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CLERK OF COURT

BY: 

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3 **Louie J. Yanza**
4 **YANZA . FLYNN . TIMBLIN, LLP**
5 **One Agana Bay**
6 **446 East Marine Corps Drive, Suite 201**
7 **Hagåtña, Guam 96910**
8 **Telephone No.: (671) 477-7059**
9 **Facsimile No.: (671) 472-5487**

10 **Attorneys for Plaintiff**
11 **CITI DEVELOPMENT CONSTRUCTION, INC.**

12 **SUPERIOR COURT OF GUAM**

13 **CITI DEVELOPMENT**
14 **CONSTRUCTION, INC.,**

15 **Plaintiff,**

16 **vs.**

17 **GUAM HEALTHCARE**
18 **DEVELOPMENT, INC. dba GUAM**
19 **REGIONAL MEDICAL CITY, dck**
20 **pacific guam, LLC, dck worldwide,**
21 **LLC, PERNIX GUAM, LLC, DOES I –**
22 **III, and all other persons, unknown,**
23 **claiming any right, title, estate, lien or**
24 **interest in the real properties**
25 **described in the Complaint adverse to**
Plaintiff' mechanic's lien, or any cloud
upon owner's title thereto.

Defendants.

CIVIL CASE NO. CV0039-16

AMENDED VERIFIED COMPLAINT
AND
DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff **CITI DEVELOPMENT CONSTRUCTION, INC.**, through
counsel, **YANZA . FLYNN . TIMBLIN, LLP**, by Louie J. Yanza, and by way of its
Complaint, alleges as follows:

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1. This Court has jurisdiction of this matter pursuant to 7 Guam Code Annotated, Section 3105, as it concerns the foreclosure of mechanic's lien against real property in Guam.
2. Plaintiff CITI DEVELOPMENT CONSTRUCTION, INC. ("CITI") is, and at all times herein mentioned was, a corporation organized under the laws of Guam, and licensed to do business under the laws of Guam.
3. Based on Plaintiff's information and belief, Defendant GUAM HEALTHCARE DEVELOPMENT, INC. ("GHDI") dba GUAM REGIONAL MEDICAL CITY ("GRMC") is a corporation organized under the laws of Guam, and licensed to do business under the laws of Guam.
4. Based on Plaintiff's information and belief, Defendant dck worldwide, LLC ("dck worldwide"), is a foreign corporation doing business under the laws of Pennsylvania, which is and has been doing business in Guam continuously on a daily basis, as dck pacific Guam LLC ("dck pacific"), and also operates and manages dck pacific.
5. Based on Plaintiff's information and belief, Defendant dck pacific is a limited liability company organized under the laws of Hawaii and granted authority to operate on Guam and licensed to do business under the laws of Guam.
6. Based on Plaintiff's information and belief, dck worldwide was formed after a corporate restructuring of its predecessor Dick Corp. dck pacific operates on Guam as a subsidiary of dck worldwide.

1 7. Based on Plaintiff's information and belief, Defendant Pernix Guam, LLC
2 ("Pernix") is a limited liability company organized under the laws of
3 Guam and licensed to do business under the laws of Guam.

4 8. Certain Defendants are sued herein as DOES I - III because their
5 identities are not yet known. If and when such identities become known,
6 Plaintiff will name any such Defendant in the place and stead of DOES I
7 - III.

8 9. At all times herein mentioned, Defendant GHDI was the owner and
9 possessor of certain parcels of real properties situated in Dededo,
10 Guam, described as follows:
11

12 **Property No. 1: Lot 5009-2-10, Dededo, Guam**

13 **Property No. 2: Lot 5009-2-16-New, Dededo, Guam**

14 10. Defendant GHDI dba GRMC contracted with Defendant dck pacific and
15 dck worldwide (hereinafter collectively referred to as "dck") to construct
16 the new private hospital named the Guam Regional Medical City.

17 11. dck entered into a contract with GHDI dba GRMC as what was
18 described as the Construction Manager at Risk of GHDI's new hospital
19 project.

20 12. Although the agreement described dck as the Construction Manager at
21 Risk, dck was in fact the agent of GHDI and the General Contractor of
22 the project.

23 13. On or about June 10, 2013, dck entered into a subcontract with CITI to
24 provide labor and materials to the new hospital project.
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- 14. During the course of construction of the new hospital, both GHDI and dck pacific caused delays of the project, resulting in the Plaintiff incurring extended overhead expenses.
- 15. During the course of construction of the new hospital, both GHDI and dck pacific instructed Plaintiff to make change orders resulting in the Plaintiff incurring further expenses.
- 16. All of Plaintiff's expenses related to extended overhead and change orders for work not included in the Plaintiff's scope of work, were approved by the Defendants.
- 17. Based on Plaintiff's information and belief, during the course of construction of the new hospital serious construction defects arose affecting the safety and integrity of the GHDI project resulting in delay, and requiring substantial repairs and increased costs.
- 18. Based on Plaintiff's information and belief the aforementioned construction defects resulted in substantial delays and thousands of dollars of added constructions expenses.
- 19. None of the aforementioned construction defects delays and were caused by Plaintiff.
- 20. Disputes arose between GHDI and dck, and without good cause, dck abandoned its contract with GHDI on or about September 2015.
- 21. Upon Plaintiff's information and belief in order to avoid having to pay millions of dollars to GHDI due to the aforementioned construction

1 defects, on or about June 2015 dck purported to sell all or nearly all of its
2 remaining assets to Pernix.

- 3 22. Through no fault of Plaintiff, dck abandoned its subcontract with Plaintiff
4 and has failed to comply with the remaining terms and obligations of the
5 subcontract.
6

7 **COUNT I – FORECLOSURE OF MECHANIC’S LIEN**

- 8 23. Plaintiff repeats and realleges, and incorporates herein by reference,
9 each and every allegation in the preceding paragraphs.

- 10 24. Beginning in or about September 2013, Plaintiff CITI furnished labor and
11 materials to GHDI, and the labor and materials were used in the work of
12 improving the above-referenced real properties.

- 13 25. On or about August 24, 2015, Plaintiff recorded a preliminary notice of
14 lien claim to Defendants. A copy of the notice is attached hereto,
15 marked as Exhibit “1” and incorporated by reference herein.
16

- 17 26. On or about October 22, 2015, Plaintiff CITI recorded with the
18 Department of Land Management, Government of Guam, as Instrument
19 No. 884773, its claim of lien, a full and correct copy of which is attached
20 hereto, marked Exhibit “2,” and incorporated by reference herein.

- 21 27. In its claim of lien, Plaintiff CITI claimed a mechanic's lien on the work of
22 improvement and reasonable value of all labor, materials, services, and
23 equipment for the amount of \$407,987.53. CITI has further incurred
24 indebtedness in the necessary costs of recording and verifying the claim
25 of lien and extended overhead.

1 28. When Plaintiff commenced their work on the properties, Defendant
2 GHDI had full knowledge of the identities of all the subcontractors,
3 including the Plaintiff, making improvements to the Properties.

4 29. Plaintiff has been damaged and these liens are superior to any other
5 liens.
6

7 **COUNT II – UNJUST ENRICHMENT**

8 30. Plaintiff repeats and realleges, and incorporates herein by reference,
9 each and every allegation in the preceding paragraphs.

10 31. All the labor and materials, and costs incurred by Plaintiff, provided to
11 Defendant GHDI significantly improved the properties thereby raising the
12 value of the properties and erecting the new Guam Regional Medical
13 City.
14

15 32. Plaintiff CITI are entitled to compensation of the labor, materials, and
16 Plaintiff's costs contributed to improve the project properties.

17 33. To deny Plaintiff compensation, would provide a windfall to GHDI.

18 34. GHDI would be unjustly enriched at the expense of the Plaintiff.

19 35. GHDI is obligated to pay for the improvements on the properties.

20 36. Plaintiff has been damaged in an amount to be proven at trial.
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22 **COUNT III – BREACH OF CONTRACT**

23 37. Plaintiff repeats and realleges, and incorporates herein by reference,
24 each and every allegation in the preceding paragraphs.
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1 38. Defendant GHDI and Defendants dck pacific and dck worldwide agreed
2 that Defendant GHDI would assume the responsibility of construction
3 manager on or about August 2015.

4 39. In assuming the role as construction manager, GHDI assumed the
5 responsibility, duties, and obligations that Defendants dck pacific and
6 dck worldwide owed to all the subcontractors including to Citi, and is
7 therefore responsible for payments to Citi all monies owed under its
8 subcontract, including extended overhead and delay costs and change
9 orders.

10 40. dck also failed to pay the Plaintiff its overhead expenses, change orders,
11 and other damages Plaintiff incurred.

12 41. Plaintiff has performed all conditions, covenants, and promises to be
13 performed on its part in accordance with the terms and conditions of the
14 Contract, including change orders requested by GHDI and dck.

15 42. As a proximate result of the acts, conduct delays, and breaches caused
16 by the Defendants, as set forth above, Plaintiff has suffered damages to
17 be proven at trial.

18
19 **COUNT IV – BREACH OF CONTRACT**

20 43. Plaintiff repeats and realleges, and incorporates herein by reference,
21 each and every allegation in the preceding paragraphs.

22 44. By abandoning its contract with GHDI dba GRMC, dck abandoned its
23 subcontract with the Plaintiff.

24 45. dck worldwide, is the alter-ego of dck pacific:
25

- 1 a. During construction, dck pacific received monies from GHDI and
2 remitted those monies to dck worldwide;
- 3 b. dck worldwide paid monies due under the subcontracts to the
4 Plaintiff;
- 5 c. dck worldwide's employees also served as the same employees,
6 supervisors, and general managers of dck pacific;
- 7 d. dck worldwide controlled the operations and management of dck
8 pacific;
- 9 e. dck worldwide is the majority owner of dck pacific.
- 10 f. dck worldwide, as the alter-ego, is also obligated under its
11 subcontract to perform and compensate the Plaintiff in accordance
12 with dck's subcontracts with the Plaintiff.
13

14 46. Because dck worldwide is the alter-ego of dck pacific, dck worldwide is
15 also obligated under dck pacific's contract with the Plaintiff.

16 47. Because both dck worldwide and dck pacific (hereinafter collectively
17 referred to as "dck") completely abandoned the contract, breached the
18 subcontracts with Plaintiff, ignored the subcontracts with the Plaintiff,
19 ignored the arbitration provisions in the subcontracts, arbitration in this
20 matter is futile.

21 48. dck also failed to pay the Plaintiff its overhead expenses, change orders,
22 and other damages Plaintiff incurred.
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1 49. Plaintiff has performed all conditions, covenants, and promises to be
2 performed on its part in accordance with the terms and conditions of the
3 Contract, including change orders requested by GHDI and dck.

4 50. As a proximate result of the acts, conduct delays, and breaches caused
5 by the Defendants, as set forth above, Plaintiff has suffered damages to
6 be proven at trial.

7 **COUNT V – BREACH OF CONTRACT**

8 **(SUCCESSOR IN INTEREST/ALTER EGO)**

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10 51. Plaintiff repeats and realleges, and incorporates herein by reference,
11 each and every allegation in the preceding paragraphs.

12 52. By virtue of the purported sale of dck pacific's assets to Pernix, Pernix is
13 the successor in interest or alter-ego of dck pacific:

14 53. After the serious construction defects were discovered resulting in
15 millions of dollars in added construction costs, dck pacific and its parent
16 dck worldwide desired to escape its obligations under its contract with
17 GHDI dba GRMC and to escape its subcontracts with Plaintiff;

18 54. In order to defraud its creditors under the GHDI contract and the
19 subcontracts with Plaintiff, dck made the decision to sell dck pacific's
20 assets to Pernix;

21
22 55. Although dck purported to sell dck pacific's assets to Pernix, the GHDI
23 contract was specifically not included in the purported sale;
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1 56. By not including the GHDI contract in the asset sale to Pernix; dck and
2 Pernix engaged in a scheme to defraud dck pacific's creditors under the
3 GHDI contract and its subcontracts with Plaintiff;

4 57. Based upon Plaintiff's information and belief Pernix did not pay valuable
5 consideration for dck pacific's assets;

6 58. Based upon Plaintiff's information and belief Pernix is a new entity on
7 Guam and came into existence solely as a result of the purported
8 purchase of dck pacific's assets;

9 59. Based on Plaintiff's information and belief Pernix and dck pacific are
10 essentially one and the same;

11 a. Pernix's employees and management are the same as dck pacific's
12 employees and management;

13 b. Pernix's office is located in the exact same location as dck pacific's
14 office;

15 c. Save for the GHDI contract, Pernix will be completing dck pacific's
16 remaining Guam projects including lucrative contracts with the
17 military;

18 d. Pernix, as the successor in interest or alter-ego of dck pacific, is also
19 obligated to perform and compensate the Plaintiff in accordance with
20 dck pacific's subcontracts with the Plaintiff.

21 60. Because Pernix is the successor in interest or alter-ego of dck pacific,
22 Pernix is also obligated under dck pacific's subcontract with the Plaintiff.
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1 61. Pernix is also obligated to pay the Plaintiff's its overhead expenses,
2 change orders, and other damages Plaintiff incurred;

3 62. Plaintiff has performed all conditions, covenants, and promises to be
4 performed on its part in accordance with the terms and conditions of the
5 Contract, including change orders requested by GHDI and dck pacific.

6 63. As a proximate result of the acts, conduct delays, and breaches caused
7 by the Defendants, as set forth above, Plaintiff has suffered damages to
8 be proven at trial.

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10 **COUNT VI – SET ASIDE FRAUDULENT TRANSFER OF ASSETS**

11 64. Plaintiff repeats and realleges, and incorporates herein by reference,
12 each and every allegation in the preceding paragraphs.

13 65. Because the purported sale of dck pacific's assets to Pernix was
14 intended to defraud dck pacific's creditors, it constitutes a fraudulent
15 conveyance in violation of 20 G.C.A. § 6101 and must be set aside;

16 66. By virtue of the purported sale of dck pacific's assets to Pernix, Plaintiff's
17 ability to collect from dck pacific is adversely affected;

18 67. Based upon information and belief, had dck paid to repair the
19 construction defects noted above it would have likely resulted in dck
20 pacific's insolvency;

21 68. In order to avoid a contemplated insolvency and to avoid creditors, dck
22 pacific sold its assets to Pernix;
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1 69. Because dck pacific's sale of assets was intended to avoid contemplated
2 insolvency and/or to avoid creditors such as Plaintiff, said sale was in
3 violation of 20 G.C.A. § 6103 and must be set aside;

4 **COUNT VII – QUANTUM MERUIT**

5 70. Plaintiff repeats and realleges, and incorporates herein by reference,
6 each and every allegation in the preceding paragraphs.

7 71. In the alternative to Plaintiff's claims for Breach of Contract and
8 Fraudulent Transfer as alleged above, Plaintiff conferred upon
9 Defendants GHDI and dck labor and materials as part of the Contract for
10 the Project.

11 72. Defendants GHDI and dck accepted the labor and materials provided by
12 Plaintiff for the Project.

13 73. Defendants GHDI and dck obtained a benefit from the labor and
14 materials provided by Plaintiff and costs incurred by Plaintiff.

15 74. Plaintiff provided labor and materials and incurred costs, for the Project
16 with the expectation that it would be paid by Defendants GHDI and dck
17 pursuant to the Contract.

18 75. CITI's reasonable value of the labor and materials provided still due and
19 owing totaled \$407,987.37.

20 76. As a proximate result of the acts, conduct, and breaches, as set forth
21 above, Plaintiff has suffered expenses and damages to be proven at
22 trial.
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1 WHEREFORE, CITI DEVELOPMENT & CONSTRUCTION pray for judgment

2 that:

- 3 1. The right, claim ownership, lien, and title of Defendant GHDI dba GRMC,
4 in the above-described real properties, are not prior to the lien of
5 Plaintiff.
- 6 2. The mechanic's lien claimed in CITI's claim of lien in the amount of
7 \$407,987.53, referred to above as Exhibit "2," be foreclosed, and
8 judgment be made for the sale of the real properties according to law;
9 and that the proceeds of the sale be applied in payment of the amount
10 owed Plaintiff CITI including interest.
- 11 3. Plaintiff CITI be permitted to become a purchaser at the foreclosure sale
12 of its lien.
- 13 4. In the alternative, Plaintiff CITI prays for judgment against Defendants
14 GHDI dba GRMC, dck pacific, dck worldwide, and Pernix for Breach of
15 Contract, and in the amount of \$407,987.53 due under the Contract plus
16 interest thereon.
- 17 5. In the alternative, Plaintiff pray for judgment against Defendants dck
18 pacific, dck worldwide, and Pernix setting aside all purported sales of
19 dck pacific's assets to Pernix.
- 20 6. In the alternative, Plaintiff CITI prays for judgment against Defendants
21 GHDI, dck pacific, and dck worldwide for the value of labor and materials
22 conferred upon Defendants GHDI and dck for the Project under the
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1 doctrine of quantum meruit, in the amount of \$407,987.53 plus interest
2 thereon.

3 7. For costs of suit incurred herein.

4 8. For such other and further relief as the Court may deem just and proper.

5 **DEMAND FOR JURY TRIAL**

6 The dispute involves more than \$250.00. Plaintiff hereby demands a jury of six
7 (6) in the above-entitled action.

8 Dated this 18th day of April, 2016.

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10 **YANZA • FLYNN • TIMBLIN, LLP**
11 Attorneys for Plaintiff
12 **CITI DEVELOPMENT CONSTRUCTION, INC.**

13 By: _____

14 **LOUIE J. YANZA**
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Exhibit "1"

Island of Guam, Government of Guam
Department of Land Management Office of the Recorder

882304

File for Record is Instrument No. _____

On the Year 15 Month 09 Day 24 Time 3:40

Recording Fee 25 Receipt No. 41511

Deputy Recorder Jane Yamasaki
JANET YAMASAKI

PRELIMINARY NOTICE OF LIEN CLAIM

Guam Healthcare Development, Inc. dba
Guam Regional Medical City
dck Pacific Guam, LLC

Project Owner
Contractor

You are hereby notified, pursuant to 7 Guam Code Annotated section 33106, that the undersigned, the duly authorized representative of **CITI DEVELOPMENT & CONSTRUCTION, INC.**, whose address is 545 Chalan San Antonio, Suite 310, Tamuning, Guam 96913, furnished labor and materials, beginning on June 13 2013, pursuant to a contract with dck pacific guam, LLC, whose mailing address is 226-D Finegayan St., Harmon Industrial Park, Harmon, Guam 96912, for the completion of a project on real property located in Dededo, Guam:

Lot No. 5009-2-16-New, Dededo, Guam

The total price for such materials and services furnished, including extended overhead, which remains unpaid is approximately \$476,929.33, plus interest accrued.

YOU ARE FURTHER NOTIFIED, pursuant to the above-mentioned code section, that if the balance is not paid in full for the services furnished, the property at the project described above will be subjected to a mechanic's lien.


NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by: (i) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor; or (2) any other method or device that is appropriate under the circumstances.

Dated this 20th day of August, 2015.

**CITI DEVELOPMENT &
CONSTRUCTION, INC.**

By:



RONG "BOBBY" SACHDEJ
Its Duly Authorized Representative

SUBSCRIBED AND SWORN to before me this 20th day of August, 2015, by RONG "BOBBY" SACHDEJ.



Notary Public

SARAH G. BURKHOLDER
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **JUNE 15, 2019**
P.O. Box 12664 Tamuning, Guam 96931

Exhibit "2"

RECORDER'S
USE
ONLY

Island of Guam, Government of Guam
Department of Land Management Officer of the Recorder

File for Record is Instrument No. 884773

On the Year 15 Month 10 Day 22 Time 3:07

Recording Fee 25 Receipt No. 42253

Deputy Recorder Lisa M. Quitano
LISA M. QUITANO

CLAIM OF MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN by CITI DEVELOPMENT & CONSTRUCTION, INC., a Guam corporation, licensed to do business on Guam, whose address is 545 Chalan San Antonio, Suite 310, Tamuning, Guam 96913, through its duly authorized representative, as follows:

1. The undersigned claims a lien, pursuant to 7 Guam Code Annotated §33301, et seq., in the amount of \$407,987.53, plus interest accrued, on real property located in Dededo, Guam, more particularly described as follows:

5009-2-16-New Dededo, Guam

2. The lien is claimed for the labor and materials furnished by claimant.
3. Claimant furnished the labor and materials to dck pacific guam, LLC, the contractor and contract manager for the property project.
4. On or about August 24, 2015, claimant gave preliminary notice to Guam Regional Medical City.

VERIFICATION

I, RONG SACHDEJ, declare that:

