Finding Win-Win Solutions:
Successfully Anticipating and Allocating Risks in the Owner Agreement
Neale Johnson
Smith Moore Leatherwood LLP
Greensboro, NC

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Philadelphia, PA

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City of Atlanta
Atlanta, GA
Insured

Yes

No
Negotiating the B101-2017 Owner-Architect Agreement

Kristen (Owner’s Counsel) vs. Neale (Architect’s Counsel)
§ 3.5 Procurement Process

§ 3.5.1 General

The Architect shall assist the Owner in reviewing and evaluating the Contractor’s construction proposals, providing advice, and recommending actions to the Owner.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 The Architect shall assist the Owner in bidding the Project by:

1. Facilitating the distribution of Bid Documents to prospective bidders;
2. Organizing and conducting a pre-bid conference for prospective bidders;
3. Preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bid Documents to the prospective bidders in the form of addenda; and
4. Organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results as directed by the Owner.

§ 3.5.2.2 If the Bid Documents permit substitutions, upon the Owner’s written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

1. Facilitating the distribution of Proposal Documents for distribution to the Contractor prospective contractors and requesting their return upon completion of the negotiation process;
2. Organizing and participating in selection interviews with prospective contractors;
3. Preparing responses to questions from prospective contractors and providing interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and
4. Subsequently preparing a summary of information and subsequently preparing a summary of information.
Kristen Neale

Fighting about the Architect’s insurance

Kristen

Neale

It’s Lonely At The Top: Building a Successful Team with the Owner
October 4-5, 2018
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§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « » ($ « » ) per claim and « » ($ « » ) in the aggregate.

* * *

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES
§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.

* * *

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.5.9 The Architect shall ensure that all of its consultants also carry insurance of the same types and limits required of the Architect.

ARTICLE 3  SCOPE OF ARCHITECT’S BASIC SERVICES
§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « » ($ « » ) per claim and « » ($ « » ) in the aggregate.

* * *

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence its and its consultants’ compliance with the requirements in this Section 2.5. When the Architect is required to name the Owner as an additional insured on any policy required by Section 2.5, the Architect will also provide copies of endorsements naming the Owner as an additional insured.

§ 2.5.9 The Architect shall ensure that all of its consultants also carry insurance of the same types and limits required of the Architect.
§ 2.5.8 The Architect shall provide certificates of insurance as well as an endorsement naming the Owner as an additional insured to the Owner that evidence its and its consultants’ compliance with the requirements in this Section 2.5. When the Architect is required to name the Owner as an additional insured on any policy required by Section 2.5, the Architect will also provide copies of endorsements naming the Owner as an additional insured. The Architect and its consultants shall promptly provide copies of insurance policies required under by Section 2.5 upon the Owner’s written request.

§ 2.5.9 The Architect shall ensure that all of its consultants also carry insurance of the same types and limits required of the Architect.
§ 2.5.8 The Architect shall provide certificates of insurance as well as an endorsement naming the Owner as an additional insured to the Owner that evidence its and its consultants’ compliance with the requirements in this Section 2.5. When the Architect is required to name the Owner as an additional insured on any policy required by Section 2.5, the Architect will also provide copies of endorsements naming the Owner as an additional insured. The Architect and its consultants shall promptly provide copies of insurance policies required under by Section 2.5 upon the Owner’s written request.

§ 2.5.9 The Architect shall ensure that all of its consultants also carry insurance of the same types and limits required of the Architect; provided, however, that the Owner may give informed, prior written consent to reduce the insurance requirements of this Section for specific consultants.
Neale

Arguing about limiting the Architect’s liability.

Kristen
ARTICLE 12  SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 Notwithstanding any other provision of this Agreement, the total, aggregate liability of the Architect to the Owner for any and all claims arising from or relating to this Agreement or the performance thereof shall not exceed one half of the Architect’s fee, as adjusted from time to time by written amendments.
Blast it! I hoped DinoGolf wouldn’t hire a lawyer, and if it did, that whoever it was wouldn’t notice § 12.1...
Does he think I’m stupid?!
ARTICLE 12   SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 Notwithstanding any other provision of this Agreement, the total, aggregate liability of the Architect to the Owner for any and all claims arising from or relating to this Agreement or the performance thereof shall not exceed the total amount of collectible insurance proceeds available to pay such claims.
ARTICLE 12  SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

§ 12.1 Notwithstanding any other provision of this Agreement, the total, aggregate liability of the Architect to the Owner for any and all claims arising from or relating to this Agreement or the performance thereof shall not exceed the sum total amount of collectible insurance proceeds available to pay such claims and the Architect’s fee, as it may be adjusted from time-to-time.
ARTICLE 12  SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

§ 12.1 Notwithstanding any other provision of this Agreement, the total, aggregate liability of the Architect to the Owner for any and all claims arising from or relating to this Agreement or the performance thereof shall not exceed the sum greater of the amount of collectible insurance proceeds available to pay such claims and the Architect’s fee, as it may be adjusted from time-to-time.
Negotiating the Architect’s construction administration services
ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES
3.6 Construction Phase Services
3.6.4 Submittals

§ 3.6.4.4 ...[T]he Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information...The Architect’s response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.
Kristen’s “Sticks”
ARTICLE 3  SCOPE OF ARCHITECT’S BASIC SERVICES
3.6 Construction Phase Services
3.6.4 Submittals

§ 3.6.4.4 ...The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information... The Architect shall respond to such requests in writing within the time limits agreed upon, or otherwise with reasonable promptness stated in the General Conditions of the Contract for Construction. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.
ARTICLE 3  SCOPE OF ARCHITECT’S BASIC SERVICES
3.6 Construction Phase Services
3.6.4 Submittals

§ 3.6.4.4 ...The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information... The Architect shall respond to such requests in writing within the time limits five (5) working days after receiving them agreed upon, or otherwise with reasonable promptness. unless otherwise stated in the General Conditions of the Contract for Construction and the Architect has given prior written consent to the form of the General Conditions. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.
ARTICLE 3  SCOPE OF ARCHITECT’S BASIC SERVICES
3.6 Construction Phase Services
3.6.4 Submittals

§ 3.6.4.4 ... If the Architect cannot respond to a request for information within the applicable time limit with professional care, the Architect may request additional time from the Owner in writing (with a copy to the Contractor), which the Owner shall not unreasonably refuse. The request for additional time shall include the reasons for the request. Both the Architect’s request and Owner’s response shall be in writing.
3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor’s submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, within five (5) days after receiving the submittal reasonable promptness while allowing sufficient time, in the Architect’s professional judgment, to permit adequate review.
3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor’s submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, **within five (5) seven (7) days after receiving the submittal** reasonable promptness while allowing sufficient time, in the Architect’s professional judgment, to permit adequate review.
STOP DESAHUC
§ 3.6.4.2 The Architect shall 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. . . .
§ 3.6.4.2 **Using professional care,** the Architect shall 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.
§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.
§ 3.6.4.2 The Architect shall 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 purpose of checking for conformance with the Contract Documents. . . .
ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES
3.6 Construction Phase Services
3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work...
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Negotiating who pays for value engineering

Kristen Neale
ARTICLE 3  SCOPE OF ARCHITECT’S BASIC SERVICES
3.2 Schematic Design Phase Services

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program aesthetics, in developing a design for the Project that is consistent with the Owner’s program, schedule, and budget for the Cost of Work.
ARTICLE 6 COST OF THE WORK

§ 6.5 If at any time Architect’s estimate of the Cost of the Work exceeds the Owner’s budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project’s size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.
§ 6.6 If the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;

.2 authorize rebidding or renegotiating of the Project within a reasonable time;

.3 terminate in accordance with Section 9.5;

.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,

.5 implement any other mutually acceptable alternative.
§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner’s budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect’s services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.
§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, as an Additional Service, shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner’s budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect’s services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.
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§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, as a Basic Service, shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner’s budget for the Cost of the Work, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3 unless the Architect’s most recent estimate of the Cost of the Work contained material errors or omissions when it was prepared. The Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.
§ 6.7 . . . If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner’s budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect’s services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.
It's Lonely At The Top:
Building a Successful Team with the Owner

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Montréal, Québec, Canada
Negotiating the A101/A201-2017 Owner-Contractor Agreement

Neale (Owner’s Counsel) vs. Kristen (Contractor’s Counsel)
Neale, Naturally
(when he had hair, anyway…)
(arguing about retainage, of course!)
Thought so. I’ll just ask for 10% retainage. It’s industry standard, after all!
NO WAY! He did not just ask me for 10%! Doesn’t he know what’s going on in this market? We’d be crazy to accept that!
She must think I’m really stupid. There’s not a chance in Hades that I’ll agree to that!
I can’t go along with 10%, but my client wants this job.
My client needs this building, and liked this contractor. I don’t want to mess this up over retainage.
• Retain 10%, but cap retainage at 5%
• Release or continue to retain if change orders adjust Contract Sum
• Based on timing of completion, Contractor should develop a schedule for release of retainage to subcontractors that will coincide with the applications for payment submitted to the Owner after 50% completion.
He must be high!
Well, that’s dead on arrival!
§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

* * *

A201-2017 Section 8.3:
§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

* * *
§ 8.3 Delays and Extensions of Time

* * *

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.
§ 8.3 Delays and Extensions of Time

* * *

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.
• Define different types of delays (owner, contractor, weather)
• Deal with concurrent delays
• Determine which delays are excusable and which are compensable
• Require a logical effect on the completion date based on the current schedule (i.e., no one owns the float, but no extensions until it’s used up and the delay causes the substantial completion date to slip)
• Allow parties to agree to a change order, but if they can’t agree, state how to determine the extension and the amount of additional compensation to the Contractor (if any).
• For excusable delays, give the Owner an opportunity to pay the Contractor to accelerate to hold the schedule.
(Arguing about consequential and liquidated damages)
§ 15.1.7 Waiver of 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 Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
§ 15.1.7 Waiver of 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 Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
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.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 Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.
§ 15.1.7 Waiver of Claims for Consequential Damages

* * *

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 14. **The Owner may suffer actual damages if the Contractor does not achieve Substantial Completion of the Work within the Contract Time, including without limitation loss of use, lost profits, storage expenses, and other damages for delay.** The Owner’s damages for delay are foreseeable and within the contemplation of the Contractor and the Owner at the time of contracting. Notwithstanding any other provision of this Contract, the Owner’s damages for delay shall be deemed general, direct damages, are expressly reserved by the Owner, and are excluded from the waiver of consequential damages in this Section.
§ 15.1.7 Waiver of Claims for Consequential Damages

* * *

This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 14. The Owner may suffer actual damages if the Contractor does not achieve Substantial Completion of the Work within the Contract Time, including without limitation loss of use, lost profits, storage expenses, and other damages for delay. The Owner’s damages for delay are foreseeable and within the contemplation of the Contractor and the Owner at the time of contracting. Notwithstanding any other provision of this Contract, the Owner’s damages for delay shall be deemed general, direct damages, are expressly reserved by the Owner, and are excluded from the waiver of consequential damages in this Section.
§ 15.1.7 Waiver of Claims for Consequential Damages

***

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What’s he smoking, anyway?!
§ 15.1.7 Waiver of Claims for Consequential Damages

* * *

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 Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. The Owner waives of all damages for delay and agrees that any damages for delay are consequential damages within the scope of the waiver contained in this Section.
Did they open up a medicinal marijuana shop near her office?! We can’t agree to that!
My contractor client doesn’t like liquidated damages, but at least we can price in the risk. I wonder if my client already quoted a price. Hope not....
Yeah, a really, really **BIG** number! The contractor already quoted the price....
(Arguing about correcting work and warranty claims)
The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.
The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that **the Work will conform to the requirements of the Contract Documents and will be free from defects**, except for those inherent in the quality of Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.
§ 12.2.2.1 In addition to the Contractor’s obligations under Section 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 Section 9.9.1, or by terms of any 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 notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. . . .
§ 12.2.2.1 . . . 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 Section 2.5.
What the Owner expected:

Chernobyl control room before April 26, 1986

What the Owner got:

Chernobyl control room after April 26, 1986
It's Lonely At The Top:
Building a Successful Team with the Owner

October 4-5, 2018
Le Centre Sheraton Montréal Hotel
1201 Boulevard Rene-Levesque West
Montréal, Québec, Canada
**A201 Section 12.2.2.1**

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 Section 2.5.
During the one-year period for correction of Work, if the Owner [becomes aware of nonconforming Work and] 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.
During the one-year period for correction of Work, if [regardless of the Owner’s knowledge of the nonconformity of the Work] 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.
• Add language to require that a management level employee or officer of the Owner have actual knowledge of the defect during the one year period for correction of the Work.

• Clarify the language to limit the waiver of warranty claims to situations in which the Owner knew of the defect during the year and did not give the Contractor notice and opportunity to correct it.
Never Kristen
Always Neale
No, you stink!
You stink!

(Arguing evergreen warranty provisions)
§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed or to nonconforming Work corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion 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 Section 12.2.
Utter silliness!
QUESTIONS?