

**THE HILL AND GRIFFITH COMPANY
DISTRIBUTORSHIP AGREEMENT**

PLAINTIFF'S EXHIBIT

H&G-89

NOV 17 1994

THIS AGREEMENT entered into as of September 1, 1994, by and between **THE HILL AND GRIFFITH COMPANY**, 1262 State Avenue, Cincinnati, Ohio 45204, an Ohio Corporation, ("H&G") and **CANFIELD & JOSEPH, INC.**, 6536 E. 42nd Street, Tulsa, OK 74145, an Oklahoma Corporation, ("Distributor"), is as follows:

1. **Products.** As used in this Agreement, the term "Products" means H&G's entire line of foundry products (except the products, if any, listed on Schedule A attached hereto).
2. **Grant of Distributorship.** H&G hereby grants to Distributor the exclusive right to sell Products within the states of Texas (excluding as noted in Schedule C), Oklahoma, Kansas, Nebraska, Missouri, Louisiana (exclusions as noted in Schedule C), and the State of Iowa, (south of Route 3 excluding Davenport and Bettendorf, Iowa), (see attached letters dated July 28, 1994 and October 12, 1994), (the "Territory") upon and subject to the terms and conditions of this Agreement.
3. **Scope of Services.**
 - 3.1 Distributor will (i) use its best efforts to promote sales of Products in the Territory, (ii) maintain a suitable place of business in the Territory for sales of Products, (iii) provide prompt and satisfactory delivery and service to purchasers of Products, and (iv) respond promptly to all inquiries and expressions of interest from prospective purchasers.
 - 3.2 H&G will refer to Distributor all inquiries and orders received from sources located within the Territory, and Distributor will refer to H&G all inquiries and orders received from sources located outside the Territory.
 - 3.3 H&G will use reasonable efforts to protect the exclusive rights in the Territory granted to Distributor hereunder, but H&G cannot control or prohibit sales of Products by other purchasers and will not be liable to Distributor for and will have no obligation to take any legal action to prevent such sales.
4. **Prices; Payment Terms; Delivery.**
 - 4.1 H&G will sell Products to Distributor at its distributor list prices in effect at the time H&G accepts Distributor's purchase orders therefor. All H&G invoices for Products purchased by Distributor shall be payable in full within 30 days after the date of H&G's invoice therefor.
 - 4.2 Distributor shall be responsible for making all freight, shipping and delivery arrangements unless other arrangements are agreed to by H&G. All Products shall be delivered to Distributor by delivering the same to the carrier f.o.b. at H&G's shipping dock, and title to the Products and all risk of loss shall pass to Distributor upon such delivery. Distributor shall pay all freight, insurance and other charges and expenses applicable to the shipment and delivery of Products.
 - 4.3 All orders accepted by H&G and all shipments of Products to Distributor shall be upon such terms and conditions in addition to those set forth herein as the Company may establish for such transactions from time to time.
5. **Purchase Orders.**
 - 5.1 Distributor shall order Products from H&G by written purchase orders submitted in writing or by phone to H&G's principal office in Cincinnati, Ohio. All purchase orders shall be subject to acceptance by H&G.
 - 5.2 H&G shall have no liability to Distributor for its rejection of any purchase order for any reason, or for any delay or failure in filling any accepted purchase order because of the unavailability of Products or transportation, labor disputes, casualties, government regulations or orders or other events or conditions beyond H&G's control or which constitute force majeure.

6. **Negative Covenants.** During the term of this Agreement, Distributor will not, directly or indirectly, for itself or as agent or for the account of others:
- 6.1 Sell or solicit orders for the sale of any products within the Territory which are competitive with any of H&G's Products, except the products, if any, listed on Schedule B attached hereto; or
- 6.2 Sell or solicit orders for the sale of any Products outside the Territory.
7. **Independent Contractor.** The relationship of H&G and Distributor hereunder is that of seller and buyer, and in all matters relating to this Agreement and to the purchase, sale and servicing of Products, Distributor shall be and shall represent itself to others to be an independent contractor, and Distributor shall not for any purposes be or be deemed to be and shall not for any purposes represent itself to be or purport to act as an agent, partner, joint venturer, employee or legal representative of H&G. Distributor shall have no right or authority to contract for or create or impose any obligation whatsoever upon H&G in favor of any third party, and Distributor will not take any action which purports to bind or obligate H&G in any manner or represent that it has the right to do so.
8. **Arbitration.** Any controversy or claim arising out of or related to this Agreement or any claimed breach hereof shall be submitted to arbitration in Cincinnati, Ohio, in accordance with the rules of the American Arbitration Association. The decision and award in any arbitration shall be final, binding, conclusive and non-appealable, and judgement on such award may be entered as a final, non-appealable order by any court of competent jurisdiction.
9. **Proprietary Rights.** Distributor shall have the right to use H&G's patents, trade names and trademarks associated with Products ("Proprietary Rights") in the Territory during the term of this Agreement solely in connection with the sale of Products. All right, title and interest in the Proprietary Rights, and all good will associated therewith, are the sole property of H&G, and Distributor shall not have or acquire any rights to or interests therein except the right to use them as provided in the preceding sentence. Distributor will take all actions reasonably necessary to protect H&G's interests in the Proprietary Rights in the Territory and will not use the Proprietary Rights in any manner or take any other action which would cause them to be encumbered or lost. Upon the termination of this Agreement, regardless of the cause of termination, Distributor shall discontinue all further use of the Proprietary Rights and all other identification or appearance of affiliation of Distributor with H&G and Products.
10. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been given (i) when personally delivered to an executive officer of the party to whom such notice is directed, (ii) when transmitted by facsimile, provided that receipt of such transmission is confirmed by the transmitting party's facsimile machine and the transmitting party forwards a copy of such transmission to the receiving party by first class mail on the day of the transmission, or (iii) two business days after having been deposited in a United States mail depository, postage prepaid, for delivery by certified mail, return receipt requested, or delivered to a national overnight delivery service with delivery charges prepaid, and addressed as follows until such time as either party notifies the other of a change of address:

To H&G:

The Hill and Griffith Company
1262 State Avenue
Cincinnati, OH 45204
ATTN: President

To Distributor:

Canfield & Joseph, Inc.
6536 E. 42nd Street
Tulsa, OK 74145
ATTN: Greg Joseph

11. Term; Termination.

11.1 This Agreement shall be for a term of three years commencing September 1, 1994, and ending August 31, 1997; provided, however, that either party shall have the right to terminate this Agreement at any time before such ending date without cause by giving written notice of termination not less than 90 days prior to the date of termination set forth in such notice. If this agreement has not been terminated at or prior to the end of the original three year term, it shall automatically be renewed for additional consecutive terms of three years each, each three year renewal term to commence upon the expiration of the preceding term, subject, however, to the continuing rights of the parties to terminate as provided in the preceding sentence and Sections 11.2 and 11.3.

11.2 H&G shall have the right to terminate this Agreement at any time prior to the termination date set forth in Section 11.1 by giving written notice of termination to Distributor upon the occurrence of any of the following events:

11.2.1 The failure by Distributor to make any payment to H&G when due.

11.2.2 Default by Distributor in the performance of or compliance with any other obligation hereunder and the failure to cure such default to the satisfaction of H&G within 30 days after having been given written notice to do so by H&G. Distributor acknowledges that the services to be rendered by it under Section 3 are qualitative and must be judged subjectively. Therefore, H&G's subjective judgement as to the existence of a default by Distributor in the performance of such services and as to the continuation or curing of such default shall be binding upon Distributor.

11.2.3 Distributor is adjudged bankrupt or insolvent, or a receiver is appointed for the business or property of Distributor, or any assignment is made of Distributor's interest herein for the benefit of creditors or if Distributor's interest herein is taken in execution or by other process of law.

11.3 Distributor shall have the right to terminate this Agreement at any time prior to the termination date set forth in Section 11.1 if H&G defaults in the performance of any obligation under this Agreement and fails to cure such default within 30 days after having been given written notice to do so by Distributor.

11.4 Upon termination of this Agreement for any reason, Distributor shall promptly pay H&G all amounts due it hereunder.

12. Warranty; Limitation of Warranties.

12.1 H&G warrants that all Products to be sold to Distributor pursuant to this Agreement shall conform to H&G's specifications therefor. H&G's sole obligation under this warranty will be to replace any Products which are not as warranted or to refund the purchase price, at H&G's option, provided Distributor gives H&G notice of non-conformity within 90 days after delivery of such Products. **SUCH REPLACEMENT OR REFUND SHALL CONSTITUTE FULL AND FINAL DISCHARGE OF H&G FROM ANY AND ALL CLAIMS FOR DAMAGE OR LOSS RESULTING FROM ANY CAUSE WHATSOEVER, WHETHER BASED ON NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY, AND H&G SHALL HAVE NO OTHER LIABILITY TO DISTRIBUTOR OR ANY THIRD PARTY, DIRECT OR INDIRECT, INCLUDING LIABILITY FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.**

12.2 **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 12.1, H&G MAKES NO WARRANTY AND SHALL NOT BE DEEMED TO HAVE MADE ANY EXPRESS OR IMPLIED WARRANTY OF THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PRODUCTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTY.**

13. Non-Assignability. Distributor shall have no right to assign this Agreement or any of the rights, interests or obligations of Distributor hereunder without the prior written consent of H&G.

14. Miscellaneous.

14.1 The failure by H&G to require performance by Distributor of any provision of this Agreement shall not constitute a waiver of the right to require such performance at any time thereafter, and the waiver by H&G of a breach of any provision of this Agreement shall not constitute a waiver of any prior or succeeding breach of the same or any other provision of this Agreement. Acceptance by H&G of any payment due it hereunder with knowledge of any breach shall not constitute a waiver of that or any other breach.

14.2 This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

14.3 This Agreement sets forth the entire agreement between the parties as to the subject matter hereof, and supersedes all prior written and oral negotiations, agreements, and understandings.

14.4 Subject to the provisions of Section 13, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

14.5 The captions contained in this Agreement are for reference purposes only and shall not affect or relate to the interpretation hereof.

Signed by H&G at Cincinnati, Ohio, and by Distributor at Tulsa, Ok, as of the date specified in the first paragraph of this Agreement.

THE HILL AND GRIFFITH COMPANY
an Ohio Corporation

CANFIELD & JOSEPH, INC.
an Oklahoma Corporation

By: [Signature]

By: [Signature]

Its: Pres.

Its: Pres.

H&G

DISTRIBUTOR

THE HILL AND GRIFFITH COMPANY
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Schedule A

Section 1 — Excluded Products

[If none is listed, all products are included]

THE HILL AND GRIFFITH COMPANY
DISTRIBUTORSHIP AGREEMENT

Schedule B

Section 6.1 — Permitted Competitive Products

[If none is listed, there are no permitted products]

Acme/Borden core washes and conventional core oil
Water based silicone emulsion release agents
Harborlite slag conditioners
Stahl permanent mold coatings
Stahl ladle wash
Conestoga acetone based core paste

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Schedule C

Excluded Accounts/Products

[If none is listed, there are no permitted products]

Texas exclusions:

Martin Foundry, Dallas, Texas
NIBCO, Nacogdoches, Texas

Premix™
Premix™

Louisiana exclusions:

Vulcan Foundry, Denham Springs, Louisiana Premix™