

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. **Conveyances to JPFO.** With this Agreement, Jason and Harry shall convey the Interests to JPFO.

2. **Conveyances by JPFO.** With this Agreement, JPFO shall convey the Shares to Jason and Harry.

3. **Restrictions on Competition.**

a. Jason, Harry, SMH, Delaware and Pennsylvania shall, by March 31, 2018, cease and desist from any further use of the name "Fazzio" in any printed material, letterhead, advertising, signage, etc.

b. Delaware, Pennsylvania, Jason and Harry agree, for a period of fifty (50) years, that neither they, their immediate family, parents (including Joseph Caputo & family), related entities, co-venturers and/or significant others ("Giloley Parties"), will directly or indirectly, either individually as owner, investor, partner, agent, employee, consultant or otherwise, become interested, financially or otherwise, in a business that is the same as or that is substantially similar to or that is competitive with the business of JPFO, its subsidiaries, affiliates and related entities in the State of New Jersey, nor, directly or indirectly, compete with JPFO or any of its subsidiaries or affiliates, in New Jersey, by providing similar goods or services as those provided by JPFO, nor purchase material, sell material, advertise or solicit business in the State of New Jersey.

c. Jason, Harry, Delaware, Pennsylvania and the Giloley parties further agree that for the next Fifty (50) years, they will not open any business location within thirty (30) miles of any present or future business location consisting of not less than Thirty Thousand (20,000) square feet with not fewer than four (4) employees and not less than One Million Five Hundred Thousand (\$ 1,500,000.00) Dollars of inventory, on hand, at wholesale cost and licensed for and in operation as a full time retail and wholesale industrial sales and supply location (a "Facility") of JPFO or its affiliates, outside of the State of New Jersey.

d. Delaware, Pennsylvania, Jason, Harry and the Giloley Parties further agree, that for two (2) years from the date of this Agreement, they shall not (i) induce or take any action that could be reasonably expected to induce any employee, contractor or consultant of JPFO ("Service Provider") to leave its employ or breach an existing employment, supply, contractor or consulting agreement, or arrangement with JPFO or its affiliates, or to prevent any potential Service Provider to refrain from doing business with JPFO or its affiliates. The term "Service Provider" includes, but is not limited to, persons or entities who do or which did provide goods or services to JPFO during the two (2) years prior to contact by Delaware, Pennsylvania, Jason, Harry and/or the Giloley Parties, or with whom JPFO negotiated for the purchase or sale of its products or services within one hundred eighty (180) days prior to contact by Delaware, Pennsylvania, Jason, Harry and or the Giloley Parties.

e. In addition to the restrictions imposed elsewhere by this Agreement, neither Delaware, Pennsylvania, Jason, Harry nor the Giloley Parties, during the next fifty (50)

years, will advertise or maintain or establish any type of business location nor facility whatsoever, whether owned, rented, office, warehouse, showroom or any other place of business, whether for storage, processing, sales or otherwise, closer to New Jersey in the line drawn from New Castle, Delaware continuing north through the center of Pottstown, Pennsylvania, extending to the center of Wilkes-Barre, Pennsylvania, extending to the center of Binghamton, New York, and eastward to the center of Providence, Rhode Island and continuing to the Atlantic Ocean, as depicted on the attached Exhibit "A" ( the "Restrictive Line").

f. Neither Jason, Harry, Delaware, Pennsylvania nor the Giloley Parties shall ever use the name "Fazzio", "JFI", "Shop JFI" or any variation or derivative thereof in any business dealings, whether directly or indirectly.

g. The parties acknowledge and agree that it would be difficult, if not impossible, to determine with precision the damages JPFO would sustain after violation, of this Paragraph 3 of this Agreement, by Jason, Harry, Delaware, Pennsylvania or the Giloley Parties. Therefore, on violation by Jason, Harry, Delaware, Pennsylvania and/or the Giloley Parties, Delaware, Pennsylvania, Jason and Harry shall be jointly and severally liable for liquidated damages payable to JPFO in the sum of One Million Five Hundred Thousand (\$1,500,000.00) Dollars, the Parties' best estimate of the damages JPFO would sustain, and not as a penalty, together with all rights at law and in equity.

4. **Closure of New Jersey Office.** Delaware, Pennsylvania, Jason , Harry and the Giloley Parties shall, within sixty (60) days of the date of this Agreement, cease and desist from any further business operation in the State of New Jersey and shall, for the

next Fifty (50 years) refrain from any further use of any business office in the State of New Jersey including the office located 245 Chapel Heights Road, Sewell, NJ 08080.

5. **Delaware Operations.** JPFO shall not, during the next fifty (50) years, establish any type of business location nor facility whatsoever, whether owned, rented, office, warehouse, showroom or any other place of business, whether for storage, processing, sales or otherwise in the State of Delaware as long as Delaware, Pennsylvania, Jason or Harry continue to maintain and operate a Facility, in the State of Delaware. Nothing contained herein shall, otherwise, prevent JPFO from making purchases or sales and doing business in the State of Delaware.

6. **JPFO Restriction.** JPFO shall not, during the next fifty (50) years, establish any type of business location nor facility whatsoever, whether owned, rented, office, warehouse, showroom or any other place of business, whether for storage, processing, sales or otherwise within thirty (30) miles of any permitted Facility, operated by Jason, Harry, Delaware and or Pennsylvania.

7. **Ownership of Names.** The names "Fazzio", "JFI", "Shop JFI" and/or other names or marks associated therewith are the exclusive property of JPFO.

8. **Steel and Metal Services.** JPFO shall not use the name "Steel and Metal Services" without some designator or modifier such as "Fazzio Steel and Metal Services".

9. **Red Book System.** Excluded from the transfer of the shares herewith shall be the "Red Book Pricing System". JPFO will license the use of the Red Book Pricing System to Delaware and Pennsylvania on terms to be discussed.

10. **Section 355.** The transaction evidenced hereby shall be reported by the Parties as exchange of stock pursuant to Section 355 of the Internal Revenue Code and each party shall file returns consistent with such treatment unless otherwise required by law. Jason and Harry represent and warrant that they have, and at the effective date of the exchange will have, no binding obligation, or fixed or definite plan or intention, to dispose, for United States Federal income tax purposes, of any interest in SMH received in this transaction.

11. **Transfer Taxes.** Jason and Harry shall be solely responsible to pay any real estate transfer taxes assessed or payable as a result of this transaction.

12. **Closing.** The closing of the transaction contemplated by this Agreement (the "Closing") will take place on execution of this Agreement at a mutually agreed location between the parties, provided that all conditions to the obligations of the parties to consummate the transactions contemplated herein are either satisfied or waived. The transactions contemplated herein shall be deemed to be effective as of the Closing Date.

13. **Representations and Warranties of JPFO.** JPFO hereby represents and warrants to and covenants with Jason and Harry, as of the date of this Agreement and as of Closing, intending Jason and Harry to rely thereon, as follows:

- (a) **Ownership.** JPFO owns the Shares free and clear of all liens, encumbrances, claims and other charges of every kind.
- (b) **Right to Transfer.** JPFO has the right to transfer the Shares to Jason and Harry, free and clear of all liens, encumbrances, claims and other charges of every kind and without violating any agreement or

understanding to which JPFO is a party or by which the JPFO is bound.

- (c) Authority. JPFO has full power and authority to enter into this Agreement and to consummate the transactions on its part contemplated hereby.
- (d) Non-Breach. Neither the execution and delivery of this Agreement nor the consummation of the transactions herein by JPFO constitute a violation or breach of applicable law or of any provision of any contract or instrument to which JPFO is a party or by which it is bound, or any order, writ, injunction, decree or judgment applicable to JPFO.
- (e) Binding. This Agreement constitutes the legal, valid and binding obligation of JPFO enforceable in accordance with its terms.
- (f) No Broker. JPFO has not dealt with any broker or finder in connection with this Agreement and the transactions provided for herein and knows of no third person or other entity which will be entitled to any commission or finder's fee.

14. **Representations and Warranties of Jason and Harry.** Jason and Harry hereby represent and warrant to and covenant with JPFO, as of the date of this Agreement and as of Closing, intending JPFO to rely hereon, as follows:

- (a) Ownership. Jason and Harry own the Interests free and clear of all liens, encumbrances, claims and other charges of every kind.

- (b) Right to Transfer. Jason and Harry have the right to transfer the Interests to JPFO free and clear of all liens, encumbrances, claims and other charges of every kind and without violating any agreement or understanding to which Jason and Harry are a party or by which Jason and Harry are bound.
- (c) Authority. Jason and Harry have full power and authority to enter into this Agreement and to consummate the transactions on their part contemplated hereby.
- (d) Non-Breach. Neither the execution and delivery of this Agreement nor the consummation of the transactions herein by Jason and Harry constitutes a violation or breach of applicable law or of any provision of any contract or instrument to which Jason and Harry are a party or by which they are bound, or any order, writ, injunction, decree or judgment applicable to Jason and Harry.
- (e) Binding. This Agreement constitutes the legal, valid and binding obligation of Jason and Harry enforceable in accordance with its terms.
- (f) No Broker. Jason and Harry have not dealt with a broker or finder in connection with this Agreement and the transactions provided for herein and know of no third person or other entity which will be entitled to any commission or finder's fee.

15. **“As Is” Transfer.** Except as may be specifically set forth herein, the exchange of the Interests and the Shares are strictly “as is” whereas and with all faults.

16. **Indemnification.** Following the Closing Date, each party shall indemnify, defend and hold the other harmless from and against any claims arising out of any breach of any warranty or representation contained herein.

17. **Resignations.** Jason and Harry hereby resign all offices and employment they hold or have with JPFO and any affiliates of JPFO. With this Agreement, JPFO shall provide resignations of all officers of SMH, Delaware and Pennsylvania.

18. **Release.** Jason and Harry, for themselves, their heirs, successors and assigns, hereby release, remise, quitclaim and hold JPFO, its affiliates, officers, employees, members, heirs, successors and assigns, of and from any and all claims, charges, dues, costs, assessments and debts, from the beginning of time to the present including but not limited to claims arising from their employment with JPFO, their interests in JPFO and its affiliates, their participation in health insurance and retirement plans etc.

19. **Further Acts.** The parties will, on request, execute and deliver such separate instruments of sale, conveyance, transfer and assignment, if any, as shall reasonably be required or requested in order to effectuate the purposes of this Agreement.

20. **Headings.** The headings preceding the text of the Sections hereof are inserted solely for convenience of reference, and will not constitute a part of this Agreement, nor will they affect its meaning, construction or effect.



21. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and assigns.

22. **Entire Agreement.** This Agreement contains the entire understanding between the parties concerning the transactions addressed herein, and there have been no oral or other agreements of any kind whatsoever as a condition precedent or inducement to the signing of this Agreement or otherwise concerning this Agreement or the subject matter hereof.

23. **Severability.** It is the intention of the parties that the provisions herein shall be enforceable to the fullest extent permissible under the applicable law. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, then the remainder of this Agreement shall not be affected thereby, and in lieu of each such clause or provision of this Agreement which is illegal, invalid or unenforceable, there shall be added, as part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and as may be legal, valid and enforceable.

24. **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New Jersey and the parties hereby irrevocably submit to the jurisdiction and venue of the Superior Court of Gloucester County, in any action or proceeding arising out of, or relating to, this Agreement, and irrevocably agree that all claims in respect of any such action or proceeding may be heard and determined in such court.

25. **Survival and Materiality of Representations.** Each of the representations, warranties and agreements made by the parties hereto shall be deemed material and shall survive the Closing and the consummation of the transactions contemplated hereby.

26. **Construction.** Unless the context of this Agreement otherwise requires: (i) words of any gender include the other gender, (ii) words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms “hereof”, “herein”, “hereby”, and derivative or similar words refer to this entire Agreement as a whole and not to any other particular Section or other subdivision, (iv) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (v) “shall”, “will” or “agrees” are mandatory, and “may” is permissive, and (vi) “or” is not exclusive.

27. **Notices.** All notices, requests, demands and other communications hereunder will be in writing and will be deemed to have been duly given if personally delivered or, if mailed, when mailed through the use of a verified overnight delivery service or by United States first-class certified or registered mail, postage prepaid to the other party at the following address (or at such other address as will be given in writing by any party to the other):

If to JPFO:

Joseph P. Fazzio Organization, LLC  
2760 Glassboro-Cross Keys Road  
Glassboro, NJ 08028

With a copy to:

Andrew L. Miller, Esquire  
15 St. Asaph's Road  
Bala Cynwyd, PA 19004

If to Seller:

Jason Giloley  
334 Fish Pond Road  
Glassboro, NJ 08028

Harry Giloley  
22 Lakeshore Drive  
Glassboro, NJ 08028

28. **Amendments; Waivers.** This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

29. **Counterparts.** This Agreement may be signed in any number of separate counterparts, each of which shall be deemed to be an original hereof, and all of which, when taken together, shall constitute one and the same instrument. This Agreement may

be executed by facsimile signature or e-mail delivery of a PDF of a signed signature page, which shall be deemed for all purposes as an original.

30. **Representation by Counsel.** The parties acknowledge that they have each been represented by separate counsel and have been advised of the meaning and effect of this Agreement and have completed this transaction based on that advice or, having been advised to seek the advice of independent counsel, have knowingly and intelligently waived the opportunity to seek the advice of independent counsel before executing this Agreement. [initial by Jason Harry ]

**IN WITNESS WHEREOF**, the parties hereto have executed or caused this Agreement to be executed by their duly authorized officers on the date and year first above written.

Joseph P. Fazzio Organization, LLC

By: \_\_\_\_\_  
Chris Fazzio, Member

\_\_\_\_\_  
Jason Giloley

\_\_\_\_\_  
Harold Giloley