

02-514-CD
BjR, INC. -vs- NUTRITION, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania Corporation,

Plaintiff,

v.

NUTRITION, INC., a Pennsylvania
Corporation,

Defendant.

)
) Case No.: 02-514-CD
)

) **PRAECIPE FOR WITHDRAWAL**
) **AND ENTRY OF APPEARANCE**
)

) FILED ON BEHALF OF:
) DEFENDANT, NUTRITION, INC.
)

) COUNSEL OF RECORD FOR THIS
) PARTY:
)

) Thomas E. Weiers, Jr.
) Pa. I.D. No.: 43715
)

) Richard W. Saxe, Jr.
) Pa. I.D. No.: 87311
)

) FLUKE WEIERS, P.C.
) 1400 The Bank Tower
) Pittsburgh, PA 15222
) (412) 261-3800
)

) Firm I.D. No.: 029
)
)
)
)

FILED
m/12:41
APR 18 2005
copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

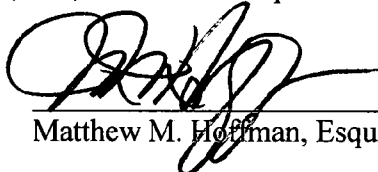
BJR, INC., d/b/a CONSERVCO, a	)	CIVIL DIVISION
Pennsylvania Corporation,)	
	)	Case No.: 02-514-CD
Plaintiff,)	
)	
)	
v.)	
)	
NUTRITION, INC., a Pennsylvania)	
Corporation,)	
)	
Defendant.)	
)	

PRAECIPE FOR WITHDRAWAL OF APPEARANCE

To the Prothonotary:

Kindly withdraw the appearance of Matthew M. Hoffman, Esquire and Tucker Arensberg, P.C., on behalf of Defendant, Nutrition, Inc., in the above-captioned action.

4/8/05
Date

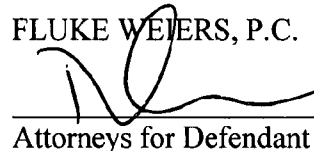

Matthew M. Hoffman, Esquire

PRAECIPE FOR ENTRY OF APPEARANCE

To the Prothonotary:

Kindly enter the appearance of Thomas E. Weiers, Jr., Esquire (Pa. I.D. No. 43715) and Richard W. Saxe, Jr. (Pa. I.D. No. 87311) of Fluke Weiers, P.C., 1400 The Bank Tower, Pittsburgh, Pennsylvania 15222 (PH. 412-261-3800) on behalf of the Defendant, Nutrition, Inc., in the above-captioned matter.

4/14/05
Date


FLUKE WEIERS, P.C.

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PRAECIPE FOR WITHDRAWAL AND ENTRY OF APPEARANCE was served via first class, U.S. Mail, postage pre-paid, this 14th day of April, 2005, upon the following:

Andrew L. Noble, Esquire
Meyer, Unkovic & Scott, LLP
1300 Oliver Building
Pittsburgh, PA 15222-2304

Matthew M. Hoffman, Esquire
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222



Thomas E. Weiers, Jr.

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

NUTRITION, INC., a
Pennsylvania Corporation,
Defendant,

*
*
*
*
*
*
*
*
*
*

No. 02 - - CD

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *

v.

No. 02 - - CD

NUTRITION, INC., a *
Pennsylvania Corporation, *
Defendant, *

COMPLAINT

NOW COMES the Plaintiff, BJR, Inc., d/b/a Conservco, and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, BJR, Inc., d/b/a Conservco, is a Pennsylvania corporation, whose principal place of business is located at One Washington Avenue, Hyde, Pennsylvania 16843.

2. That the Defendant, NUTRITION, INC., is a Pennsylvania Corporation, whose principal place of business is located at 202 South Third Street, West Newton, Pennsylvania 15089.

3. That at all times referred to herein Plaintiff was a general contractor trading and doing business as Conservco.

COUNT I

4. That on or about October 23, 2000, Plaintiff entered into an agreement with the Defendant to construct a commissary on property owned by Defendant and located at Valley View Drive, Manor Township Business Park, Ford City, Pennsylvania.

5. That the contract referred to herein was signed and accepted by Plaintiff at its principal place of business as set forth in Paragraph 1 hereof. A copy of said contract with amendments is attached hereto as Exhibit "A".

6. That Plaintiff commenced the construction required by the contract attached hereto as Exhibit "A" in November 2000.

7. That during the course of construction, Plaintiff periodically made application for payment as work was completed.

8. That on or about September 20, 2001, Plaintiff made application for payment in the amount of \$34,784. A copy of said application is attached hereto as Exhibit "B".

9. That Defendant failed to make payment to the Plaintiff in accordance with the payment application attached hereto as Exhibit "B".

10. That Plaintiff continued to perform work on Defendant's project through November 2001, during which period of time Plaintiff performed additional work including extras in the amount of \$57,750.00.

11. That Plaintiff billed Defendant for work performed during October and November of 2001 by invoice dated February 5, 2002, a copy of which is attached hereto as Exhibit "C".

12. That Defendant has failed and/or refused to the date of this Complaint to pay Plaintiff the sums due to Plaintiff totaling \$114,001.55 as of February 5, 2002.

WHEREFORE, Plaintiff claims damage from Defendant in the amount of \$114,001.55 with interest thereon from November 30, 2001.

COUNT II

13. That Plaintiff incorporates Paragraphs 1 through 12 of this Complaint by reference and makes them a part hereof.

14. That following receipt of the invoices attached hereto as Exhibit "B" and Exhibit "C" respectively, Defendant failed to provide Plaintiff within seven (7) days from receipt of said invoices with written notice of Defendant's reason or reasons for withholding payment as required by the Contractor and Subcontractor Payment Act 73 P.S., §506(b).

15. That Plaintiff has been required to retain counsel to prosecute this suit upon the fee schedule attached hereto as Exhibit "D".

11. That Plaintiff billed Defendant for work performed during October and November of 2001 by invoice dated February 5, 2002, a copy of which is attached hereto as Exhibit "C".

12. That Defendant has failed and/or refused to the date of this Complaint to pay Plaintiff the sums due to Plaintiff totaling \$114,001.55 as of February 5, 2002.

WHEREFORE, Plaintiff claims damage from Defendant in the amount of \$114,001.55 with interest thereon from November 30, 2001.

COUNT II

13. That Plaintiff incorporates Paragraphs 1 through 12 of this Complaint by reference and makes them a part hereof.

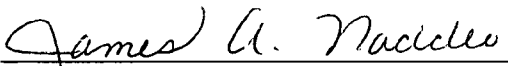
14. That following receipt of the invoices attached hereto as Exhibit "B" and Exhibit "C" respectively, Defendant failed to provide Plaintiff within seven (7) days from receipt of said invoices with written notice of Defendant's reason or reasons for withholding payment as required by the Contractor and Subcontractor Payment Act 73 P.S., §506(b).

15. That Plaintiff has been required to retain counsel to prosecute this suit upon the fee schedule attached hereto as Exhibit "D".

16. That Plaintiff claims penalties and attorney's fees as provided by the Contractor and Subcontractor Payment Act, 73 P.S. §512(a)(b).

WHEREFORE, Plaintiff demands judgment against Defendant for penalties and counsel fees as required by the Contractor and Subcontractor Payment Act, 73 P.S. §512(a)(b).


Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared JOSEPH F. KANE, who being duly sworn according to law, deposes and states that he is authorized by BJR, Inc. t/d/b/a Conservco to execute this Affidavit and further that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.


Joseph F. Kane

SWORN and SUBSCRIBED before me this 18th day of February, 2002.

Jennifer L. Royer

NOTARIAL SEAL
JENNIFER L. ROYER, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2003

AIA DOCUMENT A101-1997**Standard Form of Agreement Between Owner and Contractor**
where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the
in the year
(In words, indicate day, month and year)

23rd day of October 2000

BETWEEN the Owner:
(Name, address and other information)

Nutrition, Inc.
202 S. Third St.
West Newton, PA 15089

and the Contractor:
(Name, address and other information)

Mailing address:
P.O. Box 1404
Clearfield, PA 16830

Mr. Joseph F. Kane
Conservco General Contractors
One Washington Avenue
Hyde, PA 16843

The Project is:
(Name and location)

Nutrition, Inc. Commissary
Lot #3
Valley View Drive
Manor Twp. Business Park
Ford City, PA 16226

The Architect is:
(Name, address and other information)

Mr. Anthony Dorsch, A.I.A.
2100 Ehrman Road
Cranberry Twp., PA 16066

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.



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AGREEMENT

The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

*See supplementary conditions Exhibit "A" attached for work performed by others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

24th day of October 2000

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

3.2 The Contract Time shall be measured from the date of commencement.

3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ~~120~~ ¹⁵⁰ days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)



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ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be
*See Exhibit "B" attached. Dollars (\$),
subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

*See Exhibit "B" attached.

4.3 Unit prices, if any, are as follows:

*See Exhibit "B" attached.

ARTICLE 5 PAYMENTS

5.1 PROGRESS PAYMENTS

5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

5.1.3 Provided that an Application for Payment is received by the Architect not later than the 15th day of a month, the Owner shall make payment to the Contractor not later than the 15th 30th day of the following SAME month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 30 15 days after the Architect receives the Application for Payment.

5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.



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5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~fifteen~~ ^{ten} percent (~~15~~ ¹⁰ %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~fifteen~~ ^{ten} percent (~~15~~ ¹⁰ %);
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

5.1.7 The progress payment amount determined in accordance with Subparagraph 5.1.6 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (*Subparagraph 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.*)
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of AIA Document A201-1997.

5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Clauses 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Architect.



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5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.) -

~~0%~~ 6%

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 The Owner's representative is:
(Name, address and other information)

Mr. Patrick Davis, V.P.
c/o Nutrition, Inc.
202 S. Third St.
West Newton, PA 15089
1-800-442-2138 - Ext. 131

7.4 The Contractor's representative is:
(Name, address and other information)

Mr. Joseph F. Kane, Owner
Conservco
One Washington Ave.
Hyde, PA 16843
(814) 765-6725

7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

7.6 Other provisions:

Contractor to furnish owner with bound hard cover binder of all operation and service manuals, along with all warranty information/documentation on building materials and appliances as required.



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ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
----------	-------	-------

8.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 8.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
---------	-------	-------

8.1.5 The Drawings are as follows, and are dated (as noted below) unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Drawings attached

Number	Title	Date
1 thru 5	Anthony Dorsch, A.I.A.	Sept. 13, 2000
FS-1.0 thru 6.0	Nu-Vu Designs, Inc.	Oct. 20, 2000



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EXHIBIT "A"

October 23, 2000

Article 2 - THE WORK OF THIS CONTRACT

Work performed by owner and/or owner's representative. See floor plan drawing FS-2.0 for item reference.

1. Furnishing/hanging of the following hood/ventilators:
 - A. Item #13 - exhaust ventilator over dishmachine
 - B. Item #18 - exhaust/make-up air ventilator over steam equipment
 - C. Item #26 - exhaust/make-up air ventilator over ovens

Note! All connecting ductwork (Items #13A, 18A and 26A) to be supplied and installed by General Contractor to meet/exceed all codes.

2. Furnishing only the following:
 - A. Item #13B - exhaust fan package (for Item #13)
 - B. Item #18B - exhaust/make-up air fan package (for Item #18)
 - C. Item #26B - exhaust/make-up air fan package (for Item #26)

Note! General Contractor to set fan packages on roof, including roof curbs, and completely install, including furnishing/installing all necessary electrical service, final hook-up, cutting roof openings and finishing roof to make water tight and weatherproof.

3. Furnishing/installing of Item #26C - fire extinguishing system.
4. Furnishing, setting-in-place, installing, and final hook-up of all food service equipment and office/break room furniture, to utility rough-ins furnished by the General Contractor.

Note! Hose bibbs, furnace, hot water tanks, air conditioner, all rest room fixtures, etc. to be furnished and completely installed by the General Contractor.

8.1.6 The Addenda, if any, are as follows:

Number

Date


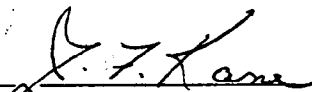
Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

 OWNER (Signature)	 CONTRACTOR (Signature)
<u>PATRICK DAVIS J.P.</u> (Printed name and title)	<u>J.F. KANE, PRES</u> (Printed name and title)

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CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
P.O. Box 1404
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
(814) 765-6725
FAX: (814) 765-2380
E-MAIL:
conservco@clearnet.net

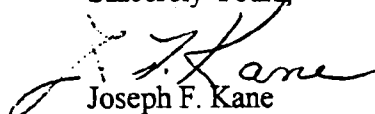
23.	hvac	\$ 14,000.00
24.	furnace	in item # 23
25.	hot water tank	not in contract
26.	air-conditioning	in item # 23

We are also enclosing a list of recent projects indicating their type and cost. The list contains the contact persons name and telephone number. At the end of the reference list is our bank. We will advise Mr. Stiner that you may be contacting him.

Mr. Dorsch has indicated the need to generate additional savings on the project. Most of the construct elements we have included are bare bones. Changing door and window types would save a few dollars. Changing from split face block to regular block would generate a nice reduction.

I apologize for the delay in responding to your request. We have been in Cleveland on a project the last three days. If we can't make contact at my office I can usually be reached via cell phone at 814-592-0980. Thank you.

Sincerely Yours,


Joseph F. Kane

Cc: T. Dorsch via fax



ANTHONY G. DORSCH ARCHITECT A.I.A.

2100 EHRMAN ROAD • CRANBERRY TOWNSHIP, PA 16066-2206
724/776-4666 • FAX 724/538/3452

MEMO:

08-29-00

**MEETING @ RESTAURANT ON 8-28-00 W/
PAT DAVIS - NUTRITION INC.
TONY PIECZYNSKI
LEE MARKOSKY
JOE KANE - CONSERVCO**

DISCUSSED PROJECT - FOLLOWING CONCLUSIONS:

LEAVE STRUCTURE @ 12' TO UNDERSIDE OF ROOF TRUSSES

LEAVE HVAC SYSTEM AS DESIGNED

**CHANGE WALL CONSTRUCTION - STILL 10" GRAY SPLIT FACE - BUT
CHANGE INTERIOR FROM 2" RIGID INSULATION & DRYWALL TO
FOAMED BLOCK CORES AND EPOXY PAINT ON THE BLOCK**

**PROVIDE APPROX. 17' WIDE X 6'-6" HI PANEL OF STAINLESS STEEL BEHIND
STEAM COOKING AREA**

DELETE DOOR ON CART WASH ROOM

**CARPET THE TWO OFFICES ONLY- OTHER FLOOR AREAS TO BE
VINYL COMPOSITION TILE, WITH SHEET GOODS (HEAVY DUTY)
FOR THE WORK AREA FLOOR.**

LOADING DOCK FLOOR - SEALED CONCRETE AS IS THE TRUCK BAY FLOOR

**PROVIDE TRENCH DRAIN IN FRONT OF STEAM COOKING AREA 15" WIDE
X 18" LONG - POLY DRAIN TYPE W/ REMOVABLE GRATES,
GRATES MAX OF 30" LONG**

**PROVIDE EMPTY CONDUIT FROM NEW TRANSFORMER LOCATION -ACROSS
NEW DRIVEWAY TO FUTURE BUILDING - SIZE TO BE DETERMINED.**

INVESTIGATE APPLICABLE FIRE RATING REQUIREMENTS.

**WINDOWS IN WORK AREA TO BE FIXED, OTHER WINDOWS TO BE ANDERSEN
CASEMENT TYPE**

**CEILINGS IN WORK AREA TO BE 2X4 LAY-IN TYP W/ VINYL COVERED
DRYWALL TILE, OTHER CEILING TILE TO BE TEXTURED TYPE
ARMSTRONG GLACIER OR SIMILAR - SUBMIT SAMPLES FOR
APPROVAL**

**CONSERVCO TO SUBMIT CONTRACT BREAKDOWN, REFERENCES, AND
CONSTRUCTION CONTRACT & NO-LIEN AGREEMENT.**

PLEASE REVIEW AND ADVISE OF ANY ERRORS OR OMISSIONS !!!

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
P.O. Box 1404
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
(814) 765-8725
FAX: (814) 765-2380
E-MAIL:
conservco@clearnet.net

September 12, 2000

Mr. Tony Pieczynski
202 South Third Street
West Newton, PA.

Re: Kittanning Commissary

Dear Tony,

We received your fax requesting additon cost breakdown on the aforementioned project. Please be advised that we have rounded the pricing off and in some instances the costs are arbitrary given that we do not do our estimates in the exact same format.

1.	excavation	\$ 6,000.00
2.	temp. Drive	\$ 2,000.00
3.	footer	\$ 10,000.00
4.	concrete floor	\$ 19,000.00
5.	concrete block	\$ 12,000.00
6.	split face block	\$ 45,000.00
7.	sewer line	no in contract
8.	building insulation	\$ 5,000.00
9.	framing	\$ 7,000.00
10.	trusses	\$ 14,000.00
11.	shingles	\$ 14,000.00
12.	interior walls	\$ 5,500.00
13.	interior doors	\$ 2,500.00
14.	exterior doors	\$ 1,500.00
15.	overhead doors	\$ 6,800.00
16.	windows	\$ 3,000.00
17.	plumbing	\$ 4,000.00
18.	restroom fixtures	\$ 2,200.00
19.	lay-in ceiling	\$ 5,000.00
20.	light fixtures	\$ 7,500.00 (allowance)
21.	electrical service	in # 20
22.	telephone	not in contract

EXHIBIT "B"

October 23, 2000

Article 4 - CONTRACT SUM

Page 1

Contract with price breakdown, alternates and allowances for overhead/profit on change orders:

1.	Original base bid cost breakdown from Conservco dated September 12, 2000 - part of Exhibit "B" - pages 2 & 3 attached	\$ 186,000.00
2.	Add asphalt paving	\$ 18,000.00
3.	Add telephone conduit	\$ 1,200.00
4.	Add for two (2) 50-gal. each w/64 GPH recovery - glass lined - 63,000 BTU - 63" H x 20" dia. hot water heaters (\$500.00 each)	\$ 1,000.00
5.	Add for complete air conditioning	\$ 8,250.00
	Add for sewer lines (60'-0" @ \$30.00/ft.)	\$ 1,800.00
7.	Add for normal water management facility. We will negotiate any additional cost with conservation district supervision/Conservco Co.	\$ 2,500.00
8.	Landscaping to be by owner	\$ -0-
	Total contract	\$ 218,750.00

Special Note! To the best of our understanding, sales tax is exempt from all items, other than the shell of the structure. The shell is defined as floor, walls and roof. Conservco to reduce the above-noted cost breakdowns, as required, to reflect sales tax on those areas.

Note! See page 4 of Exhibit "B" for alternates, which are included in the above-noted cost breakdowns. Letter from Anthony Dorsch dated August 29, 2000.

Form No. 145 N - Non Lien Agreement (Waiver)
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For Sale by P. O. Nally Co., Law Book Publishers
421 Fourth Avenue, Pittsburgh, Pa. 15219

This Agreement, made and entered into this 20th day of October, 2000, by and between CONSERVCO, INC. of _____, hereinafter designated as Contractor, and NUTRITION, INC. hereinafter designated as Owner.

WITNESSETH:

That by a certain contract, of even date herewith, the Contractor, in consideration of the covenants to be performed and payments to be made by or on account of the Owner, did covenant and agree to furnish all labor and materials and perform all work necessary to complete in the most substantial manner and to the satisfaction and acceptance of the Owner.

NOW THEREFORE, the Contractor, in consideration of the sum of \$218,750.00 Dollar and of the covenants and provisions in said contract contained, does hereby covenant, stipulate and agree, and it is also covenanted, stipulated and agreed in the above recited contract, as follows:

Construct a warehouse/office building at property known as Lot #3, in the Manor Township Business Park, Armstrong County, PA.

That there shall be no lien or right to file a lien against the structures or improvements contracted for in the above recited contract, or any part or parts thereof, or the site thereof, for work or labor done or materials furnished in the performance of the work embraced in said recited contract, or any part or parts thereof, or extra work thereunder or changes made therein; and that no such lien or claim shall be filed, or in any way attempted to be enforced by, or on behalf of the contractor, or by or on behalf of, any sub-contractors, material men or other persons concerned in or about the performance of the work embraced in said contract; nor shall there be any claim for work or materials against the Owner, his heirs, executors, administrators or assigns, other than the legal claim of the Contractor as provided in said contract.

It is the full intent of the Contractor, for himself and for any sub-contractors or material men claiming for themselves, or by, through or under the contract, that the right to file a mechanics' lien, under the provisions of Acts of Assembly in such cases made and provided, for work done or materials furnished in and about the erection, construction or repairs of the building and improvements above described, is hereby waived.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first written.

Witnesses

CONSERVCO, INC.

BY:

JOSEPH F. KANE, President

BY:

Edward W. Caswell, President



"A Nutritional View of Food Service Facility Design"

October 30, 2000

Mr. Joe Kane
Conservco General Contractors
P. O. Box 1404
Clearfield, PA 16830

**RE: Nutrition, Inc. - New Commissary
Ford City, PA 16226
Revisions to Contract**

Good morning, Joe:

Please find a copy of our contract enclosed, which shows the revisions we all made at our meeting in West Newton on Monday, October 23, 2000. The revisions are noted and include the following:

Paragraph 3.3: Changing the amount of days to complete building from 120 days to 150 days.

Paragraph 5.1.3: Changing the day from the 15th to the 30th. We are to make your payment of the same month and not later than 15 days after the architect receives the application for payment.

Paragraph 5.1.6: Changing the retainage from 15% to 10% on completed work, and the same percentage on materials delivered and stored.

Paragraph 7.2: Changing the interest allowed from 0% to 6% on payments due and unpaid under the contract.

Should you have any questions, please call.

Very truly yours,

NU-VU DESIGNS, INC.

Tony Pieczynski
Director of Facilities Design

TP/sll

Enclosure

cc: Pat Davis - Tony Dorsch - Don Baker

SEC BY: SECURITY SETTLEMENT

724 864 9193;

10/19/00 1:44PM; JmFax #99; Page 2/4

Form N-117 No. 545 N - Non Lien Agreement (Waiver)
© Copyright 1977 P. O. Nally Company

For Sale by P. O. Nally Co., Law Blank Publishers
427 South Avenue, Pittsburgh, Pa. 15219

This Agreement, made and entered into the 20th day of October, 2000
between CONSERVCO, INC. of _____, hereinafter designated
as Contractor, and NUTRITION, INC. of _____
hereinafter designated as Owner.

WITNESSETH:

That by a certain contract, of even date herewith, the Contractor, in consideration of the covenants to be performed and payments to be made by or on account of the Owner, did covenant and agree to furnish all labor and materials and perform all work necessary to complete in the most substantial manner and to the satisfaction and acceptance of the Owner.

NOW THEREFORE, the Contractor, in consideration of the sum of \$218,750.00 Dollar and of the covenants and provisions in said contract contained, does hereby covenant, stipulate and agree, and it is also covenanted, stipulated and agreed, in the above recited contract, as follows:

Construct a warehouse/office building at property known as Lot #3, in the Manor Township Business Park, Armstrong County, PA.

That there shall be no lien or right to file a lien against the structures or improvements contracted for in the above recited contract, or any part or parts thereof, or the site thereof, for work or labor done or materials furnished in the performance of the work embraced in said recited contract, or any part or parts thereof, or extra work thereunder or changes made therein; and that no such lien or claim shall be filed, or in any way attempted to be enforced by, or on behalf of, the contractor, or by or on behalf of, any sub-contractors, material men or other persons concerned in or about the performance of the work embraced in said contract; nor shall there be any claim for work or materials against the Owner, his heirs, executors, administrators or assigns, other than the legal claim of the Contractor as provided in said contract.

It is the full intent of the Contractor, for himself and for any sub-contractors or material men claiming for themselves, or by, through or under the contract, that the right to file a mechanics' lien, under the provisions of Acts of Assembly in such cases made and provided, for work done or materials furnished in and about the erection, construction or repairs of the building and improvements above described, is hereby waived.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first written.

Witnesses:

CONSERVCO, INC.

BY:

Joseph F. Kane (SEAL)
JOSEPH F. KANE, President

BY:

NUTRITION, INC.

Edward W. Caswell (SEAL)
Edward W. Caswell, President

(SEAL)

10/19/00 13:31

TX/RX NO.2882

P.002



February 20, 2002

VIA UPS NEXT DAY AIR

Mr. Joseph F. Kane
Conservco General Contractors
1 Washington Avenue
Hyde, PA 16843

Re: Clearfield, PA

Dear Mr. Kane:

Pursuant to your request, enclosed is a copy of the General Conditions of the Contract for Construction, AIA Document A201 - 1997, 1997 Edition - Electronic Format.

If you have any questions or need further information, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Nina M. Humes".

Nina M. Humes
Legal Department Secretary

Enclosure

*One Corporate Exchange
25825 Science Park Drive
Suite 355
Beachwood, Ohio 44122
216 / 464-6626
Fax: 216 / 464-6346
Legal Fax: 216 / 595-2472*



General Conditions of the Contract for Construction

**AIA Document A201 - 1997
1997 Edition - Electronic Format**

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

This document has been approved and endorsed by The Associated General Contractors of America.

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ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of

numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION

1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in

the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be

considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor

shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other

documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing

portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such

unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.10 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

4.4.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

4.4.6 When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

4.5 MEDIATION

4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.6 ARBITRATION

4.6.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.

4.6.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.6.3 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.6.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor

in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Other until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their

respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to

complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if

required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.

11.4 PROPERTY INSURANCE

11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.4.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site

by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

AIA DOCUMENT A201-GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION - 1997 EDITION - AIA - COPYRIGHT 1997 - THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, D.C. 20006-5292. WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced without violation until the date of expiration as noted below.

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3** because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4** the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

APPLICATION AND CERTIFICATE FOR PAYMENT

PAGE ONE OF 2 PAGES

TO(OWNER) PROJECT: APPLICATION NO: **FOUR FIVE**
 Nutritions Inc. New Building

FROM (CONTRACTOR) PERIOD TO: 09-20-01
 Conservco ENGINEER
 Dorsch Arch. PROJECT NO:

CONTRACT FOR: CONTRACT DATE: 11-01-00

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY			
Change Orders approved in previous months by Owner			
Approved this Month		Total	DEDUCTIONS
Number	Date Approved		
		</	

The undersigned Contractor certifies that to the best of the contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

Application is made for Payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached

1 ORIGINAL CONTRACT SUM	\$218,750.00
2 Net change by Change Orders	\$10,000.00
3 CONTRACT SUM TO DATE)	\$228,750.00
4 TOTAL COMPLETE & STORED TO DATE (Column G on G703)	\$171,000.00
5 RETAINAGE	
A. % of Completed work (Column D + E on (G703)	\$17,100.00
B. % of Stored Material Total Retainage (Line 5a + 5b or Total in Column I of G703	\$0.00

6 TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)	\$17,100.00
	\$153,900.00

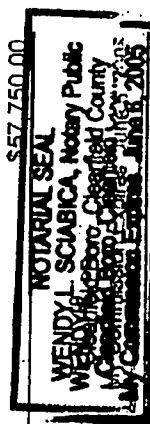
7 LESS PREVIOUS CERTIFICATES FOR PAYMENT

8 CURRENT PAYMENT DUE (Line 6 from previous)	\$132,350.00
9 BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 4)	\$34,785.00

State of: County of: day of

Subscribed and sworn to before me this day of
 Notary Public:

My Commission expires:



ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance without he Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$
 (Attach explanation if amount certified differs from the amount applied for.)

ENGINEER

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS
P.O. Box 1404
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
(814) 765-8725
FAX: (814) 765-2380
E-MAIL:
conservco@clearnet.net

February 5, 2002

Mr. Pat Davis
202 South Third Street
West Newton, PA. 15089

Re: Ford City Commissary

Dear Mr. Davis

Enclosed please find the final invoice for the aforementioned project.
We have calculated the balance as follows:

Original Contract Amount	\$ 218,750.00
Change order # 1 for sediment pond	\$ 10,000.00
Change order # 2 (copy enclosed)	\$ 11,600.00
Change order # 3 (copy enclosed)	\$ 14,223.00
Change order # 4 (Copy enclosed)	(\$ 22,500.00)

Final Contract amount	\$ 232,073.00
Less payments	(119,115.00)
Contract balance	\$ 112,958.00
Interest on past due balance \$ 34,785.00	\$1,043.55

AMOUNT DUE \$ 114,001.55

Cc: Naddeo



James A. Naddeo, Esquire
211 1/2 East Locust Street
PO Box 552
Clearfield, PA 16830

814-765-1601

814-765-8142 fax

FEE SCHEDULE

Office Conference:	\$ 75.00 minimum fee
Hourly Fee	\$ 150.00 per hour
Associate Time	\$ 75.00 per hour
Paralegal Time	\$ 35.00 per hour

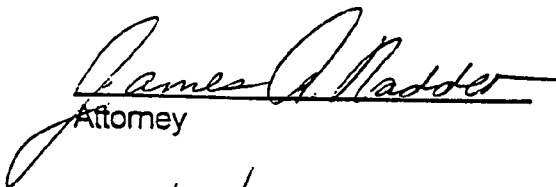
Court Time:	\$ 200.00 per hour
with minimum	\$ 250.00 per
Court includes: Magistrates,	appearance
Administrative Bodies and other	
Tribunals.	

Telephone Calls:	\$ 25.00 flat fee
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Letters:	\$ 35.00 flat fee
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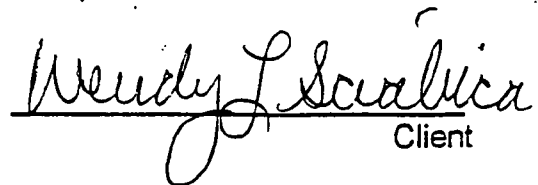
Research:	\$ 50.00 per hour
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Accepted:


Attorney

5/15/01
Date

Accepted:


Client

*The Pennsylvania Canon of Ethics for Attorneys requires that I provide you written notification of my fee structure.

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED

APR 05 2002

W
William A. Shaw
Prothonotary

Naddo

pd 80.00

lcc atty.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12338

BJR, INC., d/b/a CONSERVCO

02-514-CD

VS.

NUTRITION, INC.

COMPLAINT

SHERIFF RETURNS

NOW APRIL 9, 2002, CHRIS SCHERER, SHERIFF OF WESTMORELAND COUNTY
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON NUTRITION, INC., DEFENDANT.

NOW APRIL 23, 2002 SERVED THE WITHIN COMPLAINT ON NUTRITION, INC.,
DEFENDANT BY DEPUTIZING THE SHERIFF OF WESTMORELAND COUNTY.
THE RETURN OF SHERIFF SCHERER IS HERETO ATTACHED AND MADE A PART
OF THIS RETURN STATING THAT HE SERVED JOAN WAGNER, MGR.

Return Costs

Cost	Description
27.89	SHFF. HAWKINS PAID BY: ATTY.
38.20	SHFF. SCHERER PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

76.09

FILED

012:12
MAY 09 2002

William A. Shaw
Prothonotary

Sworn to Before Me This

9th Day Of May 2002
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

PKC

DATE 7-15-09
RECEIPT 13124
PAGE 3

CASE NO. 02-574-CD

☐ SUMMONS
☐ SEIZURE OR POSSESSION
☒ NOTICE/COMPLAINT (11)
☐ REVIVAL OR SCI FA
☐ INTERROGATORIES
☐ EXECUTION, GARNISHEE
☐ HANDBILL
☐ NOTICE OF SALE/DEBTORS RIGHT
☐ OTHER
☐ LETTER MAILED

ATTY: WILLIAM A. HARRIS
ADDRESS: 2117 S. 5th St
Clearfield, Pa. 16830
PHONE: 814 765-1601
DATE: _____

☐ **PERSON IN CHARGE** ☐ **PERSONAL ONLY** ☐ **DEPUTIZE**
☐ **CERT. MAIL** ☐ **POST** ☐ **OTHER**
☐ **SEIZE & STORE**

I hereby CERTIFY and RETURN that on the 23 day of APRIL, 2002, at 8:00 O'clock, (A.M./P.M.) Address Above/Address Below, County of Westmoreland, Pennsylvania

☐ Defendant(s) personally served. _____

☐ Adult in charge of Defendant's residence at time of serve (name & relationship) _____

☒ Manager/other person authorized to accept JOHN WAGNER

☐ Agent or person in charge of Defendant(s) office or usual place of business. _____

☐ Other _____

☐ Property Posted _____

Defendant not found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other _____
☐ Certified Mail _____ ☐ 1st Class Mail _____ ☐ Ordinary Mail/Certificate of Mailing _____
 ATTEMPTS _____ / _____ / _____ / _____

DEPUTY Sgt

Westmoreland County Costs	DS/Notary	Deputized County Costs	Costs Due	Refund	Total Costs (West. Co. Only)
\$ 36.20	\$ 2.00	\$	\$	\$	\$ 38.20

NOW: _____ 20____ I, SHERIFF OF WESTMORELAND COUNTY, PA do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law.

CK# _____ \$ _____

SHERIFF

AFFIRMED and subscribed to before me this 3rd Day of May 20 02

Notarial Seal
Rosemary Spangler, Notary Public
Greensburg, Westmoreland County
My Commission Expires Dec. 19, 2005

Rosemary Spangler
Notary Public/Prothonotary
Prothonotary (White Copy) Attorney (Ca

Expires Dec. 19, 2005

Chris Schena
Signature of Sheriff (Westmoreland County)
Sheriff (Pink Copy) Deputized Sheriff (C

Date
430.02
Date



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC. d/b/a CONSERVCO

TERM & NO. 02-514-CD

VS

NUTRITION, INC.

SERVE BY: 5/5/02

DOCUMENT TO BE SERVED:
COMPLAINT

MAKE REFUND PAYABLE TO:

JAMES A. NADDEO, Attorney

SERVE: NUTRITION, INC

ADDRESS: 202 S Third St., West Newton, Pa. 15089

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF WESTMORELAND COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 9th Day of APRIL 2002.

Respectfully,


CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO,

Plaintiff,

v.

NUTRITION, INC.,

Defendant.

CIVIL DIVISION

No. 02-514-CD

**ANSWER, NEW MATTER AND
COUNTERCLAIM**

Filed on Behalf of:
Defendant, Nutrition, Inc.

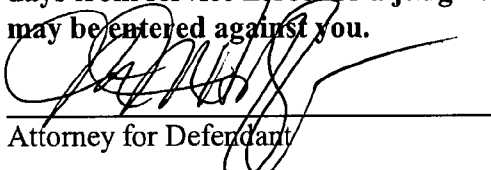
Counsel of Record for This Party:

Matthew M. Hoffman
Pa. I.D. # 43949

Hoffman & McCann, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
(412) 288-9330

TO: PLAINTIFF

**You are hereby notified to file a written
Response to the following New Matter
and Counterclaim within twenty (20)
days from service hereof or a judgment
may be entered against you.**



Attorney for Defendant

FILED

MAY 29 2002

m/150120CC
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 02-514-CD
)	
v.)	
)	
NUTRITION, INC.,)	
)	
Defendant.)	

DEFENDANT'S ANSWER, NEW MATTER AND COUNTERCLAIM

NOW COMES Defendant, Nutrition, Inc. ("Nutrition"), by and through its counsel, Matthew M. Hoffman and Hoffman & McCann, P.C., and submits the within Answer, New Matter and Counterclaim, averring as follows:

1. Admitted.
2. Admitted.
3. Admitted.

Count I

4. Admitted.

5. The averments set forth in Paragraph 5 of the Complaint are admitted in part and denied in part. It is admitted that the documents appended to the Complaint as Exhibit "A" constitute a portion of the written contract between Plaintiff and Nutrition. It is denied that the documents appended to the Complaint as Exhibit "A" constitute the entirety of the parties' contract. To the contrary, the parties' contract also includes several architectural drawings.

6. Admitted.

7. The averments set forth in Paragraph 7 of the Complaint are admitted in part and denied in part. It is admitted that, during the course of construction, Plaintiff submitted applications for payment, portions of which were for work that was completed. It is denied that all applications for payment submitted by Plaintiff accurately reflected the scope of work completed.

8. Admitted.

9. The averments set forth in Paragraph 9 of the Complaint are admitted in part and denied in part. It is admitted that Nutrition has not made payment to Plaintiff as requested by the application for payment submitted on September 20, 2001. It is denied, however, that Plaintiff was entitled to payment as requested. By way of further response, on or about September 27, 2001, Plaintiff informed Nutrition that the requested payment should not be made if Plaintiff had not completed its work by October 8, 2001. Thereafter, Plaintiff did not complete the construction work due under the parties' agreement.

10. The averments set forth in Paragraph 10 of the Complaint are admitted in part and denied in part. It is admitted that, during October and November 2001, Plaintiff performed certain work on the project. It is denied that Plaintiff completed the construction work due under the parties' agreement. It is admitted that Plaintiff performed certain work not within the scope of the parties' agreement, but it is denied that the value or cost of such extra work was \$57,750.

11. The averments set forth in Paragraph 11 of the Complaint are admitted in part and denied in part. It is admitted that Plaintiff submitted an invoice dated February 5, 2002, as appended to the Complaint as Exhibit "C." It is denied that Plaintiff is entitled to payment of the amounts invoiced. To the contrary, due to Plaintiff's breach of the parties' agreement, Nutrition has incurred costs exceeding the contract balance in order to complete the work to have been performed by Plaintiff.

12. The averments set forth in Paragraph 12 of the Complaint are admitted in part and denied in part. It is admitted that Nutrition has refused to pay the sums claimed by Plaintiff in its invoice dated February 5, 2002. It is denied, however, that Plaintiff is entitled to payment as it has requested.

WHEREFORE, Defendant, Nutrition, Inc., respectfully demands judgment in its favor and against Plaintiff and that Defendant be granted such other and further relief as may be just and appropriate.

Count II

13. Nutrition incorporates the responses and averments set forth above in Paragraphs 1 through 12, inclusive, as if fully set forth at length herein.

14. The averments set forth in Paragraph 14 of the Complaint include conclusions of law, as to which no response is required, said averments being denied by operation of the Pennsylvania Rules of Civil Procedure. To the extent a response is deemed required, the averments set forth in Paragraph 14 are denied. To the contrary, Nutrition provided Plaintiff with written notice that Plaintiff was in substantial breach of the parties' contract.

15. After reasonable investigation, Nutrition is without sufficient information or knowledge as to the truth of the averments set forth in Paragraph 15 of the Complaint and, therefore, such averments are denied.

16. The averments set forth in Paragraph 16 of the Complaint include conclusions of law, as to which no response is required, said averments being denied by operation of the Pennsylvania Rules of Civil Procedure. To the extent a response is deemed required, the averments set forth in Paragraph 16 are denied.

WHEREFORE, Defendant, Nutrition, Inc., respectfully demands judgment in its favor and against Plaintiff and that Defendant be granted such other and further relief as may be just and appropriate.

New Matter

By way of further response and defense, Defendant, Nutrition, Inc., avers the following New Matter:

17. The Complaint fails to set forth any cause of action against Nutrition for which relief may be granted.

18. While venue of this action in Clearfield County is technically appropriate, a change of venue to Armstrong County is necessitated for the convenience of the parties and witnesses, access to sources of proof and the possibility of a view of the premises.

19. The parties' agreement requires submission of Plaintiff's claims to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

20. Plaintiff's claims are barred by failure of consideration.

21. Plaintiff's claims are barred by Plaintiff's substantial and material breach of the parties' written agreement.

22. Plaintiff is not entitled to the sums claimed by reason of non-performance of its contractual obligations.

23. Plaintiff's claims are barred by the doctrines of estoppel and waiver.

24. On or about September 27, 2001, Plaintiff informed Nutrition that further payments need not be made if Plaintiff had not completed its work by October 8, 2001. Thereafter, Plaintiff did not complete the construction work due under the parties' agreement.

25. Plaintiff has failed or refused to complete its obligations under the parties' written agreement.

26. The monies withheld from payment to Conservco were necessary for the completion of the work that Conservco failed or refused to perform.

27. The monies claimed by Conservco were withheld by Nutrition in good faith and bear reasonable relation to, and in fact are less than, the value of Nutrition's claims against Conservco.

Counterclaim

28. Nutrition incorporates the responses and averments set forth above in Paragraphs 1 through 27, inclusive, as if fully set forth at length herein.

29. The written agreement between Nutrition and Conservco required that Substantial Completion of the construction of the commissary building was to be achieved by Conservco within one hundred fifty (150) days from the date of commencement. The date of commencement set forth in the contract was October 24, 2000. Consequently, Conservco was obligated to achieve Substantial Completion of the project by June 1, 2001.

30. During the course of construction, Conservco persistently failed to furnish enough properly skilled workers or sufficient materials to complete the project.

31. Conservco failed to achieve Substantial Completion of the project by June 1, 2001.

32. The failure and/or refusal of Conservco to complete the project by June 1, 2001, was a substantial and material breach of the parties' construction agreement.

33. As of September 27, 2001, Conservco still had failed to achieve Substantial Completion of the project. At a site meeting conducted on that date, Joseph Kane, an agent of Conservco, assured that the project would be substantially completed by October 8, 2001, stating further that, if the project was not substantially completed by that date, Nutrition should withhold any further payment.

34. As of October 8, 2001, Conservco still had failed to achieve Substantial Completion of the project in breach of the previous assurances of Conservco.

35. By letter dated November 7, 2001, Nutrition provided written notice to Conservco, a copy of which is appended hereto as Exhibit "A," advising Conservco that it was in

substantial breach of the parties' agreement and that the agreement would be terminated for cause in the event Conservco failed or refused to complete the project within seven days.

36. Notwithstanding the written notice of breach, Conservco continued to fail or refuse to complete the project.

37. Due to Conservco's breach of the parties' agreement, by letter dated November 27, 2001, Nutrition notified Conservco that it was terminating the parties' agreement.

38. As a consequence of Conservco's breach of the parties' agreement, Nutrition was required to retain other contractors and deploy its own personnel to complete most of the work for which Conservco had been contracted to perform and to correct non-conforming work completed by Conservco, resulting in the expenditure by Nutrition of the sum of \$120,515 for work completed by other contractors and the sum of \$2,000 for the deployment of its own personnel.

39. In addition to the foregoing there remains work that was uncompleted by Conservco and work that was non-conforming for which Nutrition will have to incur additional expenses to complete or correct, including:

- (a) the completion of rough grading around the perimeter of the building;
- (b) the correction and completion of a storm water detention pond;
- (c) the repair and completion of paving around the building;
- (d) the repair of cracking in exterior concrete masonry unit walls; and
- (e) the correction of plumbing lines within the men's restroom of the building.

The cost of completion and correction of such work is undetermined at this time, but is estimated to require the additional expenditure by Nutrition of approximately \$20,000.

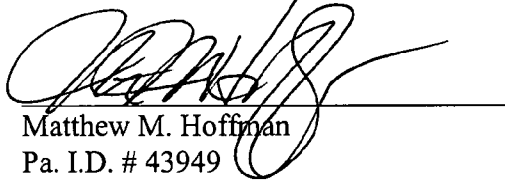
40. As a further consequence of Conservco's breach of the parties' agreement, Nutrition was required to lease substitute facilities between June 2001 and January 2002 at a cost of \$16,100.

41. By reason of Conservco's substantial and material breach of the parties' agreement, Nutrition is entitled to the recovery of its direct and consequential damages, including its prior expenditures beyond the unpaid contract balance necessary to complete the work, the future expenditures necessary to complete and/or correct the work and the additional lease expenses incurred due to the lack of completion of the project.

42. In the event Nutrition is determined to be the substantially prevailing party in this proceeding, Nutrition is entitled to payment of its reasonable attorney's fees and expenses in accordance with Section 12 of the Contractor and Subcontractor Payment Act, 73 P.S. § 512.

WHEREFORE, Nutrition, Inc., respectfully demands judgment in its favor and against Conservco in an amount exceeding \$25,000, together with interest, costs and attorney's fees and such other and further relief as may be appropriate and just.

Respectfully submitted,



Matthew M. Hoffman
Pa. I.D. # 43949

Hoffman & McCann, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
(412) 288-9330

Attorneys for Defendant,
Nutrition, Inc.

Dated: May 24, 2002

HOFFMAN & McCANN, P.C.

1400 ALLEGHENY BUILDING • 429 FORBES AVENUE
PITTSBURGH, PENNSYLVANIA 15219
TELEPHONE 412-288-9330 • FACSIMILE 412-288-9331

MATTHEW M. HOFFMAN
ATTORNEY AT LAW

E-MAIL: mhoffman@h-mlaw.net

November 7, 2001

VIA CERTIFIED MAIL

Joseph F. Kane
Conservco General Contractors
P.O. Box 1404
Clearfield, PA 16830

Re: Nutrition, Inc. Commissary / Manor Twp. Business Park

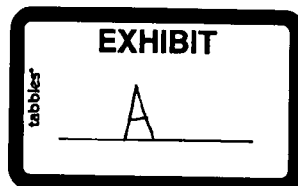
Dear Mr. Kane:

This office represents Nutrition, Inc. By the terms of the Contract for Construction between Nutrition and Conservco, the commissary building was to be substantially completed by June 1, 2001. On several prior occasions, Nutrition expressed to Conservco its concerns with the lack of completion of the building. Nonetheless, as of this date, Conservco continues in its failure to furnish sufficient tradesmen to the site or take appropriate efforts to remedy the breach of its contractual obligation for the completion of the building. As you have previously been advised, Nutrition made commitments with its clients several months ago based upon the anticipated occupancy of this building. Because of Conservco's persistent neglect of the project, Nutrition cannot further endure delay in the completion of the building.

On November 2, 2001, Nutrition received certification from the architect, Anthony G. Dorsch, stating that sufficient cause exists to terminate your contract with Nutrition pursuant to Article 14.2 of the General Conditions to the Contract for Construction because:

1. Conservco has persistently refused or failed to furnish enough properly skilled workers or proper materials to complete the project; and
2. Conservco is guilty of a substantial breach of the parties' agreement in grossly exceeding the Contract Time stipulated at Paragraph 3.3 of the Contract for Construction.

Therefore, pursuant to Paragraph 14.2.2 of the General Conditions, you are hereby given seven (7) days written notice of Nutrition's intent to terminate the Contract for Construction. If the project is not substantially completed within this seven-day period, Nutrition will contract with others to complete the project and pursue legal recourse against Conservco if the unpaid balance of your contract is insufficient to



November 7, 2001

complete the project. Accordingly, if you desire to avoid the termination of the contract and the exposure to potential liability, it is imperative that you complete this project within the next seven days.

Sincerely,


Matthew M. Hoffman

MMH/wsp

cc: Pat Davis
Tony Pieczynski
Anthony Dorsch

05/24/2002 07:25 /24-872-6206
05/21/02 14:03 FAX 4123889381NU-VU DESIGN/F.M.D.
HUFFMAN & ECLANN

PAGE 02

VERIFICATION

I, Patrick Davis, on behalf of Nutrition, Inc., have read the foregoing Answer, New Matter and Counterclaim as prepared by counsel. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

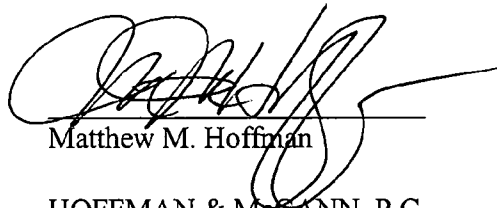
Patrick Davis
Patrick Davis

5/24/2002
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer, New Matter and has been served upon the following by first class mail, postage prepaid, this 24th day of May, 2002:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830

A handwritten signature in black ink, appearing to read "Matthew M. Hoffman", is written over a horizontal line.

Matthew M. Hoffman

HOFFMAN & McCANN, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219
(412) 288-9330

Attorneys for Defendant,
Nutrition, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

NUTRITION, INC., a
Pennsylvania Corporation
Defendant,

No. 02 - 514 - CD

Type of Pleading:

**ANSWER TO NEW MATTER
AND COUNTERCLAIM**

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

JUN 10 2002

013140/1cc atty Naddeo
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *

v.

No. 02 - 514 - CD

NUTRITION, INC., a *
Pennsylvania Corporation, *
Defendant, *

ANSWER TO NEW MATTER AND COUNTERCLAIM

NOW COMES the Plaintiff, BJR, Inc., d/b/a Conservco,
and by its attorney, James A. Naddeo, Esquire, sets forth the
following:

17. States a conclusion of law to which no answer is
required.

18. States a conclusion to which no answer is
required. To the extent that an answer may be required, it is
alleged that while Armstrong County may be convenient to the
Defendant, it is by no means convenient to Plaintiff.

19. Denied. On the contrary, it is alleged that the
arbitration provisions contained in the agreement deal with
quality of work and not with the issue of payment. In further
answer thereto, it is denied that any arbitration is in

conformity with the Construction Industry Arbitration Rules of the American Arbitration Association.

20. States a conclusion of law to which no answer is required.

21. States a conclusion of law to which no answer is required.

22. States a conclusion to which no answer is required.

23. States a conclusion of law to which no answer is required.

24. Denied. On the contrary, it is alleged that as of September 27, 2001, Plaintiff had an outstanding invoice owed in the amount of \$34,785.00 which Defendant failed and/or refused to pay. In further answer thereto, it is alleged that Plaintiff informed Defendant that if the statement was not paid, Plaintiff's employees would be removed from the job site. Finally, it is alleged that Defendant did not pay causing Plaintiff to terminate the contract with Defendant.

25. Admitted as stated but in further answer thereto, Plaintiff incorporates its answer to Paragraph 24 by reference and makes it a part hereof.

26. Denied. On the contrary, it is alleged that at the time Plaintiff terminated its contract with Defendant because of Defendant's failure to pay Plaintiff's invoice, there

was approximately six (6) days work left to fully complete construction.

27. States a conclusion to which no answer is required. To the extent that an answer may be required, said allegation is generally denied.

ANSWER TO COUNTERCLAIM

28. Plaintiff incorporates its answers to Paragraphs 17 through 27 of Defendant's New Matter and makes them a part hereof.

29. Admitted as stated but in further answer thereto it is alleged that construction was terminated in December 2000 until the second week of April 2001 upon instructions received from Defendant's architect, which period of delay was not the fault of Plaintiff.

30. Denied. On the contrary, it is alleged that Conservco at all times had sufficient workers and materials at the job site.

31. Admitted. In further answer thereto it is alleged that the project was not completed as scheduled as a result of the instructions received from Defendant's architect who closed the project for a substantial period of time due to weather conditions.

32. Denied. In answer thereto Plaintiff incorporates its answer to Paragraph 31 of Defendant's Counterclaim by reference and makes it a part hereof.

33. Admitted in so far as it states that the project was not substantially completed by September 27, 2001, for the reasons previously set forth herein. It is denied that Joseph Kane assured Defendant that the project would be substantially completed by October 8, 2001, or that he authorized Nutrition to withhold payment of Conservco's invoice of September 19, 2001, but to the contrary demanded payment of said invoice if the job was to continue.

34. Admitted in so far as it states that substantial completion of the project had not been completed by October 8, 2001. It is denied, however, that Plaintiff gave Defendant any assurances that substantial completion could be accomplished by that date.

35. Admitted as stated but in further answer thereto it is alleged that Plaintiff was not in breach of the contract as of the date of November 7, 2001. On the contrary, Defendant had breached the contract for failure to pay Plaintiff's invoice of September 19, 2001.

36. Denied. On the contrary, it is alleged that Plaintiff continued to work on the Defendant's project until mid

November 2001 despite its refusal to pay Plaintiff's invoice of September 20, 2001.

37. Denied in so far as it alleges that Plaintiff was in breach of the parties' agreement. It is admitted, however, that a letter was directed to Plaintiff by Defendant dated November 27, 2001.

38. Denied in so far as it alleges that Plaintiff was in breach of the parties' agreement and to the contrary, it is alleged that Defendant was required to retain a contractor to complete the work as a direct result of its breach of contract to Plaintiff by failing to pay invoices as scheduled. In further answer thereto, the remainder of Defendant's allegation is denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

39. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

40. Denied in so far as it alleges that Conservco breached its agreement with Defendant. In further answer thereto, it is alleged that the parties' contract specifically excludes recovery of ancillary or consequential damages by either party.

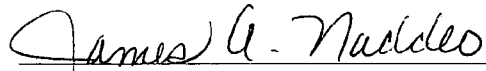
41. Denied. On the contrary, it is alleged that Plaintiff at no time committed a material breach of the parties'

agreement. To the contrary, said agreement was breached by Defendant for non-payment of Plaintiff's invoice of September 20, 2001. In further answer thereto, it is alleged that the parties' agreement specifically waives claim by either party for consequential damages.

42. States a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff respectfully requests that Defendant's Counterclaim be dismissed.

Respectfully submitted,

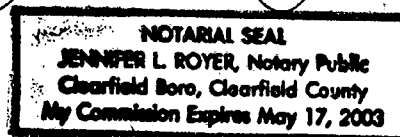


James A. Naddeo, Esquire
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)
)
) ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared JOSEPH F. KANE, who being duly sworn according to law, deposes and states that he is the President of BJR, Inc., t/d/b/a Conservco, and that as such officer he is authorized to execute this Affidavit and further that the facts set forth in the foregoing Answer to New Matter and Counterclaim are true and correct to the best of his knowledge, information and belief.

SWORN and SUBSCRIBED before me this 10th day of June 2002.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

NUTRITION, INC., a
Pennsylvania Corporation
Defendant,

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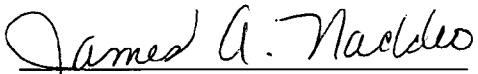
No. 02 - 514 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Plaintiff's Answer to New Matter and Counterclaim filed in the above-captioned action was served on the following person and in the following manner on the 10th day of June, 2002:

First-Class Mail, Postage Prepaid

Matthew M. Hoffman, Esquire
HOFFMAN & McCANN, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219


James A. Naddeo
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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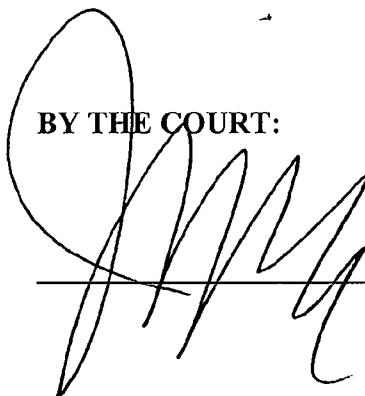
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO,)	CIVIL DIVISION
)	
Plaintiff,	)	No. 02-514-CD
)	
v.)	
)	
NUTRITION, INC.,)	
	)	HEARING DATE
Defendant.)	


ORDER OF COURT

AND NOW, this 25th day of June, 2002, it is hereby ORDERED and
DECREED that this matter is scheduled for Hearing on the 5 day of Sept
2002 at 1:30 P.m. at Courtroom No. 1,
Clearfield
~~Armstrong~~ County, Pennsylvania.

BY THE COURT:


_____, J.

FILED

JUN 25 2002
019:1611cc atty Stach
William A. Shaw
Prothonotary 

M/1:20/ICC atty Stach
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 02-514-CD
)	
v.)	
)	
NUTRITION, INC.,)	
)	
Defendant.)	

DEFENDANT'S PETITION FOR CHANGE OF VENUE

NOW COMES Defendant, Nutrition, Inc. ("Nutrition"), by and through its counsel, Hoffman & McCann, P.C., and submits the within Petition for Change of Venue, averring as follows:

1. Plaintiff, BJR, Inc. d/b/a Conservco ("Conservco") initiated this action by the filing of a Complaint in the Court of Common Pleas of Clearfield County.
2. Conservco maintains its principal place of business within Clearfield County, Pennsylvania.
3. Nutrition maintains its principal place of business within Westmoreland County, Pennsylvania. Nutrition is engaged in the business of operating and/or managing food service operations for institutional and governmental clients throughout the Commonwealth of Pennsylvania. Presently, Nutrition provides food service management services for two accounts whose facilities are located within Clearfield County.
4. Conservco entered into an agreement with Nutrition to construct a commissary facility on property owned by Nutrition in Ford City, Armstrong County, Pennsylvania.

5. Conservco performed a portion of the construction work required by its construction contract with Nutrition, but failed to complete the construction work for which it had contracted to perform and provide. By its Complaint, Conservco seeks to recover sums that Nutrition refused to pay arising from the parties' construction agreement. Nutrition has asserted a counterclaim seeking to recover sums expended by Nutrition to complete the work not performed or properly performed by Conservco.

6. Conservco's Complaint and Nutrition's counterclaim allege causes of action relating exclusively to the construction project in Armstrong County.

7. Although venue in Clearfield County is technically permitted under the Pennsylvania Rules of Civil Procedure, the only connection of the parties or the action to Clearfield County is that Plaintiff's principal place of business is located there.


8. Pursuant to Pa. R.C.P. 1006(d)(1), the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

9. Under the doctrine of *forum non conveniens* Armstrong County is the more appropriate forum to adjudicate this matter for the following reasons:

- a. The construction project is located entirely in Armstrong County.
- b. A view of the premises located in Armstrong County is likely to be required.
- c. The sources of proof are in Armstrong County.
- d. The site manager is located in Armstrong County.
- e. Clearfield County has no real interest in the litigation.

WHEREFORE, Defendant respectfully requests that this Honorable Court issue a change of venue to the Court of Common Pleas of Armstrong County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Isobel Storch', is written over a horizontal line.

Isobel Storch
Pa. ID. #30811

Matthew M. Hoffman
Pa. ID #43949

Hoffman & McCann, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, Pa 15219
(412) 288-9330

Attorneys for Defendant,
Nutrition, Inc.

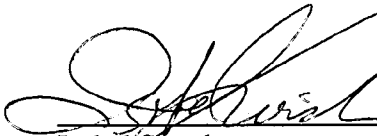
Dated: June 19, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Brief in Support of Petition For Change Of Venue** was served this date by first class mail, postage prepaid upon the following:

James A. Naddeo, Esquire
211 ½ E. Locust Street
P. O. Box 552
Clearfield, PA 16830

Dated: June 19, 2002


Isobel Storch

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 02-514-CD
)	
v.)	
)	
NUTRITION, INC.,)	
)	
Defendant.)	

ORDER OF COURT

AND NOW, this day of , 2002, it is hereby ORDERED and
DECREED that the foregoing Petition for Change of Venue is granted and case is
transferred to the Court of Common Pleas of Armstrong County.

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

BJR, INC., d/b/a CONSERVCO CO. :

-vs-

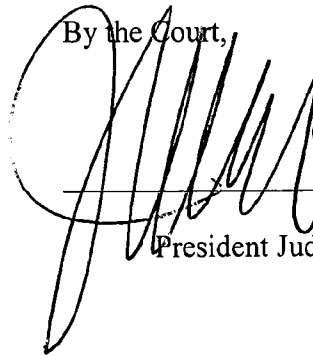
: No. 02 – 514 – CD

NUTRITION, INC. :

ORDER

NOW, this 5th day of September, 2002, upon consideration of Petition for Change of Venue filed on behalf of Defendant above-named, and argument and briefs thereon, it is the ORDER of this Court that said Petition be and is hereby dismissed.

By the Court,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by several loops and a long horizontal stroke extending to the right.

President Judge

FILED

SEP 05 2002

0/3:45 /BA 1CC ATTY Maddus

William A. Shaw
Prothonotary

1CC ATTY Storch

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC.,
d/b/a CONSERVCC,
a Pennsylvania Corporation,
Plaintiff,

v.

NUTRITION, INC., a
Pennsylvania Corporation
Defendant,

No. 02 - 514 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

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William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

NUTRITION, INC., a
Pennsylvania Corporation,
Defendant,

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*
*

No. 02 - 514 - CD


CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, Attorney for Plaintiff, BJR, Inc., t/d/b/a Conservco, do hereby certify that true and correct copies of the Notices of Deposition of Pat Davis and Anthony Dorsch in the above matter were served by first-class mail, postage prepaid, upon the following:

Matthew M. Hoffman, Esquire
HOFFMAN & McCANN, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219

ASAP Court Reporting
P.O. Box 345
Ebensburg, PA 15931

Said Notice of Deposition was mailed this 16th day of October, 2002.


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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FILED

OCT 10 5:57 PM
OCT 10 2002

1cc

Atty Naddeo

~~Atty~~

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

NUTRITION, INC., a
Pennsylvania Corporation
Defendant,

No. 02 - 514 - CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

NOV 01 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

NUTRITION, INC., a
Pennsylvania Corporation
Defendant,

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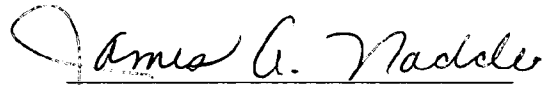
No. 02 - 514 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that true and correct copies of Plaintiff's Answers to Defendant's First Set of Interrogatories and Plaintiff's Response to Defendant's First Request for Production of Documents in the above-captioned action were served on the following person and in the following manner on the 1st day of November, 2002:

First-Class Mail, Postage Prepaid

Matthew M. Hoffman, Esquire
HOFFMAN & McCANN, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219


James A. Naddeo
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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FILED

NOV 01 2002

0/10:43 a.m. E
William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

Plaintiff,

v.

NUTRITION, INC., a Pennsylvania
corporation,

Defendant.

CIVIL DIVISION

No. 02-514-CD

**PRAECIPE FOR
SUBSTITUTION OF COUNSEL**

Filed on behalf of:
Plaintiff

Counsel of Record for this Party:

Ronald L. Hicks, Jr., Esquire
PA ID # 49520

Joshua R. Lorenz, Esquire
PA ID # 84397

MEYER, UNKOVIC & SCOTT LLP
Firm # 199
1300 Oliver Building
535 Smithfield Street
Pittsburgh, Pennsylvania 15222
(412) 456-2800

FILED

MAY 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

Plaintiff,

v.

NUTRITION, INC., a Pennsylvania
corporation,

Defendant.

) CIVIL DIVISION
)
)
) No. 02-514-CD
)
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)

PRAECIPE FOR SUBSTITUTION OF COUNSEL

Please withdraw the appearance of James A. Naddeo, Esquire, on behalf of the Plaintiff, BJR, Inc., in this action and substitute in his place the appearance of Ronald L. Hicks, Jr., Joshua R. Lorenz and Meyer, Unkovic & Scott LLP as counsel of record on behalf of Plaintiff, BJR, Inc.

Respectfully submitted,

By: 

James A. Naddeo, Esquire

and

MEYER, UNKOVIC & SCOTT LLP

By: 

Ronald L. Hicks, Jr.

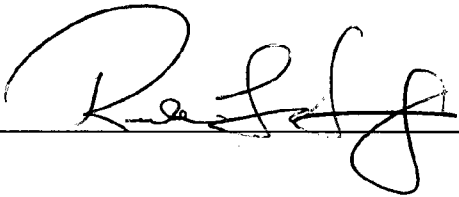
By: 

Joshua R. Lorenz

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Praecipe for Substitution of Counsel was served
by first class, U.S. mail, postage prepaid, this 20th day of May, 2004, upon the following:

Matthew M. Hoffman, Esquire
Hoffman & McCann, P.C.
1400 Allegheny Building
429 Forbes Avenue
Pittsburgh, PA 15219



FILED

NO
cc

MAY 11 3 39 PM '04

cc

copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

FILED

APR 16 2016

William A. Shaw
Prothonotary/Clerk of Courts

no 016

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC. d/b/a CONSERVCO, a
Pennsylvania Corporation,

Plaintiff,

vs.

NUTRITION, INC., a Pennsylvania
Corporation,

Defendant.

CIVIL DIVISION

No. 02-514-CD

**JOINT PRAECIPE TO DISCONTINUE
WITH PREJUDICE**

Filed on Behalf of : Plaintiff, BJR, Inc.

Counsel of Record for this
Party:

Ronald L. Hicks, Esquire

Pa. I.D. #49520

Andrew L. Noble, Esquire

Pa. I.D. #90874

MEYER, UNKOVIC & SCOTT LLP

Firm # 199

1300 Oliver Building

Pittsburgh, PA 15222

(412) 456-2800

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC. d/b/a CONSERVCO, a
Pennsylvania Corporation,

Plaintiff,

CIVIL DIVISION

No. 02-514-CD

vs.

NUTRITION, INC., a Pennsylvania
Corporation,

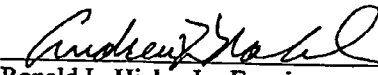
Defendant.

JOINT PRAECIPE TO DISCONTINUE WITH PREJUDICE

TO: Prothonotary, Clearfield County

Kindly discontinue the above-referenced matter with prejudice.

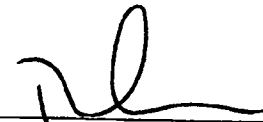
Respectfully submitted,



Ronald L. Hicks, Jr., Esquire
Pa. I.D. #49520
Andrew L. Noble
Pa. I.D. #90874

MEYER, UNKOVIC & SCOTT LLP
1300 Oliver Building
Pittsburgh, PA 15222
(412) 456-2800

Attorneys for Plaintiff



Thomas E. Weiers
Pa. I.D. #43715

Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Praecipe was served, this 14th day of April, 2010, upon counsel for Defendant by First-Class United States mail, addressed as follows:

Thomas E. Weiers
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

Andrew Z. Goral