at such times as Landlord may elect, and the amount due shall be deemed to be, and shall be paid as Additional Charges. If any tax is imposed upon Landlord's receipt from the resale of electrical energy to Tenant by any Federal, State or Municipal authority, Tenant covenants and agrees that Tenant's share of such taxes based upon its usage and demand shall be passed on to, and shall be included in the bill of, and shall be paid by Tenant to Landlord.

In the event that all or part of the meters, or system by which Landlord measures Tenant's consumption of electricity within any portion of the Premises hereunder (the "Submetering System"), shall fail to be operational, installed or otherwise malfunction, (a) Landlord, through an independent, electrical consultant selected by Landlord, at Tenant's sole cost and expense, shall estimate the readings that would have been yielded by said Submetering System as if the malfunction had not occurred, on the basis of Tenant's prior usage and demand and the lighting, HVAC and other equipment installed within such space and (b) Tenant shall utilize such estimated readings and the bill rendered based thereon shall be binding and conclusive on Tenant unless, within ninety (90) days after receipt of such a bill, Tenant challenges, in writing to Landlord, the accuracy or method of computation thereof. If, within ninety (90) days of Landlord's receipt of such a challenge, the parties are unable to agree on the amount of the contested bill, the controlling determination of same shall be made by an independent electrical consultant agreed upon by the parties or, upon their inability to agree, as selected by the American Arbitration Association. The determination of such electrical consultant shall be final and binding on both Landlord and Tenant. Pending such controlling determination, Tenant shall timely pay Additional Charges to Landlord in accordance with the contested bill. Tenant shall be entitled to a prompt refund from Landlord, or shall make prompt additional payment to Landlord, as applicable, in the event that the electrical consultant determines that the amount of a contested bill should have been other than as reflected thereon.

If all or part of the metering or submetering Additional Charges payable in accordance with this Article becomes uncollectible or reduced or refunded by virtue of any law, order or regulations, the parties agree that, at Landlord's option, in lieu of metering or submetering Additional Charges, and in consideration of Tenant's use of the Building's electrical distribution system and receipt of redistributed electricity and payment by Landlord of consultant's fees and other redistribution costs, the Fixed Rent rates to be paid under this Lease shall be increased by an "alternative charge" which shall be a sum equal to Landlord's cost thereof.

15.02. Landlord shall provide not less than five (5) watts connected load per rentable square foot, exclusive of the Building HVAC system, if any, of electrical power available within the Premises at all times during the Term of this Lease. Tenant's use of electric energy in the Premises shall not at any time exceed five (5) watts of connected load per square foot of the Premises, and in no case shall exceed the capacity of any of the electrical conductors and equipment in, or otherwise

serving, the Premises. In order to insure that such capacity is not exceeded and to avert possible adverse effect upon the Building's electric service, Tenant shall not, without Landlord's prior written consent in each instance (which shall not be unreasonably delayed or withheld), connect any fixtures, appliances or equipment to the Building's electric distribution system other than ordinary office equipment, or make any alteration or addition to the electric system of the Premises. Should Landlord grant such consent, all additional risers or other equipment required therefor shall be provided by Landlord and the actual cost thereof shall be paid by Tenant to Landlord within ten (10) days of demand.

15.03. Landlord shall not be liable or responsible to Tenant for any loss, damage or expense that Tenant sustains or incurs if either the quantity or character of electric service or any and all other utilities to and in the Premises is changed or interrupted or is no longer available or suitable for Tenant's requirements.

15.04. Tenant shall pay for its consumption of water and gas serving the Premises, which shall be measured by direct or sub-meters installed by Landlord, at Landlord's expense. If submetered, bills for such consumption of water and gas shall be rendered at such times as Landlord may elect, and the amount due shall be deemed to be, and shall be paid as Additional Charges. In the event that the direct meter or sub-meter, or system shall fail to be operational, or otherwise malfunction, until such time the meter is repaired water and/or gas will be billed and payable based upon Landlord's reasonable apportionment taking into account Tenant's prior usage and demand and Tenant shall utilize such estimated readings and the bill rendered based thereon shall be binding and conclusive on Tenant unless, within ninety (90) days after receipt of such a bill, Tenant challenges, in writing to Landlord, the accuracy or method of computation thereof. If, within ninety (90) days of Landlord's receipt of such a challenge, the parties are unable to agree on the amount of the contested bill, the controlling determination of same shall be made by an independent consultant agreed upon by the parties or, upon their inability to agree, as selected by the American Arbitration Association. The determination of such consultant shall be final and binding on both Landlord and Tenant. Pending such controlling determination, Tenant shall timely pay Additional Charges to Landlord in accordance with the contested bill. Tenant shall be entitled to a prompt refund from Landlord, or shall make prompt additional payment to Landlord, as applicable, in the event that the consultant determines that the amount of a contested bill should have been other than as reflected thereon. All such meters shall be maintained, repaired and replaced (if necessary) by Landlord at Landlord's expense.

15.05. Subject to Force Majeure (as defined below), if (i) Landlord fails to provide electrical service to the Premises in accordance with this Article 15 to the extent within Landlord's reasonable control Landlord (as applicable, the "Electricity Service") (such failure, the "Electric Service Failure"), which Electric Service Failure is material and adverse, and as a result thereof impacts Tenant's ability to

conduct its business in the Premises (or a portion thereof) in the same manner that Tenant conducted its business prior to such event, (ii) Tenant provides Landlord with written notice of the Electric Service Failure, and (iii) the Electric Service Failure extends for a period longer than five (5) consecutive Business Days, then Tenant's obligation to pay Fixed Rent, Operating Payments and Tax Payments shall be abated in the proportion that the rentable area of the portion of the Premises that Tenant is so prevented from using, and does not use, bears to the total rentable area of the Premises, for the period beginning on the sixth (6<sup>th</sup>) consecutive Business Day after the aforementioned conditions are met and ending on the date on which the Electricity Service is restored rendering the Premises or portion thereof tenantable and useable for the ordinary conduct of Tenant's business. In no event may Tenant offset any damage resulting from a breach of the preceding sentence, or any other agreement or obligation of Landlord, from Fixed Rent or Additional Charges payable under this Lease.

#### **ARTICLE 16 – Heat, Ventilation and Air-Conditioning**

16.01. The Premises shall be served by one or more existing heating, ventilating and air-conditioning units ("Tenant's HVAC Unit"). The cost of electricity for such unit shall be included in Article 15 above. Tenant may operate Tenant' HVAC Unit at such times as Tenant shall determine, but shall not exceed the capacity of Tenant' HVAC Unit at any time. Tenant shall be responsible for the maintenance, repair and replacement of Tenant's HVAC Unit and in connection therewith shall obtain and maintain, at Tenant' sole cost and expense, in effect at all times a service contract with a qualified maintenance company designated or approved by Landlord. Tenant shall promptly provide a copy of such service contract to Landlord upon Landlord's request.

16.03. The performance by Landlord of its obligations under Section 16.01 with respect to the Premises is conditioned upon Tenant's electricity usage not exceeding the amounts set forth in Section 15.02.

#### **ARTICLE 17 – Other Services, Service Interruption and Building Directory, Tenant Access**

17.01. Tenant shall cause the Premises, including the interior of the exterior windows, to be kept clean and free of rubbish and debris and will enter into separate agreements with third party companies for such services, which third party companies shall be approved by Landlord, in its reasonable discretion, prior to such companies providing services to the Premises. Tenant shall cause remove all rubbish from the Premises and may use Landlord's dumpster for disposal thereof.

17.02. Notwithstanding anything to the contrary contained herein, Landlord shall have the right, without affecting Tenant's obligations under this Lease, to stop or interrupt or reduce service of any of the heating, ventilating, air-

conditioning, electric, sanitary, elevator, sprinkler, water or other Building systems, or to stop or interrupt or reduce any other services required of Landlord under this Lease (whether or not specified in Article 16 or in this Article 17), whenever and for so long as may be necessary, by reason of (a) Force Majeure, or (b) the making of repairs, additions, changes or replacements which Landlord is required or permitted to make or in good faith deems necessary.

17.03. Subject to the terms herein, from and after the Commencement Date, Landlord shall grant to the Tenant named herein a non-exclusive license to use the parking lot (the "Parking Lot") on the Property identified on **Exhibit E** annexed hereto and made a part hereof for the parking of Vehicles (as hereinafter defined) in connection with Tenant's business in the Property; provided that Tenant (a) is not in default under this Lease beyond any applicable notice and grace period, (b) is open for the conduct of business in the Premises for the use set forth in Section 2.01 of this Lease, (c) is in occupancy of one hundred percent (100%) of the Premises and (d) has not assigned its interest in this Lease or subleased all or any portion of the Premises. Any user of the Parking Lot shall comply in all respects with Landlord's standard parking rules and regulations for the Property (including, without limitation, with respect to the registration of Vehicles). Landlord shall have the right, provided that the number of parking spaces available to Tenant is not decreased, to change the parking arrangements at the Property including, but not limited to, providing parking at other locations on the Property other than the Parking Lot, the use of a parking attendant or valet service and/or the institution of a system using parking cards or passes. As used in this Lease, the term "Vehicle" shall mean passenger vehicles (none of which shall be longer than eighteen (18) feet). Notwithstanding the foregoing or anything to the contrary contained herein, Landlord shall contract with a vendor to handle plowing and/or snow removal, as applicable, from the Parking Lot as part of Landlord's standard Common Area maintenance of the Property (with the understanding that the cost thereof shall be billable as Operating Expenses hereunder, or, to the extent any such service is exclusively performed in the Parking Lot for which Tenant, and no other tenant at the Building, derives the sole benefit, billable by Landlord as Additional Charges hereunder).

**ARTICLE 18 – Landlord Access, Notice of Occurrences, Windows,  
Name of Building**

18.01. All of the exterior Building walls, core corridor walls and doors and any core corridor entrances, any terraces or roofs adjacent to the Premises and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Premises for the purposes of operation, maintenance, decoration and repair, are reserved to Landlord. Landlord shall have the right, at any time, without affecting any of Tenant's obligations under this Lease, to install, erect, use and maintain pipes, ducts and conduits in

and through the Premises and to make such changes and improvements in or to the Building and Common Areas as Landlord deems necessary or desirable except that such alterations shall not reduce usable square footage of the Premises, other than in a de minimis or inconsequential fashion. Landlord shall use commercially reasonable efforts to make such changes, alterations, additions and improvements with minimal interference to the conduct of Tenant's business.

18.02. Landlord and its agents shall have the right to enter and/or pass through and/or be on the Premises at any time or times to examine the Premises and to show it to actual or prospective Superior Lessors or Superior Mortgagees or prospective purchasers of the Building at reasonable times and upon reasonable prior notice to Tenant (which prior notice may be given by telephone or by email to a party or parties designated by Tenant from time to time) (except in the case of emergencies). Landlord, its agents and contractors (including cleaning contractors) and their respective employees (a) shall have the right to enter the Premises at reasonable times and upon reasonable prior notice (or at any time in the case of emergencies), to make such repairs, alterations and improvements in or to the Building as Landlord is required or desires to make, and Landlord shall repair any damage arising or resulting from a such repairs, alterations and improvements in or to the Building by or on behalf of Landlord. Landlord shall have the right to take all materials into and on the Premises that may be reasonably required in connection therewith and such acts shall not be deemed an actual or constructive eviction and shall not affect Tenant's obligations under this Lease. During the period of 12 months prior to the Expiration Date, Landlord and its agents may exhibit the Premises to prospective tenants. Landlord shall use commercially reasonable efforts not to interfere with the conduct of Tenant's business in connection therewith, but Landlord shall not be required to do any of the same at times other than Business Hours.

18.03. If at any time any windows of the Premises are temporarily darkened or obstructed by reason of any repairs, improvements, maintenance and/or cleaning in or about the Building, or if any part of the Building other than the Premises is temporarily or permanently closed or inoperable (provided Tenant is not deprived of reasonable access to the Premises, except in the case of an emergency), same shall not be deemed an actual or constructive eviction and shall have no effect upon Tenant's obligations under this Lease.

18.04. Landlord may adopt any name for the Property, and Landlord shall have the right to change the name and/or address of the Property from time to time.

18.05. Tenant shall give prompt notice to Landlord of (a) any occurrence in or about the Premises for which Landlord might be liable, (b) any fire or other casualty in the Premises, (c) any damage to or defect in the Premises, including the fixtures, equipment and appurtenances thereof, for the repair of which Landlord might be responsible, and (d) any damage to or defect in any part of the Building's

sanitary, electrical, sprinkler, heating, ventilating, air-conditioning, plumbing, elevator or other systems located in or passing through the Premises.

18.06. If an excavation is made upon land adjacent to or under the Premises, or is authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter the Premises for the purpose of performing such work as said person reasonably deems necessary or desirable to preserve and protect the Premises from injury or damage and to support same by proper foundations, and same shall not be deemed an actual or constructive eviction and shall have no effect on Tenant's obligations under this Lease (provided Tenant is not deprived of reasonable access to the Premises, except in the case of an emergency).

18.07. If Tenant is not present when for any reason entry into the Premises by Landlord is necessary or permissible, Landlord or Landlord's agents may enter same by a master key, or may forcibly enter same (in the case of an emergency only), without rendering Landlord or such agents liable therefor (if during such entry Landlord or such agents accord reasonable care to Tenant's Property), and such entry shall not be deemed an actual or constructive eviction and shall have no effect upon Tenant's obligations under this Lease.

#### **ARTICLE 19 – Non-Liability and Indemnification**

19.01. Neither Landlord nor any Superior Lessor or Superior Mortgagee shall be liable to Tenant for any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, except to the extent caused by or resulting from the negligence or willful misconduct of any such person. Neither Landlord nor any Superior Lessor or Superior Mortgagee shall be liable for any damage caused by other tenants or persons in, on or about the Property. In no event shall Landlord, any Superior Lessor or any Superior Mortgagee have any liability for consequential damages.

19.02. Notwithstanding any provision to the contrary, Tenant shall look solely to the estate and property of Landlord in and to the Property in the event of any claim against Landlord or any partner, director, officer, member, manager, agent or employee of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Premises, and the liability of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Premises, shall be limited to such estate and property of Landlord. No other properties or assets of Landlord or any partner, director, officer, member, manager, agent or employee of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or for the satisfaction of any other remedy of Tenant arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Premises.

19.03. Tenant shall indemnify Landlord against liability in connection with (a) the conduct or management of the Premises or of any business therein, or any work or thing done, or any condition created (other than by Landlord) in or about the Premises during the Term or during the period of time, if any, prior to the Possession Date that Tenant is given access to the Premises, (b) any negligent act or omission of Tenant or any subtenant or licensee or their respective employees, agents, contractors or invitees, (c) any accident, injury or damage occurring in, at or upon the Premises (except to the extent caused by Landlord's negligence or willful misconduct), (d) the failure of Tenant or any subtenant or licensee or their respective employees, agents, contractors or invitees to comply with Legal Requirements and Insurance Requirements or (e) any other breach or default by Tenant under this Lease.

19.04. Notwithstanding any provision in this Lease to the contrary, Landlord, to the fullest extent permitted by law, shall indemnify Tenant against liability in connection with any accident, injury or damage occurring anywhere in and around the Property where such accident, injury or damage results or is claimed to have resulted from negligence or willful misconduct of Landlord or Landlord's agents and employees.

19.05. The obligations of Tenant under this Article 19 shall survive the Expiration Date or earlier termination of this Lease.

#### **ARTICLE 20 – Damage or Destruction**

20.01. If the Building is partially or totally damaged or destroyed by fire or other casualty (and this Lease is not terminated as provided in this Article), Landlord shall repair the damage and restore and rebuild the Building (except for Alterations and Tenant's Property) with reasonable diligence after notice to it of the damage or destruction and the collection of the insurance proceeds attributable to such damage or destruction.

20.02. Notwithstanding the provisions of Section 20.01 and subject to the provisions of Section 20.05, if all or part of the Premises is damaged or destroyed or rendered completely or partially untenable by fire or other casualty, Fixed Rent and any Additional Charges payable under Article 4 and Article 5 shall be reduced in the proportion that the untenable area of the Premises bears to the total area of the Premises for the period from the date of the damage or destruction to (a) the date the damage to the Premises is substantially repaired to substantially the condition of the Premises prior to the damage, or (b) if the Building and not the Premises is so damaged or destroyed, the date on which the Premises is made tenantable; provided, however, should Tenant reoccupy a portion of the Premises during the period in which repair work is taking place and prior to the date the Premises is substantially repaired to substantially the condition of the Premises prior to the damage or the date made tenantable, Fixed Rent and any Additional

Charges payable under Article 4 and Article 5 allocable to such reoccupied portion, based upon the proportion which the area of the reoccupied portion of the Premises bears to the total area of the Premises, shall be payable by Tenant from the date of such occupancy.

20.03. Notwithstanding the provisions of Section 20.01, if the Building is so damaged or destroyed by fire or other casualty (whether or not the Premises is damaged or destroyed) that Landlord elects not to restore, then Landlord may terminate this Lease by giving Tenant notice to such effect within 120 days after the date of the fire or other casualty and Fixed Rent and any Additional Charges payable under Article 4 and Article 5 shall be prorated and adjusted as of the date of termination.

20.04. Tenant shall not be entitled to terminate this Lease and no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building pursuant to this Article. If Landlord does not elect to cancel this Lease pursuant to this Article 20, Landlord shall, to the extent insurance proceeds are available to Landlord therefor, use reasonable efforts to make such repair or restoration in such manner as to not unreasonably interfere with Tenant's use and occupancy of the Premises, but Landlord shall not be required to do such repair or restoration work at times other than during Business Hours. Notwithstanding anything to the contrary contained in this Section 20.04, if all or substantially all of the Premises is rendered untenable by a fire or other casualty, and if (a) Landlord shall reasonably estimate that the time required for the repair or restoration of such damage or destruction is in excess of two hundred forty (240) days, (b) such two hundred forty (240) day period shall end within the last one (1) year of the Term, or (d) if repairs do, in fact, exceed two hundred forty (240) days from the date of the casualty, then Tenant, at its option, may elect to terminate this Lease as of the date such fire or other casualty occurred, as if such date were the Expiration Date

20.05. Notwithstanding the above, if by reason of any act or omission on the part of Tenant or any subtenant or licensee or their respective employees, agents, contractors or invitees, Landlord, any Superior Lessor or Superior Mortgagee is unable to collect all or substantially all the rent insurance proceeds, then, without prejudice to any other remedies which may be available against Tenant, any reduction of Fixed Rent or Additional Charges provided for herein shall be reduced by the amount by which such rent insurance proceeds have been so reduced. Further, nothing contained in this Article shall relieve Tenant from any liability it may have as a result of any damage or destruction by fire or other casualty.

20.06. Landlord will not carry insurance of any kind on Tenant's Property and shall not be obligated to repair any damage to or replace Tenant's Property.

## **ARTICLE 21 – Eminent Domain**

21.01. If the whole of the Building or the Premises is taken by condemnation or in any other manner for any public or quasi-public use or purpose, this Lease shall terminate as of the date of vesting of title on such taking (“Date of Taking”), and Fixed Rent and any Additional Charges payable under Article 4 and Article 5 shall be prorated and adjusted as of such date.

21.02. Landlord may, at its option, in the event of a partial taking of the Building or the Premises, at its option, terminate this Lease by giving Tenant notice to that effect within 90 days after the Date of Taking. If 35% or more of the Premises is so taken and if the remaining area of the Premises is not reasonably sufficient for Tenant to continue a viable operation of its business, Tenant may, at its option, terminate this Lease by giving Landlord notice to that effect within ninety (90) days after the Date of Taking. This Lease shall terminate thirty (30) days after the date that such notice from Landlord or Tenant to the other shall be given, and Fixed Rent and Additional Charges shall be prorated and adjusted as of such termination. Upon such partial taking and this Lease continuing in force as to any part of the Premises, Fixed Rent, Tenant’s Tax Percentage and Tenant’s Operating Percentage shall be equitably adjusted according to the rentable area remaining.

21.03. Landlord shall be entitled to receive the entire award or payment in connection with any taking without deduction therefrom for any estate vested in Tenant by this Lease and Tenant shall receive no part of such award. The foregoing shall not preclude Tenant from recovering a separate award for Tenant’s moving expenses and Tenant’s Property if such award does not reduce and is not payable out of the award for the Property.

21.04. In the event of any taking of less than the whole of the Building and/or Land which does not result in termination of this Lease, Landlord, whether or not any award or awards shall be sufficient for the purpose, shall proceed with reasonable diligence to repair the remaining parts of the Building (other than Tenant’s Property) to substantially their former condition to the extent that same is feasible (subject to reasonable changes which Landlord deems desirable) and so as to constitute the Building complete and tenantable.

## **ARTICLE 22 – Surrender and Holding Over**

22.01. On the Expiration Date or on any earlier termination of this Lease or on any reentry by Landlord on the Premises pursuant to the terms of this Lease, Tenant shall quit and surrender the Premises to Landlord “broom clean” and in the same order and condition as on the Possession Date, except for ordinary wear and tear and damage by fire, hurricane, tornado, earthquake or other casualty, condemnation or circumstances for which Landlord is responsible for repairing

pursuant to the terms of this Lease, and Tenant shall remove all Tenant's Property and Alterations therefrom except as otherwise expressly provided in this Lease. Additionally, at least six (6) months prior to the end of the Term, Landlord may direct Tenant, in Landlord's sole discretion, to restore the Premises to the condition of the Premises existing on the Possession Date (with the understanding that, pursuant to Landlord's notice regarding such restoration, Tenant may be required to remove any Alterations performed by Tenant, or any portion thereof). No act or thing done by Landlord or its agents or employees shall be deemed an acceptance of a surrender of this Lease or the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord.

22.02. If Tenant remains in possession of the Premises after the expiration or termination of this Lease without the execution of a new lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any claims made by any succeeding tenant founded upon such failure to surrender, and any losses incurred by Landlord resulting therefrom. In addition, for each and every month or partial month that Tenant or any party claiming by, through or under Tenant remains in occupancy of all or any portion of the Premises after the expiration of this Lease or after termination of this Lease or Tenant's right to possession, Tenant shall pay, as minimum damages and not as a penalty, monthly use and occupancy at a rate equal to (1) for the first thirty (30) days after the expiration or termination of this Lease, one hundred fifty percent (150%) of the monthly Fixed Rent last payable by Tenant, plus all Additional Charges payable hereunder, and (2) thereafter, the greater of (a) two times the monthly Fixed Rent last payable by Tenant, plus all Additional Charges payable hereunder, and (b) Landlord's then asking price, on a monthly basis, for comparable space in the Building (or, if Landlord has no asking price, the monthly rental equal to the prevailing rate for comparable space in comparable buildings in the vicinity of the Building). Nothing contained in this Section shall (i) imply any right of Tenant to remain in the Premises after the expiration or termination of this Lease without the execution of a new lease, (ii) imply any obligation of Landlord to grant a new lease or (iii) be construed to limit any right or remedy that Landlord has against Tenant as a holdover tenant or trespasser.

#### **ARTICLE 23 – Default**

23.01. This Lease is subject to the limitations that whenever Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any of the Insolvency Laws, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against Tenant under any Insolvency Laws and is not vacated within sixty (60) days, or whenever a petition is filed by or against Tenant under the reorganization provisions of any Insolvency Laws, or whenever a petition is filed by Tenant under the arrangement provisions of any Insolvency Laws, or whenever a

receiver of Tenant or of or for the property of Tenant is appointed, then Landlord (a) if such event occurs without the acquiescence of Tenant, at any time after the event continues for 60 days, or (b) in any other case at any time after the occurrence of any such event, may give Tenant a notice of intention to terminate this Lease at the expiration of 15 days from the date of service of such notice of intention, and upon the expiration of said 15-day period this Lease, whether or not the Term had commenced, shall terminate with the same effect as if that day were the Expiration Date, but Tenant shall remain liable for damages as provided in Article 25.

23.02. This Lease is subject to the further limitations that:

(a) if Tenant defaults in the payment of any Fixed Rent or Additional Charges, and such default continues for five (5) Business Days; or

(b) if Tenant, whether by action or inaction, is in default of any other obligation under this Lease (other than a default in the payment of Fixed Rent or Additional Charges) and such default continues and is not remedied within fifteen (15) days after Landlord gives to Tenant a notice specifying the same, or, in the case of a default which with due diligence cannot be cured within a period of fifteen (15) days and the continuance of which for the period required for cure will not (i) subject Landlord or any Superior Lessor or Superior Mortgagee to prosecution for a crime or (ii) result in the termination of any Superior Lease or foreclosure of any Superior Mortgage, if Tenant does not, (x) within said fifteen (15)-day period advise Landlord of Tenant's intention to take all steps necessary to remedy such default, (y) duly commence and thereafter diligently prosecute to completion all steps necessary to remedy the default, and (z) complete such remedy within a reasonable time after the date of such notice from Landlord; or

(c) if any event occurs or any contingency arises whereby this Lease, by operation of law or otherwise, devolves upon or passes to any person other than Tenant, except as expressly permitted by this Lease, or a violation of Article 8 shall occur; or

(d) if Tenant vacates or abandons the Premises; or

(e) if Tenant (or any person which, directly or indirectly, controls, is controlled by, or is under common control with Tenant) defaults under any other lease of space in the Building;

then Landlord may give to Tenant a notice of intention to terminate this Lease at the expiration of five (5) days from the date of the service of such notice of intention, and upon the expiration of said five (5)-day period this Lease shall terminate with the same effect as if that day were the Expiration Date, but Tenant shall remain liable for damages as provided in Article 25.

## **ARTICLE 24 – Re-entry by Landlord**

24.01. If Landlord gives Tenant notice of termination under Article 23 on account of nonpayment of any Fixed Rent or Additional Charges, or if this Lease terminates as provided in Article 23, Landlord or Landlord's agents may immediately or at any time thereafter re-enter the Premises, or any part thereof, either by summary dispossess proceedings or by any suitable action or proceeding at law, or by legal force or otherwise, without being liable for indictment, prosecution or damages therefor, and may repossess same, and may remove any person therefrom, to the end that Landlord may have, hold and enjoy the Premises. The word "re-enter," as used herein, is not restricted to its technical legal meaning. If this Lease is terminated under the provisions of Article 23, or if Landlord re-enters the Premises under the provisions of this Article, or in the event of the termination of this Lease, or of re-entry, by or under any summary dispossess or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall thereupon pay to Landlord Fixed Rent and Additional Charges payable to the time of such termination of this Lease, or of such recovery of possession of the Premises by Landlord, as the case may be, and shall also pay to Landlord damages as provided in Article 25.

24.02. In the event of a breach or threatened breach by Tenant of any of its obligations under this Lease, Landlord shall also have the right of injunction. The remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any other remedies to which Landlord may lawfully be entitled at any time, and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not provided for herein.

24.03. If this Lease is terminated under the provisions of Article 23, or if Landlord re-enters the Premises under the provisions of this Article, or in the event of the termination of this Lease, or of re-entry, by or under any summary dispossess or other proceeding or action or any provision of law by reason of default on the part of Tenant, Landlord may retain all monies, if any, paid by Tenant to Landlord, whether as advance rent, security or otherwise, but such monies shall be credited by Landlord against any Fixed Rent or Additional Charges due from Tenant at the time of such termination or re-entry or, at Landlord's option, against any damages payable by Tenant under Article 25 or pursuant to law.

## **ARTICLE 25 – Damages**

25.01. If this Lease is terminated under the provisions of Article 23, or if Landlord re-enters the Premises under the provisions of Article 24, or in the event of the termination of this Lease, or of re-entry, by or under any summary dispossess or other proceeding or action or any provision of law by reason of default hereunder on the part of Tenant, Tenant shall pay to Landlord as damages, at the election of Landlord, either:

(a) a sum which at the time of such termination of this Lease or at the time of any such re-entry by Landlord, as the case may be, represents the then value of the excess, if any, of (i) the aggregate amount of Fixed Rent and Additional Charges which would have been payable by Tenant (conclusively presuming the average monthly Additional Charges to be the same as were payable for the year, or if less than 365 days have then elapsed since the Rent Commencement Date, the partial year, immediately preceding such termination or re-entry) for the period commencing with such earlier termination of this Lease or the date of any such re-entry, as the case may be, and ending with the date that would have been the Expiration Date if this Lease had not so terminated or if Landlord had not so re-entered the Premises, over (ii) the aggregate rental value of the Premises for the same period, both discounted to their present value at the rate of three per cent (3%) per annum, or

(b) sums equal to the Fixed Rent and Additional Charges which would have been payable by Tenant had this Lease not so terminated, or had Landlord not so re-entered the Premises, payable upon the due dates therefor (as provided in this Lease) following such termination or such re-entry until the date that would have been the Expiration Date if this Lease had not so terminated or if Landlord had not so re-entered the Premises, provided however, that if Landlord shall relet the Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses incurred by Landlord in terminating this Lease or in re-entering the Premises and in securing possession thereof, as well as the expenses of reletting, including altering and preparing the Premises for new tenants (but only to the extent same is necessary as a result of Tenant's failure to perform a maintenance or repair obligation under this Lease), brokers' commissions, attorneys' fees and disbursements, and all other expenses, it being understood that any such reletting may be for a period shorter or longer than what would have been the unexpired portion of the Term if this Lease had not so terminated or if Landlord had not so re-entered the Premises, but in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder, nor shall Tenant be entitled in any suit for the collection of damages or otherwise to a credit in respect of any net rents from a reletting, except to the extent that such net rents are actually received by Landlord. If the Premises or any part thereof is relet in combination with other space, then proper apportionment on a per square foot basis shall be made of the rent received from such reletting and of the expenses of reletting.

If the Premises or any part thereof is relet by Landlord for what would have been the unexpired portion of the Term if this Lease had not so terminated, or if Landlord had not so re-entered the Premises, before presentation of proof of such damages to any court, commission or tribunal, the amount of rent set forth in any bona-fide arms'-length lease in connection with such reletting shall, *prima facie*, be the fair and reasonable rental value for the Premises, or part thereof, so relet during the term of the reletting. Landlord shall have the right to relet the Premises or any part thereof in Landlord's name or otherwise at such rental or rentals and upon such other terms and conditions, which may include concessions and free rent periods, as Landlord, in its sole judgment, shall determine. Landlord shall use commercially reasonable efforts to relet the Premises and, other than the foregoing obligation, Landlord shall not be liable in any way for its failure or reasonable refusal to relet the Premises or any part thereof, or if the Premises or any part thereof is relet, for its failure to collect the rent under such reletting, or for any claim of failure to mitigate damages as it is understood and agreed that Landlord has no such obligation other than the foregoing obligation, and no such reasonable refusal or failure to relet or failure to collect rent or mitigate damages shall release or affect Tenant's liability for damages or otherwise under this Lease.

25.02. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term would have expired if this Lease had not so terminated or had Landlord not so re-entered the Premises. Nothing herein contained shall be construed to limit or preclude recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default of Tenant hereunder. Nothing herein contained shall be construed to limit or prejudice the right of Landlord to prove for and obtain as damages by reason of the termination of this Lease or re-entry on the Premises for the default of Tenant under this Lease an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved whether or not such amount is greater than, equal to, or less than any of the sums referred to in Section 25.01.

25.03 Tenant shall reimburse Landlord on demand for any and all reasonable attorney's fees paid or incurred by Landlord in commencing and participating in any action arising out of or relating to a default of Tenant's obligations under Article 19 and Article 22 of this Lease, including, without limitation, a holdover by Tenant, under this Lease, provided that Landlord is the prevailing party in any such action.

## ARTICLE 26 – Waivers

26.01. Tenant, on behalf of itself and any and all persons claiming through or under Tenant, does hereby waive and surrender all right and privilege which it, they or any of them might have under or by reason of any present or future law, to redeem the Premises or to have a continuance of this Lease after being dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease.

26.02. If Tenant is in arrears in payment of Fixed Rent or Additional Charges, Tenant waives its right, if any, to designate the items to which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to such items as Landlord sees fit, irrespective of any designation or request by Tenant as to the items to which any such payments shall be credited.

26.03. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, including any claim of injury or damage, and any emergency and other statutory remedy in respect thereof.

26.04. Tenant shall not interpose any counterclaim (other than a compulsory counterclaim) in any summary proceeding commenced by Landlord to recover possession of the Premises and shall not seek to consolidate such proceeding with any action which may have been or will be brought by Tenant or any other person.

26.05. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations contained in this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations contained in this Lease or of the right to exercise such election, but same shall continue and remain in full force and effect in respect of any subsequent breach, act or omission. The receipt by Landlord of Fixed Rent or Additional Charges with knowledge of breach by Tenant of any obligation contained in this Lease shall not be deemed a waiver of such breach.

26.06. Landlord's failure during the Term to prepare and deliver any statements or invoices, and Landlord's failure during the Term to make a demand for payment under any of the provisions of this Lease, shall not in any way be deemed to be a waiver of, or cause Landlord to forfeit or surrender, its rights to collect any item of Fixed Rent or Additional Charges which may have become due during the Term. Tenant's liability for such amounts shall survive the expiration or

earlier termination of this Lease. No failure or delay by Landlord in issuing any demand, statement or invoice for sums due under this Lease shall constitute a waiver of or adversely affect Landlord's right to collect, and Tenant's obligation to pay, such sums to Landlord.

#### **ARTICLE 27 – Curing Tenant's Defaults and Costs of Enforcement**

27.01. If Tenant defaults in the performance of any of Tenant's obligations under this Lease, Landlord, without thereby waiving such default, may (but shall not be obligated to) perform same for the account and at the expense of Tenant, without notice in case of emergency, and in any other case only if such default continues after the expiration of ten (10) days from the date Landlord gives Tenant notice of the default. Bills for any expenses incurred by Landlord in connection with any such performance by it for the account of Tenant, and bills for all costs, expenses and disbursements of every kind and nature, including attorneys' fees and disbursements, involved in collecting Fixed Rent or Additional Charges or enforcing any rights against Tenant, under this Lease or pursuant to law, including any cost or expense involved in instituting and prosecuting summary proceedings or in recovering possession of the Premises after default by Tenant or upon the Expiration Date or sooner termination of this Lease, and interest on all sums advanced by Landlord under this Section at the Lease Interest Rate, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and such amounts shall be due and payable in accordance with the terms of such bills.

#### **ARTICLE 28 – Broker**

28.01. Tenant represents and warrants to Landlord that Tenant has not dealt with any broker concerning the leasing of space in the Property to Tenant. Tenant shall indemnify Landlord against all costs, expenses, claims, losses and liabilities in connection with a breach of Tenant's representation and warranty in this Section and/or in connection with any claim for a brokerage commission arising out of any communication allegedly had by Tenant with any broker in connection with Tenant's leasing of space in the Property.

#### **ARTICLE 29 – Notices**

29.01. Any notice, consent, approval or other communication required or permitted to be given by either party to the other or to any Superior Lessor or Superior Mortgagee (collectively, "Notices" and individually, "Notice") must be in writing and shall be deemed to have been properly given only if sent by a nationally recognized overnight courier service, addressed to Landlord or Tenant as the receiving party at the address set forth below and addressed to any Superior Lessor or Superior Mortgagee to it at the last address of which Landlord or Tenant, as the case may be, was notified. A copy of any notice to Landlord shall be delivered in the same manner by hand to Landlord's property manager at the management office at

the Building. A Notice shall be deemed to have been given on the third Business Day after the day so mailed, or on the first Business Day following delivery to a reliable overnight courier service. Either party may, by notice as aforesaid, designate a different address for Notices intended for it. At any time that Tenant consists of more than one person, a Notice to Tenant shall be effective if given to any one of said persons.

29.02. (a) Any notice to Tenant shall be sent to:

3475 Victory Boulevard  
Staten Island, New York 10314  
Attention: Andrew Gordon

with a copy via e-mail to:

(b) Any notice to Landlord shall be sent to:

21 Grace Church Street Realty LLC  
1250 Waters Place, PH-1  
Bronx, New York 10461  
Attention: Mr. Joseph Simone

with a copy by like means to:

Simone Development Companies  
1250 Waters Place, PH-1  
Bronx, New York 10461  
Attention: General Counsel

29.03. Landlord shall have the right to assume that any Notice from Tenant signed by any person purporting to be an officer of Tenant (if Tenant is a corporation) or a partner, member or manager of Tenant (if Tenant is a partnership or limited liability company) is duly authorized and approved by and binding on Tenant, and Tenant shall be bound by such Notice whether or not the person signing the Notice was actually authorized and approved by Tenant.

### **ARTICLE 30 – Estoppel Certificates; Financial Statements**

30.01. Tenant shall, at any time and from time to time, as requested by Landlord, execute and deliver to Landlord within twenty (20) days after receipt of such request a statement (a) certifying that this Lease is unmodified and in full force and effect (or if modified, that same is in full force and effect as modified and stating the modifications), (b) certifying the dates to which Fixed Rent and

Additional Charges have been paid, (c) stating whether or not, to the best knowledge of Tenant, either party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which Tenant has knowledge, and (d) stating whether or not, to the best knowledge of Tenant, any condition or event exists which with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such condition or event. Any statement delivered pursuant to this Section may be relied upon by Landlord and by others with whom Landlord may be dealing, regardless of independent investigation. Tenant also shall include in any such statement such other information concerning this Lease as any prospective Superior Mortgagee or Superior Lessor may require or as Landlord may reasonably request.

30.02. Tenant shall furnish to Landlord: (a) within ten (10) days after request annual consolidated financial statements (balance sheets and profit and loss statements) of Tenant, certified by an independent certified public accountant of recognized standing previously approved by Landlord, and (b) such other information regarding the condition (financial or otherwise) of Tenant as Landlord reasonably requests. Each financial statement of Tenant shall be accompanied by a certificate of its chief financial officer or managing general partner that no material adverse change in the business, condition (financial or otherwise) or operations of Tenant or its affiliates occurred after the period covered by such statement. Any statement delivered pursuant to this Section 30.02 may be relied upon by Landlord and by others with whom Landlord may be dealing, regardless of independent investigation.

#### **ARTICLE 31 – Force Majeure**

31.01. The obligations of Tenant hereunder shall be in no wise affected, impaired or excused, nor shall Landlord have any liability whatsoever to Tenant, nor shall it be deemed a constructive eviction because (a) Landlord is unable to fulfill, or is delayed in fulfilling, any of its obligations under this Lease by reason of strike, lock-out or other labor trouble, weather-related events or occurrences, terrorism or threats of terrorism, any actual or threatened health emergency, epidemic or pandemic or governmental shut-down or governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar, beyond Landlord's reasonable control; or (b) of any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises, by reason of any requirement, act or omission of the public utility or others serving the Building with electric energy, steam, oil, gas or water (as applicable), or for any other reason whether similar or dissimilar, beyond Landlord's reasonable control (collectively, "Force Majeure").

31.02. If the Fixed Rent or any Additional Charges shall be or become uncollectible or shall be reduced or required to be reduced or refunded by virtue of

any federal, state, county or city law, order or regulation, or by any direction of a public officer or body pursuant to law, or the orders, rules, code or regulations of any organization or entity formed pursuant to law, whether such organization or entity be public or private (a "Legal Rent Restriction"), then Tenant shall enter into such agreement or agreements and take such other action as Landlord may request, as may be legally permissible, to permit Landlord to collect the maximum Fixed Rent and Additional Charges which may, from time-to-time during the continuance of such Legal Rent Restriction, be legally permissible, but not in excess of the amounts of Fixed Rent and/or Additional Charges due and payable pursuant to any and all applicable provisions of this Lease. Upon the termination of such Legal Rent Restriction, (a) the Fixed Rent and Additional Charges, due and payable after such termination, shall be any and all Fixed Rent and Additional Charges due and payable under this Lease as expressly set forth in this Lease for the period following the termination of the Legal Rent Restriction, and (b) Tenant shall pay to Landlord, to the fullest extent legally permissible, an amount equal to (i) the Fixed Rent and Additional Charges which would have been paid pursuant to this Lease during the period of such Legal Rent Restriction, but for the same, less (ii) the Fixed Rent and Additional Charges actually paid by Tenant to Landlord during the period the Legal Rent Restriction was in effect. Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that neither the impossibility of performance nor the frustration of purpose shall be defenses to the payment of Fixed Rent and Additional Charges or any monetary obligations of either Landlord or Tenant.

#### **ARTICLE 32 – Consents**

32.01. If Tenant requests Landlord's consent and Landlord fails or refuses to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent; Tenant's sole remedy therefor shall be an action for specific performance or injunctive or declaratory relief, and such remedy shall be available only in those cases where this Lease provides that Landlord shall not unreasonably withhold its consent or where as a matter of law Landlord may not unreasonably withhold its consent.

#### **ARTICLE 33 – Partnership or Multi-Person Tenant**

33.01. If (x) Tenant is comprised of two (2) or more persons, (y) any person constituting Tenant at any time during the Term herein named is a partnership or (z) Tenant's interest in this Lease is assigned to a partnership or to two (2) or more persons, then the following provisions shall apply: (a) the liability of (1) if Tenant is comprised of two (2) or more persons, each of the persons that make up Tenant, or (2) if Tenant is a partnership, each of the persons at any time comprising the general partners of Tenant, shall be joint and several, (b) each of the persons at any time comprising Tenant shall be bound by (i) any written instrument executed by Tenant, one (1) of the persons making up Tenant, or any successor

Tenant changing, modifying, extending or discharging this Lease, in whole or in part, or surrendering all or any part of the Premises to Landlord, (ii) any Notices given by Tenant, or one (1) of the persons making up Tenant, or by any of the persons comprising Tenant, and (iii) any statement executed by Tenant, or one (1) of the persons making up Tenant, or any of the persons comprising Tenant, pursuant to Section 30.01, (c) any Notices given to Tenant, one (1) of the persons making up Tenant, or to any of such persons shall be binding on Tenant and all such persons, (d) if Tenant admits new general partners, or another person joins this Lease as Tenant, all of such new general partners or persons, as applicable, shall, by their admission to Tenant or joining in this Lease, be deemed to have assumed joint and several liability for the performance of all of Tenant's obligations under this Lease, (e) if Tenant is a partnership, Tenant shall give prompt notice to Landlord of the admission of any such new general partners, and shall cause each such new general partner to execute and deliver to Landlord an agreement in form satisfactory to Landlord wherein each such new partner assumes joint and several liability for the performance of all of Tenant's obligations under this Lease, (f) the death, adjudication of incompetency or withdrawal of an individual comprising Tenant or, if applicable, of an individual partner shall not relieve such person or such person's personal representatives of any liability for the performance of Tenant's obligations under this Lease, and (g) if Tenant is comprised of two (2) or more persons, (A) this Lease may not be assigned and the Premises may not be sublet in the event Landlord consents to such sublease or assignment without the consent of each person making up Tenant, which proof of consent shall be delivered to Landlord prior to such sublease or assignment and (B) Article 8 shall apply to each person comprising Tenant individually.

#### **ARTICLE 34 – Environmental Provisions**

34.01. (a) Tenant covenants that (i) at all times during the Term it shall not permit within the Premises any substance or material presently identified to be toxic or hazardous according to any applicable federal, state or local statute, rule, ordinance, code, guideline or regulation (collectively, the "Environmental Law"), including any asbestos, PCB, radioactive substance, methane, volatile hydrocarbons, industrial solvents or any other material or substance which has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property (all of such substances being referred to as "Hazardous Materials"); (ii) it will not during the Term cause or suffer to occur, or permit any subtenant or occupant of the Premises to cause, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "spill"), or the presence of Hazardous Materials at, upon, under or within the Premises; (iii) it will not be involved in operations at or near the Premises which could lead to the imposition on Landlord or Tenant of liability or the creation of a lien on the Premises or any portion thereof under the Environmental Law or any

similar laws; and (iv) it will not permit any subtenant or occupant of the Premises to do any of the foregoing.

(b) Tenant shall comply strictly with the requirements of the Environmental Law and related regulations and with all similar applicable laws and regulations and shall notify Landlord promptly in the event of any spill or Hazardous Material upon the Premises, and shall promptly forward to Landlord copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or Hazardous Material or any other matters relating to the Environmental Law as they may affect the Premises.

(c) Tenant shall indemnify Landlord, each Superior Lessor and each Superior Mortgagee, and hold Landlord, each Superior Lessor and each Superior Mortgagee harmless from and against all loss, liability, damage and expense (including attorneys' fees and disbursements) suffered or incurred by Landlord and attributable to Tenant or persons or entities acting by, through or under Tenant (i) under or on account of the Environmental Law or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or Hazardous Material affecting the Premises or any part thereof, whether or not the same originates or emanates from the Premises or any contiguous property, including any loss of value of the Premises as a result of a spill or Hazardous Material, and (iii) with respect to any other matter affecting the Premises within the jurisdiction of the Environmental Protection Agency or any state or local department or agency having jurisdiction over Hazardous Materials or environmental matters, or their successors.

(d) In the event of any spill or Hazardous Material affecting the Premises, whether or not the same originates or emanates from the Premises or any contiguous real estate, or if Tenant shall fail to comply with any of the requirements of the Environmental Law, Landlord may at its election, but without the obligation to do so, give such notice and/or cause such work to be performed at the Premises and/or take any and all other actions as Landlord shall deem necessary or advisable in order to remedy such spill or Hazardous Material or cure such failure of compliance, and any amounts paid as a result thereof which are attributable to Tenant's acts or omissions, or acts or omissions of persons or entities acting or holding by, through or under Tenant (together with interest thereon at the Lease Interest Rate), from the date of payment by Landlord, shall be immediately due and payable by Tenant to Landlord as Additional Charges.

34.02. Notwithstanding the provisions of this Article 34, Tenant shall have no responsibility with respect to Hazardous Materials, spills or compliance with the Environmental Law to the extent such Hazardous Materials were on or about the Premises, or any spill or violation of the Environmental Law occurred, prior to the Possession Date (unless caused by Tenant or Tenant's agents, employees, representatives or contractors).

34.03. The obligations and indemnities contained in this Article 34 shall survive the expiration or earlier termination of this Lease.

34.04. Tenant represents that it is not a "Generator" or an "Establishment" as those terms are defined under the Environmental Laws.

#### **ARTICLE 35 – Miscellaneous**

35.01. Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements except to the extent that they are expressly set forth in this Lease. All prior understandings and agreements between the parties are merged in this Lease, which alone fully and completely express the agreement of the parties and which are entered into after full investigation.

35.02. Whenever Tenant shall submit to Landlord any plan, agreement or other document for Landlord's consent or approval, and Landlord requires the opinion of Landlord's outside consultants or outside professionals as to the form or substance thereof, Tenant agrees to pay the reasonable fees and expenses of such consulting or professional services for reviewing the said plan, agreement or document. Landlord and its consultants and professionals shall have no responsibility for the design, adequacy or legal compliance of any plan, agreement or document submitted to Landlord for review or approval and Tenant acknowledges that the purpose of their review or approval is solely to advise Landlord and represent Landlord's interest in connection with any such plan, agreement or document.

35.03. No agreement shall be effective to change, modify, waive, release, discharge, or terminate this Lease, in whole or in part, unless such agreement is in writing, refers expressly to this Lease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge, or termination is sought.

35.04. Except as otherwise expressly provided in this Lease, the obligations under this Lease shall bind and benefit the successors and assigns of the parties hereto with the same effect as if mentioned in each instance where a party is named or referred to; provided, however, that no violation of the provisions of Article 8 shall operate to vest any rights in any successor or assignee of Tenant. No provision in this Lease shall be construed for the benefit of any third party (including any broker) except as expressly provided herein.

35.05. Submission by Landlord of this Lease for review and/or execution by Tenant shall not confer any rights or impose any obligations on either party unless and until both Landlord and Tenant execute this Lease and duplicate originals thereof are delivered to the respective parties.

35.06. Tenant hereby represents to Landlord that it is not entitled, directly or indirectly, to diplomatic or sovereign immunity. In all disputes arising out of this Lease the original Tenant herein named, each person comprising Tenant, each assignee of Tenant's interest in this Lease and each person comprising each such assignee, shall be deemed subject to service in the State of New York and to the jurisdiction of the state and federal courts located in the State of New York and such service may be accomplished in any manner permitted by law.

35.07. Irrespective of the place of execution or performance of this Lease, this Lease shall be governed by and construed in accordance with the laws of the State of New York. If any provision of this Lease or the application thereof to any person or circumstance, for any reason and to any extent, is invalid or unenforceable, the remainder of this Lease and the application of that provision to other persons or circumstances shall not be affected, but shall be enforced to the extent permitted by law. The table of contents, captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each obligation of Tenant under this Lease shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. This Lease may be executed in counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute a single instrument.

35.08. Tenant represents and warrants that (a) Tenant is duly formed and validly existing corporation under the laws of the State of Nevada and (b) the execution, delivery and performance by Tenant of this Lease have been duly authorized by all necessary action.

35.09. Landlord may sell the Building at any time hereafter without in any manner affecting the obligations of Tenant hereunder and upon reasonable notice to Tenant, Tenant shall recognize such successor as the "Landlord" hereunder and such successor shall have all of the rights and of Landlord hereunder. If any security deposit, prepaid Fixed Rent beyond thirty (30) days, or other sums have been paid by Tenant to Landlord, then Landlord shall transfer such sums to Landlord's successor and upon such transfer, Landlord shall be released from any liability to Tenant for return thereof.

#### **ARTICLE 36 - Operating Covenants**

36.01. Tenant shall not place or install any logo, lettering or other signage on the exterior of the Building, nor shall Tenant place in any windows, entrance doors or any other area visible to the public view from the outside of the

Building or from the outside of the Premises, any such signage, without first obtaining in each instance Landlord's prior consent. Tenant shall promptly remove any signage if Landlord shall object thereto. If Landlord shall consent to requested proposed signage or advertising by Tenant, no change in the composition, dimensions or content of such signage or advertising may thereafter be made without first obtaining Landlord's consent in each instance. On the expiration or sooner termination of the Term, Tenant shall (a) promptly remove all signage installed or displayed by Tenant, and (b) promptly repair in a good and workmanlike manner in conformity with Legal Requirements and all applicable provisions of this Lease, all damage to the Building caused by such removal.

36.02. Tenant shall cause the Premises to be free at all times of all vermin and insects. Tenant shall take all reasonable precautions that Landlord deems necessary to prevent any such vermin or insects from existing in the Premises or permeating into other parts of the Building. Without limiting the foregoing, Tenant shall, at its sole cost and expense, hire a reputable extermination company to provide exterminating services to the Premises on a monthly basis (or as frequently as Landlord shall direct, in its sole discretion). Tenant agrees that such extermination company shall be subject to Landlord's approval. Tenant shall deliver to Landlord a copy of the service contract with its extermination company, which contract shall describe the scope of exterminating services to the Premises; Tenant agrees that such description shall be such in detail as requested by Landlord.

36.03. Tenant shall not suffer or permit the delivery, removal or pickup of merchandise, food, beverages, garbage, inventory, goods, machinery, or fixtures, through the Common Areas at any time except through such areas expressly designated by Landlord. Tenant shall cause all deliveries to be made through entrances to the Premises and Building expressly designated by Landlord and in such a way as not to impede pedestrian traffic, other tenant deliveries, or ingress to or egress from the Premises or the Building. Tenant shall have deliveries to and from the Premises made at such times as Landlord shall reasonably direct in writing and otherwise in accordance with such rules and regulations of Landlord governing such deliveries. In no event shall Tenant place or maintain any merchandise or other articles in the Common Areas or outside of the Premises, or on the sidewalks, corridors, parking lots or other common areas of the Property without Landlord's prior written consent in each instance.

36.04. Tenant shall not use, play or operate or permit to be used, played or operated any loudspeaker, sound making or sound reproducing device in the Premises, except in such manner and under such conditions so that no sound shall be heard outside of the Premises, and Tenant shall observe, comply with and adopt such means and precautions as Landlord may from time to time request in such connection.

36.05. Tenant shall conduct its activities in the Premises (including, without limitation, any Alterations), in such a manner that does not create any noise, odors or vibrations which, in Landlord's sole discretion would impair or interfere with the use or enjoyment by any other tenant of any other space in the Property.

#### **ARTICLE 37 – Security Deposit**

37.01. Tenant shall deposit with Landlord the sum of Ninety-Seven Thousand Ninety-One and 90/100 Dollars (\$97,091.90) as security for the faithful performance and observance by Tenant of the terms, provisions, covenants and conditions of this Lease (the "Security Deposit"). It is agreed that in the event Tenant defaults in respect of any of the terms, provisions, covenants and conditions of this Lease including, but not limited to, the payment of Fixed Rent and Additional Charges, Landlord may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any such sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, provisions, covenants, and conditions of this Lease, including but not limited to, any damages or deficiency accrued before or after summary proceedings or other re-entry by Landlord. If no default shall have occurred and be continuing at the expiration of the Term, the Security Deposit (or such portion thereof as shall then be remaining) shall be returned to Tenant after the date fixed as the end of the term of this Lease and after delivery of entire possession of the Premises to Landlord in the condition required hereunder. In the event of a sale of the Building or leasing of the Building, Landlord shall have the right to transfer the Security Deposit to the vendee or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Deposit; and Tenant agrees to look solely to the new landlord for the return of said Security Deposit; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a new landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the Security Deposit and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. In the event Landlord applies or retains any portion or all of the Security Deposit, Tenant shall forthwith restore the amount so applied or retained so that at all times the amount deposited shall be as set forth above.

#### **ARTICLE 38 – Patriot Act**

38.01 Tenant represents and warrants to Landlord that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction

directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representation and warranty.

[No further text.]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

**21 GRACE CHURCH STREET REALTY LLC**

By: /s/ Joseph Simone  
Name: Joseph Simone  
Title: Manager

**TENANT:**

**COFFEE HOLDING COMPANY, INC.**

By: /s/ Andrew Gordon  
Name: Andrew Gordon  
Title: President and CEO

**COMMENCEMENT DATE AGREEMENT**

**COMMENCEMENT DATE AGREEMENT**, dated as of November 7, 2024, by and between 21 GRACE CHURCH STREET REALTY LLC, a New York limited liability company (“Landlord”), having an address at 1250 Waters Place, PH-1, Bronx, New York 10461, and COFFEE HOLDING CO., INC., a Nevada corporation (“Tenant”), having an address at 3475 Victory Boulevard, Staten Island, New York.

**WITNESSETH :**

1. The parties hereto have entered into a Lease dated as of November 7, 2024 (the “Lease”) for the leasing by Landlord to Tenant of certain space in the building and on the land located at 21 Grace Church Street, Port Chester, New York.

2. The Possession Date (as defined in the Lease) is November 7, 2024.

3. The Rent Commencement Date (as defined in the Lease) is November 7, 2024.

4. The Expiration Date (as defined in the Lease) is November 30, 2028.

5. This Commencement Date Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute a single instrument. Landlord and Tenant agree that the execution of this Commencement Date Agreement by electronic means (including by use of DocuSign (or similar) and/or by use of digital signatures) and/or the delivery of an executed copy of this Commencement Date Agreement by facsimile or e-mail shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Commencement Date Agreement had been delivered.

[No further text.]

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IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Commencement Date Agreement as of the day and year first above written.

**LANDLORD:**

**21 GRACE CHURCH STREET REALTY LLC**

By: /s/ Joseph Simone

Name: Joseph Simone

Title: Manager

**TENANT:**

**COFFEE HOLDING CO., INC.**

By: /s/ Andrew Gordon

Name: Andrew Gordon

Title: President and CEO

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**SECURED CREDITOR SALE AGREEMENT**

by and between

**BRIDGE BUSINESS CREDIT, LLC**, as  
secured party in possession,  
As "Seller"  
and

**SECOND EMPIRE, LLC**  
As "Buyer"

November 6, 2024

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## SECURED CREDITOR SALE AGREEMENT

THIS SECURED CREDITOR SALE AGREEMENT (this "Agreement") is made and entered into effective as of November 6, 2024 (the "Effective Date"), by and between BRIDGE BUSINESS CREDIT, LLC, a Michigan limited liability company, as secured party in possession ("Seller") and SECOND EMPIRE, LLC, a Delaware limited liability company (the "Buyer").

WHEREAS, M&T Bank, successor by merger to People's United Bank, National Association, (the "Bank") extended loans to Empire Coffee Company, Inc., a New York corporation (the "Borrower"), pursuant to Loan and Security Agreement dated October 23, 2015 (the "Loan and Security Agreement"), a Revolving Note and a Term Note;

WHEREAS, in order to secure payment and performance of any and all Obligations (as defined in the Loan and Security Agreement) of Borrower to Bank, including those arising under the Revolving Note, the Term Note, and the Loan and Security Agreement, Borrower granted to Bank security interests and liens upon certain property including, but not limited to, the Purchased Assets (as defined herein), (the "Collateral") pursuant to the terms of the Loan and Security Agreement, as well as certain other documents, instruments, guaranties, security agreements, pledge agreement, and other agreements executed and/or delivered by Borrower and the guarantors a party thereto pursuant to the Loan Agreement or in connection therewith (together with the Loan and Security Agreement, collectively, the "Bank Loan Documents");

WHEREAS, Bank sold and assigned to Seller the Bank Loan Documents;

WHEREAS, Seller and Borrower amended and restated the Loan and Security Agreement pursuant to the terms of that certain Amended and Restated Loan Agreement dated as of May 10, 2024 (the "Loan Agreement") and an Amended and Restated Promissory Note dated May 10, 2024 (the "Note");

WHEREAS, Borrower also executed and delivered to Seller a Security Agreement (All Assets) dated as of May 10, 2024 (the "Security Agreement"), as well as certain other documents, instruments, guaranties, security agreements, pledge agreement, and other agreements executed and/or delivered by Borrower and the guarantors a party thereto pursuant to the Loan Agreement or in connection therewith (together with the Loan Agreement, the Note and the Security Agreement, collectively, the "Loan Documents");

WHEREAS, Borrower is in default under the Loan Agreement and the other Loan Documents; and

WHEREAS, contemporaneously with the effectiveness of this Agreement, Borrower has agreed to provide Seller with peaceful possession of the Purchased Assets in accordance with that certain Collateral Surrender and Sale Agreement, dated as of October 8, 2024, by and between Seller and Borrower (the "Surrender Agreement"), a copy of which is annexed hereto as Exhibit A; and

WHEREAS, in accordance with its rights as a secured party under the Uniform Commercial Code as in effect in the State of New York or such other jurisdiction as is applicable (the “UCC”) and the rights granted to Seller under the Loan Documents, and subject to the terms and conditions contained herein, (i) the Seller, as secured party in possession, desires to sell the Borrower’s right, title, and interest in and to the assets which constitute Collateral on an “AS IS, WHERE IS” basis, with no representations or warranties of any kind, expressly disclaiming warranty of title, except as expressly set forth in Article IV of this Agreement, and (ii) the Buyer desires to pay for and accept such assets, upon the terms and subject to the conditions set forth herein (the “Proposed Transaction”).

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties and covenants made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the signatories hereto hereby agree as follows:

## ARTICLE I

### CERTAIN DEFINITIONS

1.1 Definitions. For the purposes of this Agreement, the following terms have the meanings set forth below:

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Cash Purchase Price” has the meaning set forth in Section 2.4.

“Claims” means any and all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities.

“Collection Account” means that certain lockbox maintained by the Seller for the account of the Borrower at JPMorgan Chase, account number ending 8272.

“Governing Authority” means any: (i) federal, state, local, municipal, foreign or other government; (ii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); or (iii) body exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal.

“**Intellectual Property**” means any and all intellectual property or similar proprietary rights in, arising from or associated with the following, whether protected, created or arising under the laws of the United States or any other jurisdiction or under any international convention, whether registered or unregistered: patents, and equivalent or similar rights anywhere in the world in inventions and discoveries including rights in invention disclosures, copyrights, trademarks, software, mask-work registrations, inventions, proprietary data, domain names, social media accounts, trade secrets, databases, and design rights; any service mark, trade dress or similar rights arising from artwork, packaging, labeling, designs, publicity, advertising copy, and promotional materials; rights of publicity, rights of privacy, and any rights arising from a person’s picture, photograph, image, name, nickname, signature, likeness, biographical details, performances, characteristics, endorsements, voice, and/or other indicia of identity, and all ownership and exploitation rights in such persona, including production, reproduction, distribution, adaptation, performance, display, fixation, exhibition, broadcast, merchandising, and all other rights of communication to the public, and the right to exploit such persona throughout the universe in perpetuity in all media, markets, and languages and in any manner now known or hereafter devised, including moral rights or *droit moral*; and all registrations, applications, recordings, and common-law rights relating to any of the foregoing, all rights to sue at law or in equity for any infringement or other impairment thereto, including the right to receive all proceeds and damages therefrom, and all rights to obtain renewals, continuations, divisions or other extensions of legal protections pertaining thereto.

“**Lien**” means any mortgage, pledge, charge, hypothecation, lien (statutory or otherwise), preference, priority, security interest, tax owed, security agreement, easement, covenant, encroachment, condition, covenant, claim, exception, option, equity, right, restrictions on transfer or other encumbrance of any kind or nature whatsoever (whether absolute, accrued, disputed, contingent or otherwise).

“**Lockbox**” means that certain lockbox maintained by the Seller for the account of the Borrower, account number ending 8636.

“**Person**” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governing Authority.

“**Purchased Assets**” means, the following assets of the Borrower, which were surrendered to Seller pursuant to the Surrender Agreement, (i) all accounts receivables (the “**Accounts Receivable**”); (ii) all packaging inventory; (iii) all green coffee inventory; (iv) all machinery and equipment, (v) all assets used or held for use by the Borrower and used or usable in connection with the operation of the Borrower’s business, including, without limitation, all Intellectual Property, (vi) all purchase orders relating to the foregoing, (vii) all customer lists, email lists and all other digital material that is related to, or used by, the Borrower’s business, (viii) all books and records and historical data of the Borrower, including supplier customer history and vendor history, and (ix) all products and proceeds of the foregoing.

## **ARTICLE II**

### **PURCHASE AND SALE OF ASSETS**

#### **2.1 Purchase and Sale of Purchased Assets.**

a. On the terms and subject to the conditions set forth in this Agreement, the Buyer shall purchase from the Seller, and the Seller, as holder of a security interest in, among other things, the Purchased Assets, in accordance with Sections 9-610 and 9-617(a) of the UCC, shall, through a secured creditor’s private sale, sell, convey, assign, transfer and deliver to the Buyer on the “Closing Date” (as that term is defined below), all right, title and interest in and to the Purchased Assets on an “AS IS, WHERE IS” basis, with no representations or warranties, express or implied, including no warranty of title, except as expressly set forth in Article IV of this Agreement.

b. At the Closing, except as otherwise set forth herein, Seller shall deliver to Buyer an Article Nine Secured Party's Bill of Sale with respect to the Purchased Assets in the form attached hereto as Exhibit B (the "Secured Party's Bill of Sale"), free and clear of Liens of Seller.

c. For clarity, Buyer does not assume any of the liabilities of Seller in connection with its purchase hereunder.

## 2.2 Closing Transactions.

a. The closing of the Proposed Transaction (the "Closing"), shall occur promptly upon the expiration of notices hereof to be given to lien holders or others entitled to receive notice of the sale, but in no event later than November 6, 2024 ("Closing Date"), subject to the Seller Deliveries and the Buyer Deliveries.

b. At the Closing:

i. The Seller shall deliver to the Buyer the following (collectively, the "Seller Deliveries”).

A. a duly executed copy of the Surrender Agreement together with all schedules and exhibits thereto;

B. a duly executed copy of this Agreement together with all schedules and exhibits thereto;

C. a duly executed Secured Party's Bill of Sale executed by the Seller in its capacity as secured party in possession of the

Purchased Assets; and

D. satisfactory documentation that addresses the forwarding of collected proceeds received in the Lockbox and/or Collection Account from the Closing Date to and including ninety (90) days after the Closing Date to an account under the control of Buyer, executed by Seller in favor of Buyer; and

ii. The Buyer shall deliver to the Seller the following (collectively, the "Buyer Deliveries”):

A. a duly executed copy of this Agreement together with all schedules and exhibits thereto; and

B. a cash payment in the amount of the Cash Purchase Price, by wire transfer of immediately available funds to the deposit account of Seller listed on Exhibit C,

2.3 Possession of the Assets. Following the Closing, Buyer will have the right to immediate possession of the Purchased Assets.

2.4 Purchase Price. The aggregate consideration to be paid by the Buyer for the Purchased Assets shall be a cash payment by Buyer to Seller on the Closing Date in an amount equal to \$800,000 (the "Cash Purchase Price").

**ARTICLE III**  
**CONDITIONS TO CLOSING**

3.1 Conditions to the Buyer's Obligations. The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to:

- a. The receipt by Buyer, in form and substance satisfactory to Buyer, of the Seller Deliveries, any of which the Buyer shall have the right to waive and proceed to the Closing;
- b. The representations, warranties, and covenants of Seller made herein shall have been true as of Closing Date;
- c. As of the Closing Date, the sale of the Purchased Assets by Seller or any of the transactions contemplated hereby are not prohibited by any stay or injunction in any litigation, governmental action, or other proceeding, including the "automatic stay" under 11 U.S.C. §362 in any pending case under Title 11 of the United States Code by or against Borrower. No litigation shall have been filed that would prevent closing or subject Buyer to a claim for damages as a result of the consummation of the Proposed Transaction;
- d. Satisfactory completion of confirmatory due diligence, including a field audit of all inventory to be acquired, at Buyer's sole cost and expense;
- e. Receipt of accounts receivable agings as of the Closing Date, in form and substance acceptable to Buyer together with copies of all invoices related to all Accounts Receivable created during the Interim Period;
- f. Buyer shall have entered into a satisfactory lease with the landlord of the manufacturing facility located at 106 Purdy Avenue, Port Chester, NY, which lease shall not require Buyer to assume any past due amounts owed by the Borrower;
- g. Borrower, Robert A. Richter, and Deborah F. Richter, shall execute and deliver the Consent attached hereto;
- h. Confirmation that the Company has maintained its operations during the Interim Period and has continued to employ essential employees; and
- i. The delivery of notice from the Seller that all of the conditions set forth in Section 3.2 hereafter are satisfied or waived.

3.2 Conditions to the Seller's Obligations. The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the receipt by Seller, in form and substance satisfactory to Seller, of the Buyer Deliveries and the items listed below, any of which the Seller shall have the right to waive and proceed to the Closing:

- a. The expiration of the 10-day notice period set forth in the notices of secured party private sale issued by Seller to the parties listed on Exhibit E hereto;

- hereto;
- b. The expiration of the 25-day notice period set forth in the notices of secured party private sale issued by Seller to the parties listed on Exhibit F
  - c. The absence of any prohibition, stay, condition, limitation or impediment to Closing issued, ordered or imposed by any Governing Authority;
  - d. Borrower, Robert A. Richter, and Deborah F. Richter, shall execute and deliver the Consent attached hereto; and
  - e. The delivery of notice from the Buyer that all of the conditions set forth in Section 3.1 above are satisfied or waived.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES OF THE SELLER**

As a material inducement to the Buyer to enter into this Agreement and consummate the transactions contemplated hereby, the Seller hereby represents and warrants to the Buyer that the following are true and correct:

4.1 Title to Loan Documents. Seller is the holder of the of the Bank Loan Documents and of the Loan Documents.

4.2 Default, Valid Lien and No Discharge. Borrower is in default of its obligations under the Loan Documents and other obligations owing to Seller and Seller has validly exercised its rights under the Loan Documents and applicable law in foreclosing on the Purchased Assets. Seller has a valid and perfected first-priority Lien upon and security interest in the Purchased Assets, and Seller has not amended or modified the Loan Agreement or the other Loan Documents so as to limits its right to enter into this Agreement with Buyer. Seller has not discharged in whole or in part its security interest and Lien in the Purchased Assets.

4.3 Organization and Power. The Seller is limited liability company duly organized and validly existing under the laws of the State of Michigan, with full power and authority to enter into this Agreement and to perform its obligations hereunder.

4.4 Authorization. The execution, delivery and performance by the Seller of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Seller and no other requisite act or proceeding on the part of the Seller, or its governing body is necessary to authorize the execution, delivery or performance of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Seller and this Agreement constitutes a valid and binding obligation of the Seller, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

4.5 Purchased Assets.

- a. Seller makes no representation or warranties regarding the scope and/or extent of the Purchased Assets;

b. Upon execution of this Agreement and receipt by the Seller of the Buyer Deliverables, including the Cash Purchase Price at Closing, all Liens that Seller may have in or to the Purchased Assets shall, and shall be deemed, discharged in accordance with Section 9-617(a) of the UCC and Seller shall, in accordance with Section 3.2 of this Agreement, execute and deliver in favor of Buyer such other and further documents and instruments, in form and substance reasonably satisfactory to Buyer, in order to evidence the transfer of the Purchased Assets by Seller to Buyer;

c. Seller has complied with all applicable provisions of the UCC in order to effectuate the Proposed Transaction, including, without limitation, providing notice of the Proposed Transaction to all secured creditors of Borrower as required under the UCC;

d. To the best of its knowledge following diligent inquiry, the sale of the Purchased Assets by the Seller or any of the transactions contemplated hereby are not prohibited by any stay or injunction in any litigation, governmental action, or other proceeding, including the “automatic stay” under 11 U.S.C. §362 in any pending case under Title 11 of the United States Code by or against Borrower; and

e. Seller has not conveyed, assigned, transferred or otherwise encumbered its Lien on the Purchased Assets or transferred any of its rights under the Bank Loan Documents or the Loan Documents.

4.6 Governmental Authorities and Consents. The Seller is not required to submit any notice, report or other filing with any Governing Authority in order for Seller to execute and deliver this Agreement, consummate the transactions contemplated hereby or deliver to the Buyer all of Seller’s right, title and interest in the Purchased Assets subject to the terms hereof. No consent, approval or authorization of any Governing Authority is required to be obtained by the Seller in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

4.7 Brokerage. There are no claims for brokerage commissions, employee bonuses, finders’ fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Seller that would be binding upon any other Party hereto.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES OF THE BUYER**

As an inducement to the Seller and Borrower to enter into this Agreement and consummate the transactions contemplated hereby, the Buyer hereby represents and warrants to the Seller and Borrower that the following are true and correct:

5.1 Recitals. The matters and facts set forth in the Recitals above are true and correct.

5.2 Organization and Power. The Buyer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, with full requisite power and authority to enter into this Agreement and to perform its obligations hereunder.

5.3 Authorization. The execution, delivery and performance by the Buyer of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Buyer and no other requisite act or proceeding on the part of the Buyer, its board of directors or governing body is necessary to authorize the execution, delivery or performance of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Buyer and, assuming that this Agreement is the valid and binding obligation of the Seller and the Borrower, this Agreement constitutes a valid and binding obligation of the Buyer, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

5.4 Governmental Authorities and Consents. The Buyer is not required to submit any notice, report or other filing with any Governing Authority in connection with the execution or delivery by it of this Agreement or the consummation of the transactions contemplated hereby. No consent, approval or authorization of any Governing Authority is required to be obtained by the Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

5.5 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Buyer that would be binding upon any other Party hereto.

5.6 Purchased Assets. Buyer has inspected the Purchased Assets, is satisfied with their condition, and assumes all risk of the quality, condition, location and extent of the Purchased Assets.

5.7 Waiver of Certain Warranties. The Seller is selling the Purchased Assets to Buyer "AS IS, WHERE IS." SELLER DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE. SELLER ALSO DISCLAIMS ALL WARRANTIES OF TITLE. BUYER AGREES TO TAKE THE PURCHASED ASSETS ON THAT BASIS.

## **ARTICLE VI** **COVENANTS**

6.1 Survival of Representations, Warranties and Covenants. The representations, warranties and covenants set forth in this Agreement shall survive the Closing.

6.2 Collections. During the 90-day period following the Closing, if Seller receives payment on any Accounts Receivable consisting of the Purchased Assets, Seller shall remit payment of such collected amounts to Buyer, and shall hold such payments in trust for the benefit of Buyer until such amounts are remitted to Buyer. Buyer immediately after Closing shall take steps to notify account obligors to make payment to a lockbox and collection account established by Buyer.

6.3 Press Release and Announcements. Unless required by law (in which case each of the Parties agrees to use reasonable efforts to consult with the other Parties prior to any such disclosure as to the form and content of such disclosure), after the date hereof and through and including the Closing Date, no press releases, announcements or other public releases of information related to this Agreement or the transactions contemplated hereby will be issued or released without the consent of each of all of the Parties, except that no Party shall be under any restriction with respect to the disclosure of information which it, in its sole and absolute discretion, deems necessary or appropriate to the exercise and enforcement of its rights and interests including those acquired or sold, or to be acquired or sold, hereunder.

6.4 Further Assurances. From time to time, as and when requested by any Party hereto and at such Party's out-of-pocket reasonable expense, any other Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further actions as the requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement. In addition to the foregoing, the Seller and/or the Borrower shall take such actions as may be reasonably requested by the Buyer to permit the Buyer to take delivery of and to transport the Purchased Assets, if applicable.

6.5 Sales and Transfer Taxes. All sales, use, excise, value-added, goods and services, transfer, recording, documentary, registration, conveyancing and similar taxes that may be imposed on the sale and transfer of the Purchased Assets (including any stamp, duty or other tax chargeable in respect of any instrument transferring property be paid), together with any and all penalties, interest and additions to tax with respect thereto, shall be paid by the Buyer. The Buyer and the Seller shall cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of applicable law in connection with the payment of any such taxes described in the immediately preceding sentence.

6.6 Mutual Assistance. The Buyer and the Seller agree that they will mutually cooperate in the expeditious filing of any notices, reports and other filings with any governmental authority required to be submitted jointly by the Buyer and the Seller in connection with the execution and delivery of this Agreement and the consummation of the Proposed Transactions. The Buyer and Seller agree to execute and deliver to the other party any other documentation reasonably required or requested by the other party (at the requesting party's expense) to effectuate the intent of the parties to this Agreement, including documentation required in connection with recording in the public record Buyer's acquisition of the Purchased Assets (and otherwise consistent with Article 9 of the UCC) necessary to implement a proper chain of title in connection with the assignment to and ownership of the Purchased Assets.

6.7 Term. Unless the Proposed Transaction closes or this Agreement is extended in writing by the Buyer and the Seller, this Agreement will terminate at 5:00 p.m. (Eastern) on November 6, 2024.

**ARTICLE VII**  
**ADDITIONAL AGREEMENTS**

7.1 Acknowledgment by the Buyer. BUYER ACKNOWLEDGES AND AGREES THAT SELLER (A) MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE CONCERNING THE PHYSICAL CONDITION OF THE PURCHASED ASSETS, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE ENVIRONMENTAL OR PHYSICAL CONDITION THEREOF, THE COMPLIANCE OF THE PURCHASED ASSETS WITH ANY LAWS, RULES OR REGULATIONS, THE MERCHANTABILITY OR SUITABILITY OF THE PURCHASED ASSETS FOR CURRENT USE OR BUYER'S PROPOSED USE, OR WITH RESPECT TO THE QUALITY OR VALUE OF THE PURCHASED ASSETS AND (B) MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, INCLUDING WARRANTY OF TITLE, OF ANY KIND OR NATURE EXCEPT AS SET FORTH IN THIS AGREEMENT FOR WHICH BUYER MAY SEEK RECOURSE UPON A BREACH BY SELLER THEREOF. Rather, the only representations and warranties made by Seller are as set forth in Article IV.

7.2 Amendment and Waiver. This Agreement may be amended, and any provision of this Agreement may be waived; *provided* that any such amendment or waiver will be binding upon the Seller or the Buyer only if such amendment or waiver is set forth in a writing executed by the Seller or the Buyer, as the case may be. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Person under or by reason of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

7.3 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when delivered by hand or sent by telecopy (with hard copy to follow); (ii) one day after being sent by reputable overnight express courier (charges prepaid), or (iii) five days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to the Seller and the Buyer shall be sent to the addresses indicated below:

Notices to Buyer:

SECOND EMPIRE, LLC  
c/o Coffee Holding Co., Inc.  
3475 Victory Boulevard,  
Staten Island, NY 10314

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

Lowenstein Sandler LLP  
One Lowenstein Drive  
Roseland, NJ 07068  
Attention: Steven Skolnik, Esq.  
E-mail: sskolnick@lowenstein.com

Notices to the Seller:

Bridge Business Credit, LLC  
900 Wilshire Dr., Suite 305  
Troy, MI 48084  
Attention: James Campbell  
E-mail: [jcampbell@bridgebusinesscredit.com](mailto:jcampbell@bridgebusinesscredit.com)

With a copy to:

Miller Canfield PLC  
150 West Jefferson, Suite 2500  
Detroit, MI 48226  
Attention: Steven Roach, Esq.  
E-mail: [roach@millercanfield.com](mailto:roach@millercanfield.com)

7.4 Successors and Assigns. This Agreement and all of the covenants and agreements contained herein and rights, interests or obligations hereunder, by or on behalf of any of the Parties hereto, shall bind and inure to the benefit of the respective heirs, successors and assigns of the Parties hereto whether so expressed or not, except that neither this Agreement nor any of the covenants and agreements herein or rights, interests or obligations hereunder may be assigned or delegated by the Seller or the Buyer, as the case may be, without the other Party's prior written consent.

7.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.6 Interpretation. The headings and captions used in this Agreement, in any Schedule or Exhibit hereto, in the table of contents or in any index hereto are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement or any Schedule or Exhibit hereto, and all provisions of this Agreement and the Schedules and Exhibits hereto shall be enforced and construed as if no caption or heading had been used herein or therein. Any capitalized terms used in any Addendum or Schedule attached hereto and not otherwise defined therein shall have the meanings set forth in this Agreement. Each defined term used in this Agreement shall have a comparable meaning when used in its plural or singular form. The use of the word "including" herein shall mean "including without limitation" and shall not be deemed to be limiting, unless the context otherwise requires, "neither," "nor," "any," "either" and "or" shall not be exclusive. The Parties hereto intend that each representation, warranty and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such Party has not breached shall not detract from or mitigate the fact that such Party is in breach of the first representation, warranty or covenant. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

7.7 No Third-Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person other than the Parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement, such third parties specifically including employees and creditors of the Borrowers, the Buyer and their Affiliates.

7.8 Complete Agreement. This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

7.9 Delivery by Facsimile or Electronic Transmission. This Agreement and any notices delivered under this Amendment, may be executed by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. This Agreement and any notices delivered under this Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. Delivery of an executed counterpart of a signature page of this Agreement and any notices as set forth herein will be as effective as delivery of a manually executed counterpart of this Amendment or notice. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or electronic transmission in PDF to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or electronic transmission in PDF as a defense to the formation of a contract and each such Party forever waives any such defense.

7.10 Governing Law. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTIONS) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTIONS OTHER THAN THE STATE OF NEW YORK.

7.11 Jurisdiction. Anything in Section 7.10 to the contrary notwithstanding, each of Buyer and Seller hereby irrevocably consent to the non-exclusive jurisdiction of the courts of the state of New York, County of New York and of any federal court located therein in connection with any action or proceeding arising out of or relating to this Agreement.

**7.12 Waiver of Jury Trial. EACH OF BUYER AND SELLER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. EITHER PARTY MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

7.13 Schedules. All Exhibits and Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any of the Exhibits or Schedules shall be deemed to refer to this entire Agreement, including all Exhibits and Schedules.

[SIGNATURES ON FOLLOWING PAGES]

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

**SELLER:**

BRIDGE BUSINESS CREDIT, LLC

By: /s/ James Campbell

Name: James Campbell

Title: Chief Credit Officer

**BUYER:**

SECOND EMPIRE, LLC

By: /s/ Andrew Gordon

Name: Andrew Gordon

Title: President

## Consent

### ACKNOWLEDGED AND AGREED:

By its respective signature below, each of the undersigned acknowledges and agrees to the terms of this Purchase Agreement and hereby releases Buyer from any and all liabilities, claims and demands, actions and causes of action, damages, costs, payments and expenses of every kind, nature or description, in all domestic and foreign legal jurisdictions, arising from any event or transaction occurring in connection with, or arising out of, this Purchase Agreement. Each of the undersigned agrees that Buyer shall be entitled to rely on the representations and warranties made by Borrower in the Surrender Agreement as a third-party beneficiary thereof.

The undersigned represent and warrant to Buyer that the following are true and accurate:

1. As of September 30, 2024, the Indebtedness includes the sum of \$1,347,976.44 in principal plus \$25,251.34 in accrued interest. The foregoing amounts are exclusive of interest that continues to accrue on and after September 30, 2024, and all other costs fees and expenses of Lender, including reasonable attorney fees.
2. The only Liens on the Purchased Assets are the Liens of the Seller and of the U.S. Small Business Administration in existence immediately prior to the consummation of the Proposed Transaction.
3. The Lien of Seller on the Purchased Assets is a first priority Lien.
4. Borrower has good title to the Purchased Assets, including the machinery and equipment identified in the Secured Party's Bill of Sale, subject solely to the Liens of the Seller and of the U.S. Small Business Administration immediately prior to the consummation of the Proposed Transaction.
5. Borrower does not own any Intellectual Property that has been registered with the United States Patent and Trademark Office.
6. The recitals set forth in this Purchase Agreement are true and accurate in all respects.
7. The recitals set forth in the Collateral Surrender and Sale Agreement are true and accurate in all respects.
8. The Accounts Receivable and inventory reports delivered to the Buyer as of the Closing Date are true and correct in all respects.

This consent does not modify or expand the limited obligations of Deborah F. Richter under the Guaranty dated October 23, 2015, as amended by the Amendment to Guaranty dated as of May 10, 2024.

**EMPIRE COFFEE CO., INC.**

By: /s/ Robert A. Richter  
Name: Robert A. Richter  
Title: President

/s/ Robert A. Richter  
Robert A. Richter, as guarantor

/s/ Deborah F. Richter  
Deborah F. Richter, as limited guarantor

Exhibit A  
Surrender Agreement

## **COLLATERAL SURRENDER AND SALE AGREEMENT**

This Collateral Surrender and Sale Agreement ("Agreement") is made as of October 8, 2024 ("Effective Date"), among Bridge Business Credit, LLC, a Michigan limited liability company ("Lender"), Empire Coffee Company, Inc., a New York corporation ("Debtor"), Robert A. Richter ("Robert"), and Deborah F. Richter ("Deborah" or "Limited Guarantor" and collectively with Robert, the "Guarantors," and collectively with the Debtor, the "Debtor Parties").

### **RECITALS OF FACTS**

A. Lender, as successor in interest to M&T Bank, and Debtor previously entered into a certain (1) Loan and Security Agreement dated as of October 23, 2015, as amended, and (2) other documents, evidencing, securing, or relating to, in part, that certain revolving line of credit loan in the original current principal amount of Two Million and 00/100 Dollars (\$2,000,000.00) ("Original Line of Credit").

B. Guarantors and other parties executed a Guaranty dated October 23, 2015 (the "Guaranty") to M&T Bank regarding the Original Line of Credit.

C. Debtor and Lender entered into a certain Amended and Restated Loan Agreement on May 10, 2024 ("Loan Agreement"), to renew and extend the Original Line of Credit to a sum not to exceed Three Million and 00/100 Dollars (\$3,000,000.00) ("Extended Line of Credit").

D. On May 10, 2024, Debtor and Lender executed an Amended and Restated Promissory Note (Line of Credit) ("Note") evidencing the Extended Line of Credit.

E. Guarantors and Lender subsequently entered into an Amendment to Guaranty dated as of May 10, 2024 ("Guaranty Amendment"), amending the Guaranty. Under the Guaranty Amendment, among other things, Deborah's liability under the Guaranty was "limited to Deborah F. Richter's right, title and interest in and to (a) the Collateral (as defined in the Security Agreement (Re: Securities Account) between Robert A. Richter, Deborah F. Richter and Bridge and dated on or about the date of this Amendment) related to a certain account held at Independent Bank, a Michigan banking corporation, and (b) the real property located at 100 Commonwealth Avenue, Alexandria, Virginia."

F. On May 10, 2024, Robert executed a Continuing Guaranty Agreement ("Continuing Guaranty"), whereby Robert guaranteed payment of all of Debtor's obligations to Lender. The Continuing Guaranty is for an unlimited amount.

G. On May 10, 2024, Debtor executed a Security Agreement (All Assets) ("Security Agreement"), granting Lender a first priority security interest in all of Debtor's personal property ("Collateral"). In particular, the Collateral includes, without limitation, all of Debtor's accounts receivable, all of Debtor's inventory, all of Debtor's machinery and equipment, and all products and proceeds thereof.

H. The Loan Agreement, Note, Guaranty, Guaranty Amendment, Continuing Guaranty, Security Agreement, and all related documents are referred to collectively as the "Loan Documents."

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I. Debtor is in default under the Loan Documents, which defaults have not been cured or otherwise waived by Lender.

J. As of September 30, 2024, the Indebtedness includes the sum of \$1,347,976.44 in principal plus \$25,251.34 in accrued interest. The foregoing amounts are exclusive of interest that continues to accrue on and after September 30, 2024, and all other costs fees and expenses of Lender, including attorney fees. The Indebtedness is unconditionally owed by Borrower and Robert without offset, defense or counterclaim of any kind, nature or description whatsoever.

K. The Collateral includes the machinery and equipment identified in Exhibit A.

L. Debtor's Collateral is located at 106 Purdy Avenue, Port Chester, New York 10573 (the "Business Premises").

M. Second Empire, LLC ("Buyer") has offered to buy the Collateral, as is, where is, with no representation or warranties of any kind by Lender through a private sale under Article Nine of the UCC (the "Sale"). The aggregate consideration to be paid by the Buyer shall be a cash payment by Buyer to Lender in an amount equal to \$825,000.00 (the "Purchase Price") less a \$50,000.00 "Clawback" (the "Cash Purchase Price" or "Sale Proceeds"). The Cash Purchase Price shall increase or decrease, as applicable, (i) on a dollar-for-dollar basis as follows (a) collections received by the Company and/or the Lender which are applied to reduce the outstanding indebtedness owed by the Company to the Lender during the period commencing on October 1, 2024 through and until closing of the transaction ("Interim Period"), shall reduce the Cash Purchase Price, and (b) Accounts Receivable generated by the Company during the Interim Period shall increase the Cash Purchase Price, and (ii) any changes in the amount of inventory on hand as of the Interim Period shall increase or decrease the Cash Purchase Price as applicable by an amount equal to 25% of the value of such inventory (each such adjustment to the purchase price shall be referred to as a "Purchase Price Adjustment"). The Purchase Price Adjustment shall be determined as of the date immediately preceding the Closing Date.

N. Buyer anticipates closing on the Sale during the time frame of October 15 to October 18, 2024, inclusive (the "Closing Date"), with the precise Closing Date in that time frame to occur based on Buyer sending notice to Lender and Debtor Parties.

O. Debtor has agreed to surrender to Lender the Collateral at the Business Premises by delivering same to Buyer at the Business Premises at the closing of the sale described above.

NOW, THEREFORE, in consideration of the facts set forth above, and the mutual covenants set forth below, the parties agree as follows:

### AGREEMENT

1. Representations of Debtor Parties. Debtor Parties represent and warrant the following:

- a. The recitals are true and correct.

- b. Debtor owns the Collateral, including the machinery and equipment listed in Exhibit A, and has the legal right to surrender the Collateral to the Lender pursuant to this Agreement.
- c. The only secured parties are Lender and the U.S. Small Business Administration. Lender has the first priority security interest in the Collateral.

2. **Surrender and Assignment of Collateral.** Effective at the Closing Date, Debtor surrenders all of its right, title, and interest in and to the Collateral by delivering the Collateral at the closing of the sale described above to Buyer at the Business Premises. Debtor shall cooperate fully with Buyer and with Lender's efforts to undertake a private sale of the Collateral in accordance with M.C.L. § 440.9610. Notwithstanding the surrender of its Collateral, until the sale contemplated under this Agreement has closed, Debtor may continue to operate the Collateral, to maintain the Collateral, and to insure the Collateral. Debtor shall deliver to Bank and to Buyer accounts receivable agings as of the Closing Date, in form and substance acceptable to Buyer together with copies of all invoices related to all Accounts Receivable created during the Interim Period, and an updated statement of Inventory as of the Closing Date, in form and substance acceptable to Buyer;

In no event will the surrender of Collateral vest title into Lender, provided however, that the surrender of Collateral by Debtor to Lender will give Lender the ability to transfer title of the Collateral to the Buyer. .

3. **Acknowledgement of Adjustment to Sale Proceeds.** Debtor Parties understand and acknowledge that Debtor will continue to operate through the Closing Date.

- a. While operating, the Inventory levels might increase or might decrease, which might result in an adjustment to the Sale Proceeds as of the Closing Date.
- b. While operating, the Accounts Receivable balance might increase or might decrease, which might result in an adjustment to the Sale Proceeds as of the Closing Date.

4. **Disposition of Collateral.** Debtor Parties agree that Lender may dispose of the Collateral by private sale in accordance with the terms of this Agreement. Debtor Parties acknowledge that disposition of the Collateral in accordance with the terms of this Agreement is commercially reasonable. Debtor shall fully cooperate with the Lender and with the Buyer, including the execution of any necessary documents to effect transfer title of the Collateral to Buyer.

5. **Access to Collateral.** This Agreement also serves as the Debtor's authorization to any employee or agent of Debtor to grant to Lender or Lender's designee (including without limitation, the Buyer), and Debtor hereby grants to Lender and its designees, full and complete access to the Business Premises to allow Buyer, Lender or their designees to assemble, inspect, sell and/or take possession of any such Collateral.

6. **Mitigation of Damages.** Debtor Parties hereby acknowledge and agree that because any and all actions taken by Lender under this Agreement, including as set forth in **Section**

4 above, with regard to the disposition of the Collateral at a private sale are deemed commercially reasonable by the Debtor Parties, each Debtor Party waives their respective right to assert a claim against Lender for failing to mitigate damages. Debtor Parties acknowledge and agree that the waiver set forth in this paragraph shall survive the sale of the Collateral.

7. **Waiver under Article Nine of the UCC.** Each Debtor Party acknowledges that it is in default and waives, in accordance with section 9-624 of the Uniform Commercial Code as adopted by the State of Michigan or such other jurisdiction where the Collateral is located, as applicable (“UCC”), its right to require disposition of collateral under subdivision (e) of section 9-620 of the UCC, its right to receive notification of any liquidation, settlement, or other disposition of collateral pursuant to Sections 9-610 and 9-611 of the UCC, and its right to redeem collateral pursuant to Section 9-623 of the UCC.

8. **Additional Waivers.** Borrower and each Guarantor knowingly waives any rights they may have to notice and a hearing before any court of competent jurisdiction and consent to Lender’s possession, sale, transfer, license or other disposition of or realization on the Collateral. Without in any way limiting or prejudicing the rights or remedies of Lender under the Loan Documents and applicable law, Borrower and each Guarantor agrees that Lender may (i) at any time, accept possession of, and exercise its right to dispose of any and all such Collateral as provided for under the Loan Documents and applicable law free and clear of any and all rights of Borrower in or to any of the Collateral and (ii) take such action as Lender may deem appropriate with respect to the Collateral.

9. **Waiver of Defenses.** Guarantors each acknowledge and agree that the Guaranty (as amended by the Guaranty Amendment) and the Continuing Guaranty that were previously delivered to Lender remain valid and binding obligations upon them, and each further acknowledges and reaffirms its obligations under these guaranties, without any defense, offset, recoupment, or claim of any kind. To the extent that such a claim or defense may or does exist, Guarantors waive the same, including without limitation, any and all defenses arising by reason of (i) any and all amendments or modifications of any document, (ii) any and all alterations, accelerations, extensions, or other changes in the time or manner of payment or performance, (iii) any and all increases or decreases in the rate of interest or other charges, (iv) the release, substitution, or addition of collateral, borrowers, or guarantors, (v) any failure of Lender or its predecessors to give notice of default to any borrower or guarantor, (vi) any failure of Lender or its predecessors to pursue any borrower or guarantor or any property of any borrower or guarantor with due diligence, (vii) any failure of Lender or its predecessors to resort to collateral or remedies which may be available to them, and (viii) any and all defenses arising out of the guarantor / principal relationship.

10. **Lender to Retain Proceeds.** Debtor authorizes the Lender to receive all proceeds from the sale or disposition of the Collateral and apply the proceeds in accordance with the terms of this Agreement.

11. **Choses in Action.** Choses in action are not being sold by Lender to Buyer and shall be retained by Lender. Notwithstanding anything to the contrary, Debtor warrants and represents that (a) it has not instituted litigation against any party prior to the date of this

Agreement that remains pending and (b) to the best of its knowledge, information, and belief, it has no Choses in Action.

12. **Deficiency.** It is agreed that the Sale Proceeds is less than the current amount of the Indebtedness. Debtor Parties shall remain fully liable for any deficiency, to the fullest extent of their respective obligations under the Loan Documents.

13. **Other Security Interests in Collateral.** To the extent that Lender determines that other creditors of Debtor have a right to a security interest in the Collateral, Lender, in its sole discretion, has the right to determine the disposition of such Collateral and proceeds from other creditors. However, Lender is not undertaking any effort to do so. Rather, Lender reserves the right to retain the full amount of the Sale Proceeds.

14. **No Assumption of Liabilities.** Debtor Parties acknowledge that by Lender accepting possession of the Collateral, Lender has not agreed to assume any other obligations or liabilities of Debtor to other creditors, including creditors having competing claims against any or all of the Collateral. Debtor Parties further acknowledge that, as Debtor will have possession of the Collateral until the Closing Date and then Buyer will take immediate possession of the Collateral, Lender has no obligation to maintain, safe keep, or otherwise protect any of the Collateral.

15. **Voluntary Surrender.** Debtor hereby acknowledges that it is granting possession of the Collateral to Lender freely, voluntarily, without breach of the peace, without compulsion by judicial process, and of its own free will.

16. **Release.** Each of the Debtor Parties releases and forever discharges Lender, and all parent companies, subsidiaries and affiliates of Lender and all former and current officer, directors, employees, agents, and members of Lender of and from any all claims and causes of action, at law or at equity, based on any fact currently in existence, whether known or unknown, including without limitation any such claims or causes of action arising out of the Loan Agreement, the Note, the Loan Documents, the Collateral, or this Agreement. The terms of this release will be interpreted as broadly as possible.

17. **Indemnification.** Debtor hereby indemnifies, defends (through attorneys acceptable to Lender), and holds Lender and all parent companies, subsidiaries, and affiliates of Lender and all former and current officers, directors, members, employees, agents, attorneys, and other representatives of Lender and such other entities (all being hereinafter collectively called the "**Indemnified Parties**") harmless from and against any and all claims, demands, losses, damages, penalties, fines, forfeitures, judgments, reasonable attorney's fees and other costs, fees and expenses suffered or incurred by Lender or any other of the Indemnified Parties which directly or indirectly relate to or arise out of the Loan Documents, the Collateral, or this Agreement, including without limitation (a) the occurrence of any breach by any of the Debtor Parties, or (b) any acts or omissions by any of the Debtor Parties, provided that such loss, damage, or liability is not caused by the a breach by, or the acts or omissions of, Lender or any other Indemnified Party. In addition to the foregoing indemnification provisions, Lender shall be entitled to pursue any and all rights and remedies available to Lender under this Agreement. All of the covenants, obligations, terms, remedies, and indemnities contained in this section shall expressly survive the closing of the

transactions contemplated by this Agreement and shall not be merged into any of the closing documents but shall be independently enforceable.

18. **Assignment.** This Agreement shall not be assignable by any of the Debtor Parties without the written consent of Lender. This Agreement is freely assignable by Lender.

19. **Successors and Assigns.** All terms and provisions of this Agreement shall be enforceable by the respective successors, heirs, representatives, and assigns of the parties to this Agreement.

20. **Third Parties.** This Agreement is for the benefit of the parties, their successors, heirs, representatives, and assigns, and is not for the benefit of any third party; provided, however, that Buyer shall be entitled to rely on the representations and warranties set forth herein by the Debtor Parties.

21. **Authority to Execute.** Each party signing this Agreement represents and warrants that it has the full power and authority to execute, deliver, and perform the terms of this Agreement.

22. **Review of Agreement.** Each party signing this Agreement acknowledges and agrees that it has completely read, fully understands, and has voluntarily executed this Agreement, and acknowledges that it has either had the Agreement reviewed by legal counsel or has had the opportunity for such review and has voluntarily declined to avail itself of that opportunity.

23. **Power of Attorney.** Debtor irrevocably grants to Buyer a power of attorney to execute any and all documents reasonably necessary for Buyer to take possession of the Collateral and to undertake all such acts reasonably necessary for Buyer to take possession of the Collateral.

24. **Entire Agreement.** This Agreement contains all terms of the agreement between the parties with respect to the surrender and sale of Collateral and the related matters set forth herein. Each party to this Agreement acknowledges that there are not now, nor will there be later, any unwritten oral agreements between the parties. This Agreement may be amended only by a writing explicitly referencing this Agreement and signed by all parties to this Agreement.

25. **Severability.** The unenforceability of any provision of this Agreement shall not affect the enforceability of the remaining provisions of this Agreement.

26. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

27. **Agreement in Counterparts.** This Agreement may be executed in counterparts, and shall be effective against parties executing this Agreement even if not signed by all parties hereto.

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IN WITNESS OF WHICH, the parties have executed this Agreement effective as of the Effective Date set forth above.

Bridge Business Credit, LLC

By: /s/ James Campbell  
Its: Chief Credit Officer

Empire Coffee Company, Inc.

By: /s/ Robert Richter  
Its: President

**Guarantor**

/s/ Robert A. Richter  
Robert A. Richter

**Limited Guarantor**

/s/ Deborah F. Richter  
Deborah F. Richter

Exhibit B  
Secured Party's Bill of Sale

## SECURED PARTY BILL OF SALE

This **SECURED PARTY BILL OF SALE** (this "Secured Party Bill of Sale") is made and entered into as of November 6, 2024 by and between BRIDGE BUSINESS CREDIT, LLC as secured party in possession ("Seller") and SECOND EMPIRE, LLC, a Delaware limited liability company (together with its successors and assigns, the "Buyer").

**WHEREAS**, this Secured Party Bill of Sale is made pursuant to and is subject to certain Secured Creditor Sale Agreement, dated as of the date hereof, between Seller and Buyer, and acknowledged by Borrower and the guarantors (the "Purchase Agreement").

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby agrees as follows:

1. In accordance with Sections 9-610 and 9-617(a) of the UCC, Seller, in consideration and upon receipt of the Cash Purchase Price (as defined in the Purchase Agreement), and as secured party in possession, does hereby sell, convey, assign, transfer and deliver to the Buyer all right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement).

2. **The Seller is selling the Purchased Assets to Buyer "AS IS, WHERE IS" basis. Except as expressly set forth in Article IV of the Purchase Agreement, Seller makes no representations or warranties of any kind, express or implied, including without limitation warranties of title, fitness for a particular purpose or merchantability.**

3. This Secured Party Bill of Sale is made pursuant to and is subject to the Purchase Agreement. In the event of a conflict between the terms of this Secured Party Bill of Sale and the Purchase Agreement, the terms of the Purchase Agreement shall govern. Any defined term used in this Secured Party Bill of Sale shall have the meanings set forth in the Purchase Agreement.

4. This Secured Party Bill of Sale may be executed in multiple counterparts, each of which when executed shall constitute one and the same agreement. Execution of any such counterpart may be by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature.

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IN WITNESS WHEREOF, Seller has executed and delivered this Secured Party Bill of Sale on the date first above written.

SELLER:

BRIDGE BUSINESS CREDIT, LLC

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

Name:

Title:

ACCEPTED AND AGREED:

BUYER:

SECOND EMPIRE, LLC

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

Name: Andrew Gordon

Title: President

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**COFFEE HOLDING CO., INC.**

**Significant Subsidiaries**

<b><u>Name of Entity</u></b>	<b><u>Jurisdiction</u></b>
Organic Products Trading Company, LLC	United States, Delaware
Second Empire, LLC	United States, Delaware

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statement of Coffee Holding Co., Inc. on Form S-8 (FILE No. 333-233065) of our report dated January 31, 2025, with respect to our audits of the consolidated financial statements of Coffee Holding Co., Inc. as of October 31, 2024 and 2023 and for each of the two years in the period ended October 31, 2024, which report is included in this Annual Report on Form 10-K of Coffee Holding Co., Inc. for the year ended October 31, 2024.

/s/ Marcum LLP

Marcum LLP  
New York, New York  
January 31, 2025

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**Certification of Principal Executive Officer and Principal Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Andrew Gordon, certify that:

1. I have reviewed this annual report on Form 10-K for the period ended October 31, 2024 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 registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's 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, 2025

*/s/ Andrew Gordon*

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

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**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, 2024 (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, 2025

*/s/ Andrew Gordon*

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

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