

TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE: NEW ASSIGNMENT

NATURE OF CONVEYANCE: MERGER

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Medical Foods, Inc.		10/25/1999	CORPORATION:

RECEIVING PARTY DATA

Name:	Amerifit Nutrition, Inc. f/k/a Medical Foods, Inc.
Street Address:	166 Highland Park Drive
City:	Bloomfield
State/Country:	CONNECTICUT
Postal Code:	06002
Entity Type:	CORPORATION:

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	2059098	NITEBITE

CORRESPONDENCE DATA

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NAME OF SUBMITTER: Matt Marshall

Total Attachments: 18

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CONTRIBUTION AND EXCHANGE AGREEMENT

by and among

MEDICAL FOODS, INC.,

THE SECURITY HOLDERS OF MEDICAL FOODS, INC.,

AMERIFIT, INC.,

THE SECURITY HOLDERS OF AMERIFIT, INC.

and

AMERIFIT NUTRITION, INC.

October 25, 1999

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CONTRIBUTION AND EXCHANGE AGREEMENT

This Contribution and Exchange Agreement (this "Agreement") is entered into as of this 5th day of October, 1999, by and among Medical Foods, Inc., a Delaware corporation ("MFI"), those holders of securities of MFI listed on the signature pages hereto (the "MFI Security Holders"), AmeriFIT, Inc. a Delaware corporation ("AFI"), those holders of securities of AFI listed on the signature pages hereto (the "AFI Security Holders"), and Amerifit Nutrition, Inc., a Delaware corporation ("Amerifit Nutrition").

WHEREAS, the Boards of Directors of MFI, AFI and Amerifit Nutrition deem it advisable and in the best interest of each of them that MFI, AFI and Amerifit Nutrition combine in order to develop a unified entity to advance their long-term business interests; and

WHEREAS, the combination of MFI, AFI and Amerifit Nutrition shall be effected by the terms of this Agreement through a transaction in which the shareholders of MFI (the "MFI Shareholders"), certain other security holders of MFI, the shareholders of AFI (the "AFI Shareholders") and certain other security holders of AFI shall contribute their shares of capital stock of, and/or other securities in, MFI and AFI, respectively, to Amerifit Nutrition, in exchange for shares (the "Amerifit Nutrition Shares") of Class A Common Stock, \$.001 par value per share, of Amerifit Nutrition (the "Amerifit Nutrition Class A Common Stock") and/or Class B Common Stock, \$.001 par value per share, of Amerifit Nutrition (the "Amerifit Nutrition Class B Common Stock" and, collectively with the Amerifit Nutrition Class A Common Stock, the "Amerifit Nutrition Common Stock").

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE I

CONTRIBUTIONS AND EXCHANGE OF SHARES

1.1 Contribution of AFI Shares. On the terms and subject to the conditions of this Agreement, on the Initial Closing Date, the AFI Shareholders shall contribute all of the issued and outstanding shares of capital stock of AFI held by them (the "AFI Shares") to Amerifit Nutrition in exchange for shares of Amerifit Nutrition Class A Common Stock and/or Amerifit Nutrition Class B Common Stock. A list of the issued and outstanding AFI Shares and the number of shares of Amerifit Nutrition Common Stock to be issued to each AFI Shareholder in exchange for the AFI Shares shall be as set forth on Schedule 1.1 attached hereto.

1.2 Contribution of MFI Shares. On the terms and subject to the conditions of this Agreement, (a) on the Initial Closing Date, the accredited MFI Shareholders (the "Accredited MFI Shareholders") shall contribute all of the issued and outstanding shares of capital stock of MFI held by them (the "Accredited MFI Shares") to Amerifit Nutrition in exchange for shares of Amerifit Nutrition Class A Common Stock and/or Amerifit Nutrition Class B Common Stock, and (b) on the Subsequent Closing Date, the non-accredited MFI Shareholders (the "Non-

Accredited MFI Shareholders"), shall contribute all of the issued and outstanding shares of capital stock of MFI held by them (the "Non-Accredited MFI Shares" and, collectively with the Accredited MFI Shares, the "MFI Shares") in exchange for shares of Amerifit Nutrition Class A Common Stock. A list of the issued and outstanding MFI Shares and the number of shares of Amerifit Nutrition Common Stock to be issued to each MFI Shareholder in exchange for the MFI Shares shall be as set forth on Schedule 1.2 attached hereto.

1.3 AFI Options and Subordinated Debt.

1.3.1 AFI Options. At the Initial Closing, each outstanding option to purchase shares of the Common Stock, \$.01 par value per share (the "AFI Common Stock"), of AFI under AFI's 1995 Non-Qualified Stock Option Plan, as amended, and AFI's 1996 Non-Qualified Consultant Stock Option Plan (the "AFI Stock Option Plans"), whether vested or unvested (the "AFI Options"), will be assumed by Amerifit Nutrition. AFI hereby acknowledges and agrees that the number of shares of Amerifit Nutrition Common Stock issuable upon exercise of such AFI Options shall be included in the fifty percent (50%) equity interest allocable to the AFI Shareholders. Schedule 1.3 hereto sets forth a true and complete list as of the Initial Closing Date of all holders of outstanding AFI Options under the AFI Stock Option Plans, including the number of shares of AFI Common Stock subject to each such AFI Option, and the exercise or vesting schedule, the exercise price per share and the term of each such AFI Option. Each AFI Option so assumed by Amerifit Nutrition under this Agreement shall continue to have, and be subject to, the same terms and conditions set forth in the applicable AFI Stock Option Plan immediately prior to the Initial Closing Date, except that (a) such AFI Option will be exercisable for that number of whole shares of Amerifit Nutrition Common Stock equal to the product of the number of shares of AFI Common Stock that were issuable upon exercise of such AFI Option immediately prior to the Initial Closing Date multiplied by the AFI Common Exchange Ratio (as defined in Section 1.5) and rounded down to the nearest whole number of share of Amerifit Nutrition Common Stock, and (b) the per share exercise price for the share of Amerifit Nutrition Common Stock issuable upon exercise of such assumed AFI Option will be equal to the quotient determined by dividing the exercise price per share of AFI Common Stock at which such AFI Option was exercisable immediately prior to the Initial Closing Date by the AFI Common Exchange Ratio, rounded up to the nearest whole cent. Consistent with the terms of the AFI Stock Option Plans and the documents governing the outstanding AFI Options under such Plans, the transactions contemplated hereby will not terminate any of the outstanding AFI Options under the AFI Stock Option Plans. It is the intention of the parties that the AFI Options so assumed by Amerifit Nutrition qualify following the Initial Closing Date as incentive stock options as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), to the extent such AFI Options qualified as incentive stock options prior to the Initial Closing Date. Within ten (10) business days after the Initial Closing Date, Amerifit Nutrition will issue to each person who, immediately prior to the Initial Closing Date was a holder of an outstanding AFI Option under the AFI Stock Option Plans a document in form and substance reasonably satisfactory to AFI evidencing the foregoing assumption of such AFI Option by Amerifit Nutrition.

1.3.2 AFI Subordinated Debt. At the Initial Closing, all holders of subordinated indebtedness of AFI (the "AFI Subordinated Debt") shall surrender for cancellation the instruments evidencing such AFI Subordinated Debt in exchange for shares of Amerifit Nutrition

Common Stock, such shares of Amerifit Nutrition Common Stock issuable upon conversion of such AFI Subordinated Debt to be included in the fifty percent (50%) equity interest in Amerifit Nutrition allocable to the AFI Shareholders. Schedule 1.3 hereto sets forth a true and complete list as of the Initial Closing Date of all holders of outstanding AFI Subordinated Debt, including the original principal amount.

1.4 MFI Convertible Securities.

1.4.1 MFI Options. At the Subsequent Closing, each outstanding option to purchase shares of MFI Common Stock under the Medical Foods, Inc. Employee Stock Option Plan dated June 3, 1996 (the "MFI Stock Option Plan"), whether vested or unvested, issued to current and former employees of MFI and directors of, and consultants to, MFI (the "MFI Options"), will be assumed by Amerifit Nutrition. MFI hereby acknowledges and agrees that the number of shares of Amerifit Nutrition Common Stock issuable upon exercise of such MFI Employee Options shall be included in the fifty percent (50%) equity interest allocable to the MFI Shareholders. Schedule 1.4 hereto sets forth a true and complete list as of the Initial Closing Date of all holders of outstanding MFI Options under the MFI Stock Option Plans, including the number of shares of MFI Common Stock subject to each such MFI Option, and the exercise or vesting schedule, the exercise price per share and the term of each such MFI Option. Each MFI Option so assumed by Amerifit Nutrition under this Agreement shall continue to have, and be subject to, the same terms and conditions set forth in the applicable MFI Stock Option Plan immediately prior to the Initial Closing Date, except that (a) such MFI Option will be exercisable for that number of whole shares of Amerifit Nutrition Common Stock equal to the product of the number of shares of MFI Common Stock that were issuable upon exercise of such MFI Option immediately prior to the Initial Closing Date multiplied by the MFI Exchange Ratio (as defined in Section 1.5) and rounded down to the nearest whole number of share of Amerifit Nutrition Common Stock, and (b) the per share exercise price for the share of Amerifit Nutrition Common Stock issuable upon exercise of such assumed MFI Option will be equal to the quotient determined by dividing the exercise price per share of MFI Common Stock at which such MFI Option was exercisable immediately prior to the Initial Closing Date by the MFI Exchange Ratio, rounded up to the nearest whole cent. Consistent with the terms of the MFI Stock Option Plan and the documents governing the outstanding MFI Options under such Plan, the transactions contemplated hereby will not terminate any of the outstanding MFI Options under the MFI Stock Option Plan. It is the intention of the parties that the MFI Options so assumed by Amerifit Nutrition qualify following the Initial Closing Date as incentive stock options as defined in Section 422 of the Code to the extent such MFI Options qualified as incentive stock options prior to the Initial Closing Date. Within ten (10) business days after the Initial Closing Date, Amerifit Nutrition will issue to each person who, immediately prior to the Initial Closing Date was a holder of an outstanding MFI Option under the MFI Stock Option Plan a document in form and substance reasonably satisfactory to MFI evidencing the foregoing assumption of such MFI Option by Amerifit Nutrition.

1.4.2 MFI Convertible Debt. At the Initial Closing, all holders of indebtedness of MFI that is convertible into MFI Shares (the "MFI Convertible Debt") shall surrender for cancellation the instruments evidencing such MFI Convertible Debt in exchange for shares of Amerifit Nutrition Common Stock, such shares of Amerifit Nutrition Common Stock issuable

upon conversion of such MFI Convertible Debt to be included in the fifty percent (50%) equity interest in Amerifit Nutrition allocable to the MFI Shareholders. Schedule 1.4 hereto sets forth a true and complete list as of the Initial Closing Date of all holders of outstanding MFI Convertible Debt, including the original principal amount and the conversion price thereof.

1.4.3 MFI Bridge Warrants. At the Initial Closing, all outstanding warrants to purchase shares of MFI Common Stock, whether or not then exercisable, issued in connection with MFI's bridge financings (the "MFI Bridge Warrants"), will be assumed by Amerifit Nutrition, such shares of Amerifit Nutrition Common Stock issuable upon exercise of such MFI Bridge Warrants to be included in the fifty percent (50%) equity interest in Amerifit Nutrition allocable to the MFI Shareholders. Schedule 1.4 hereto sets forth a true and complete list as of the Initial Closing Date of all holders of outstanding MFI Bridge Warrants, including the number of shares of MFI Common Stock subject to each such MFI Bridge Warrant, and the exercise price per share and the terms of each such MFI Bridge Warrant. Each such MFI Bridge Warrant so assumed by Amerifit Nutrition under this Agreement shall continue to have, and be subject to, the same terms and conditions set forth in each such MFI Bridge Warrant immediately prior to the Initial Closing Date, except that (a) such MFI Bridge Warrant will be exercisable for, or convertible into, as the case may be, that number of whole shares of Amerifit Nutrition Common Stock equal to the product of the number of shares of MFI Common Stock that were issuable upon exercise of such MFI Bridge Warrant immediately prior to the Initial Closing Date multiplied by the MFI Exchange Ratio and rounded down to the nearest whole number of shares of Amerifit Nutrition Common Stock, and (b) the per share exercise price or conversion price for the share of Amerifit Nutrition Common Stock issuable upon exercise of such assumed MFI Bridge Warrant will be equal to the quotient determined by dividing the exercise price per share of MFI Common Stock at which such MFI Bridge Warrant was exercisable immediately prior to the Initial Closing Date by the MFI Exchange Ratio, rounded up to the nearest whole cent. Consistent with the terms of the documents governing the outstanding MFI Bridge Warrants, the transactions contemplated hereby will not terminate any of such MFI Bridge Warrants. Within ten (10) business days after the Initial Closing Date, Amerifit Nutrition will issue to each person who, immediately prior to the Initial Closing Date was a holder of an MFI Bridge Warrant a document in form and substance reasonably satisfactory to MFI evidencing the foregoing assumption of such MFI Bridge Warrant by Amerifit Nutrition.

1.4.4 MFI Founder Warrants. At the Subsequent Closing, all outstanding warrants to purchase shares of MFI Common Stock, whether or not then exercisable, issued to certain MFI Founders (the "MFI Founder Warrants" and, collectively, with the MFI Bridge Warrants, the "MFI Warrants"), will be assumed by Amerifit Nutrition, such shares of Amerifit Nutrition Common Stock issuable upon exercise of such MFI Founder Warrants to be included in the fifty percent (50%) equity interest in Amerifit Nutrition allocable to the MFI Shareholders. Schedule 1.4 hereto sets forth a true and complete list as of the Initial Closing Date of all holders of outstanding MFI Founder Warrants, including the number of shares of MFI Common Stock subject to each such MFI Founder Warrant, and the exercise price per share and the terms of each such MFI Founder Warrant. Each such MFI Founder Warrant so assumed by Amerifit Nutrition under this Agreement shall continue to have, and be subject to, the same terms and conditions set forth in each such MFI Founder Warrant immediately prior to the Subsequent Closing Date, except that (a) such MFI Founder Warrant will be exercisable for, or convertible

into, as the case may be, that number of whole shares of Amerifit Nutrition Common Stock equal to the product of the number of shares of MFI Common Stock that were issuable upon exercise of such MFI Founder Warrant immediately prior to the Subsequent Closing Date multiplied by the MFI Exchange Ratio and rounded down to the nearest whole number of shares of Amerifit Nutrition Common Stock, and (b) the per share exercise price or conversion price for the share of Amerifit Nutrition Common Stock issuable upon exercise of such assumed MFI Founder Warrant will be equal to the quotient determined by dividing the exercise price per share of MFI Common Stock at which such MFI Founder Warrant was exercisable immediately prior to the Subsequent Closing Date by the MFI Exchange Ratio, rounded up to the nearest whole cent. Consistent with the terms of the documents governing the outstanding MFI Founder Warrants, the transactions contemplated hereby will not terminate any of such MFI Founder Warrants. Within ten (10) business days after the Subsequent Closing Date, Amerifit Nutrition will issue to each person who, immediately prior to the Subsequent Closing Date was a holder of an MFI Founder Warrant a document in form and substance reasonably satisfactory to MFI evidencing the foregoing assumption of such MFI Founder Warrant by Amerifit Nutrition.

1.5 Allocation of Amerifit Nutrition Shares. The parties hereto agree that the Amerifit Nutrition Shares shall be allocated between the MFI Shareholders and the AFI Shareholders in accordance with Schedule 1.5 attached hereto, such that upon consummation of the transactions contemplated hereby (a) the MFI Shareholders, the holders of MFI Warrants, the holders of MFI Convertible Debt and the holders of MFI Options shall have the right to a fifty percent (50%) equity interest in Amerifit Nutrition in the aggregate, and (b) the AFI Shareholders and the holders of AFI Options shall have the right to a fifty percent (50%) equity interest in Amerifit Nutrition in the aggregate. The capitalization of Amerifit Nutrition shall be established in such a manner as to permit (a) one (1) share of Common Stock of MFI to be exchanged into [REDACTED] shares of Amerifit Nutrition Common Stock (the "MFI Exchange Ratio"), with the holders of Preferred Stock of MFI participating in such exchange on an as-converted basis and (b) one (1) share of Common Stock of AFI to be exchanged into [REDACTED] shares of Amerifit Nutrition Common Stock (the "AFI Common Exchange Ratio") and one (1) share of Preferred Stock of AFI to be exchanged into [REDACTED] shares of Amerifit Nutrition Common Stock (the "AFI Preferred Exchange Ratio").

1.6 Certificate Legends. The Amerifit Nutrition Shares to be issued pursuant to this Article shall not have been registered under federal securities laws, and under such laws, such shares may be resold without registration under the Securities Act of 1933, as amended (the "Securities Act"), only in limited circumstances. Each certificate evidencing Amerifit Nutrition Shares to be issued pursuant to this Article shall bear the following legend:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). SUCH SHARES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION WITHOUT AN EXEMPTION UNDER THE SECURITIES ACT OR AN OPINION OF LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED".

1.7 Closings.

1.7.1 Initial Closing. Upon the terms and subject to the conditions of this Agreement, the contribution to Amerifit Nutrition of (a) the AFI Shares by the AFI Shareholders, (b) the AFI Options by the holders of AFI Options, (c) the Accredited MFI Shares by the Accredited MFI Shareholders, and (d) the MFI Convertible Debt and the MFI Bridge Warrants by the holders of MFI Convertible Debt and MFI Bridge Warrants, respectively in exchange for shares of Amerifit Nutrition Common Stock and/or rights to obtain shares of Amerifit Nutrition Common Stock as contemplated by this Agreement, shall take place at an initial closing (the "Initial Closing") to be held at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts at 10:00 A.M. Boston time on October 25, 1999, or at such other place or at such other time or on such other date as the parties hereto may mutually agree upon in writing (the day on which the Initial Closing takes place being the "Initial Closing Date").

1.7.2 Subsequent Closing. Upon the terms and subject to the conditions of this Agreement, the contribution to Amerifit Nutrition of (a) the Non-Accredited MFI Shares by the Non-Accredited MFI Shareholders, (b) the MFI Options by the holders of MFI Options and (c) the MFI Founder Warrants by the holders of MFI Founder Warrants in exchange for shares of Amerifit Nutrition Common Stock and rights to obtain shares of Amerifit Nutrition Common Stock, respectively, as contemplated by this Agreement, shall take place at a subsequent closing (the "Subsequent Closing"; as used herein, the Initial Closing and the Subsequent Closing shall collectively be referred to as the "Closing") to be held at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts at 10:00 A.M. Boston time on November 25, 1999, or at such other place or at such other time or on such other date as the parties hereto may mutually agree upon in writing (the day on which the Subsequent Closing takes place being the "Subsequent Closing Date"; as used herein, the Initial Closing Date and the Subsequent Closing Date shall collectively be referred to as the "Closing Date").

1.8 Initial Closing Deliveries.

1.8.1 AFI. At the Initial Closing, AFI shall deliver or cause the AFI Shareholders and the holders of AFI Options to deliver to MFI the following:

- (a) the certificates of AFI required by Sections 9.1 and 9.2;
- (b) the original stock certificates representing the AFI Shares;
- (c) the original documents or instruments representing the AFI Options;
- (d) the original documents and instruments evidencing the AFI Subordinated Debt;
- (e) the opinion of Dechert Price & Rhoads, counsel to AFI, required by Section 9.3;
- (f) the Stockholders' Agreement executed by the AFI Shareholders;
- (g) a certificate of the Secretary of AFI, dated as of the Initial Closing Date, certifying the resolutions of the Board of Directors of AFI authorizing the execution and delivery of this Agreement and the transactions contemplated hereby; and
- (h) such other documents, instruments and certificates required under Article VII and as may be reasonably requested by MFI or its counsel.

1.8.2 MFI. At the Initial Closing, MFI shall deliver or cause the Accredited MFI Shareholders and the holders of MFI Bridge Warrants and MFI Convertible Debt to deliver to AFI the following:

- (a) the certificates of MFI required by Sections 8.1 and 8.2;
- (b) the original stock certificates representing the MFI Shares held by the Accredited MFI Shareholders;
- (c) the original documents and instruments evidencing the MFI Bridge Warrants and MFI Convertible Debt;
- (d) the opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., counsel to MFI and Amerifit Nutrition, required by Section 8.4;
- (e) the Stockholders' Agreement executed by the Accredited MFI Shareholders;

(f) a certificate of the Secretary of MFI, dated as of the Initial Closing Date, certifying the resolutions of the Board of Directors of MFI authorizing the execution and delivery of this Agreement and the transactions contemplated hereby;

(g) the consents and approvals of all third parties required under existing agreements with MFI; and

(h) such other documents, instruments and certificates required under Article VII and as may be reasonably requested by AFI or its counsel.

1.8.3 Amerifit Nutrition. At the Initial Closing, Amerifit Nutrition shall deliver to AFI and MFI the following:

(a) the documents evidencing the Amerifit Nutrition Financing (as such term is defined in Section 7.8 below); and

(b) such other documents, instruments and certificates as may be reasonably requested by AFI, MFI or their respective counsel.

1.9 Subsequent Closing Deliveries.

1.9.1 MFI. At the Subsequent Closing, MFI shall deliver or cause the Non-Accredited MFI Shareholders, the holders of MFI Options and the holders of MFI Founder Warrants, to deliver to Amerifit Nutrition the following:

(a) the certificates of MFI required by Sections 8.1 and 8.2;

(b) the certificates representing the MFI Shares held by the Non-Accredited MFI Shareholders;

(c) the original documents and instruments evidencing the MFI Founder Warrants;

(d) the original documents or instruments evidencing the MFI Options;

(e) a certificate of the Secretary of MFI, dated as of the Subsequent Closing Date, certifying the resolutions of the Board of Directors of MFI authorizing the execution and delivery of this Agreement and the transactions contemplated hereby; and

(f) such other documents, instruments and certificates required under Article VII and as may be reasonably requested by MFI or its counsel.

1.10 Further Assurances. At any time and from time to time after the date hereof and/or after the Initial Closing Date and/or the Subsequent Closing Date, as the case may be, each of the parties hereto, at the request of any other party hereto and without further consideration, will execute and deliver such other instruments of sale, transfer, conveyance, assignment, confirmation and other instruments as may be reasonably requested in order to more

effectively transfer, convey and assign to Amerifit Nutrition and to confirm Amerifit Nutrition's title to the AFI Shares, and the MFI Shares, and to effectuate the transactions contemplated herein.