

08-809-CD
Nat'l Fuel Gas vs Whalen Contracting

National Fuel Gas Distribution Corp., Owner
and
Whalen Contracting, Inc., Contractor

FILED *ICC National Fuel Gas*
MAY 11 2008 *3rd Flr, 101 National Fuel*
01 2008 pd. \$20.00 IN THE COURT OF COMMON PLEAS
William A. Shaw County of Clearfield
Prothonotary/Clerk of Courts *LS*
State of Pennsylvania No. Term,
08-809-CD

MECHANIC'S LIEN WAIVER

This instrument is executed this 21st day of April, 2008, by Whalen Contracting, Inc. ("contractor") in favor of National Fuel Gas Distribution Corporation ("owner").

WITNESSETH:

1. Owner and contractor intend to enter into a certain contract ("contract") in connection with building, remodeling, general construction and related services at owner's facility known as the DuBois Servicenter, 1216 S. Brady Street, DuBois, Pennsylvania, 15801 ("property").

2. Contractor has, by this instrument and the promises contained herein, covenanted, promised and agreed that no mechanics' or materialmen's liens shall be filed or maintained against the estate or title of owner in the property or any part thereof, or the appurtenances thereto, either by itself or anyone else acting or claiming through or under it for or on account of any work, labor or materials supplied in the performance of the work under the contract or under any supplemental contract or for extra work.

NOW, THEREFORE, in consideration of the contract and the covenants of owner therein contained, and intending to be legally bound hereby:

1. Contractor, for itself and anyone else acting or claiming through or under it, does hereby waive and relinquish all right to file a mechanic's or materialmen's lien, or notice of intention to file any lien, and does hereby covenant, promise and agree that no mechanics' lien or other lien of any kind whatsoever shall be filed or maintained against the estate or title of owner in the property or the appurtenances thereto, by or in the name of contractor, or any subcontractor, materialman or laborer acting or claiming through or under for work done or materials furnished in connection with the contract or by any other party acting through or under them or any of them for and about the property or any part of it.

2. This agreement waiving the right of lien shall be an independent covenant by contractor and shall operate and be effective as well with respect to work done and materials furnished under any supplemental contract for extra work in connection with the above-described project on the property to the same extent as any work and labor done and materials furnished under the contract.

3. In order to give owner full power and authority to protect itself, the property, the estate or title of owner therein, and the appurtenances thereto, against any and all liens filed by contractor or anyone acting under or through it in violation of the foregoing covenant, contractor hereby irrevocably authorizes and empowers any attorney of any Court of Common Pleas of the Commonwealth of Pennsylvania to (i) appear as attorney for it, them or any of them, in any such Court, and in its or their name or names, to the extent permitted by law, mark satisfied of record at the cost and expense of contractor or of any subcontractor or materialman, any and all lien or liens, filed in violation of the foregoing covenant, or (ii) cause to be filed and served in connection with such lien or liens any pleading or instrument, or any amendment to any pleading or instrument previously filed by it or them, and to incorporate therein, as part of the record, the waiver contained in this instrument; and for such act or acts this instrument shall be good and sufficient warrant and authority. A reference to the court, term and number in which and where this agreement shall have been filed shall be conclusive evidence of the authority herein to warrant such action, and contractor, for itself and for them, hereby remises, releases and quit-claims all rights and all manner of errors, defects and imperfections whatsoever in entering such satisfaction or in filling such pleading, instrument or amendment, or in any way concerning them. In the event anyone acting through or under contractor shall so file a lien in violation of the foregoing covenant, owner may not exercise its rights under this Paragraph 3 unless such lien has not been stricken or discharged (by payment, posting of a bond or other means) for a period of ten days after notice of such lien shall have been received by contractor.

IN WITNESS WHEREOF, contractor has executed this instrument as of the day and year first above written.

ATTEST:

By: *Stacey L. London*
Bruce A. Smeal, Secretary
Stacey L. London, Secretary

WHALEN CONTRACTING, INC.

By: *Bonnie A. Smeal*
Bonnie A. Smeal, President