

COMMONWEALTH OF MASSACHUSETTS

NORFOLK,ss.

TRIAL COURT DEPARTMENT
NORFOLK SUPERIOR COURT
CIVIL ACTION NO.

_____)
DIAZ CONSTRUCTION CO. INC.)
)
<i>Plaintiff</i>)
)
v.)
)
PINNCON, LLC., BLUE HILL)
COMMONS, LLC)
)
<i>Defendants</i>)
_____)

COMPLAINT

COUNT ONE

(To establish a mechanic’s lien under C. 254 of the General Laws)

**PROPERTY ADDRESS: 10 ROYALL AVENUE, CANTON, MASSACHUSETTS
OWNER: BLUE HILL COMMONS, LLC
LIENOR: DIAZ CONSTRUCTION COMPANY**

*Notice of Contract filing:
Norfolk Registry Book 25678, Page 201, April 14, 2008*

*Statement of Account filing
Norfolk Registry Book 25678, Page 204, April 14, 2008*

*Title Reference:
Norfolk Registry Book 24916, Pages 387-427, June 21, 2007*

1. Diaz Construction Co. Inc. (“Diaz Construction”) is a Massachusetts corporation with a usual place of business in Brockton, Massachusetts, County of Plymouth. Diaz Construction is widely regarded as a leader in the field of construction excavation.

2. Pinncon, LLC (“Pinncon”) is a Massachusetts limited liability company with a usual place of business in Braintree, Massachusetts, County of Norfolk.
3. Blue Hill Commons, LLC (“Blue Hill”) is a Massachusetts limited liability company with a usual place of business in Canton, Massachusetts, County of Norfolk.
4. Diaz Construction entered into a subcontract with Pinncon, LLC dated April 11, 2006 whereby Diaz Construction would furnish labor, materials, equipment and other miscellaneous appurtenances required for the for the construction of a condominium building including but not limited to concrete form work, concrete flat work, and composite concrete deck systems work.
5. Diaz Construction has properly performed its subcontract work and there is due and owing to Diaz Construction approximately \$93,954 for its construction activities, which is the amount indicated in Diaz Construction’s Notice of Contract. The amount represents the fair and reasonable value of the labor and materials and equipment Diaz Construction has furnished to this project for which it has not been paid.
6. Pinncon is in breach of its contractual obligations to Diaz Construction as to the contract alleged above. Diaz Construction has substantially completed its contract performance in its entirety and Pinncon has refused to pay Diaz Construction’s rightful bill. Upon information and belief, Pinncon has taken these monies otherwise due Diaz Construction and used them in other business and real estate development projects.
7. All of the materials furnished by the Plaintiff were used in the construction of the condominium project in question and were furnished in reliance on Plaintiff’s notice and/or Plaintiff’s right to claim notice of contract and a mechanic’s lien under Massachusetts law.
8. Diaz Construction has performed all conditions precedent required of it and all conditions precedent to the maintenance of this suit have occurred. Diaz Construciton has timely filed a noicie of contract and statement of account and has otherwise complied with the requirements of C.254 of the General Laws for the purposes of filing this mechanic’s lien, copies of which are attached hereto as “Exhibit A” and “Exhibit B”.

WHEREFORE, Plaintiff Diaz Construction demands judgment for all damages, monies, costs, interest fees and counsel fees to which it is entitled after a hearing on this matter against Pinncon, LLC and Blue Hill Commons, LLC.

FURTHER, PLAINTIFF DEMANDS JUDGMENT THAT:

- I. The amount due the Plaintiff by reason of its furnishing the aforesaid labor, materials and equipment be determined and that it have judgment thereon for its costs;
- II. That the Plaintiff's lien on the real estate be established;
- III. That the rights of all other interested persons who are or may become parties be adjudicated;
- IV. That the interests in the real estate subject to the lien be sold and the proceeds applied to the satisfaction of the Plaintiff's lien, judgment, and its costs for establishing and enforcing said lien along with all prejudgment interest and attorney's fees; and
- V. That all of Plaintiff's tools, equipment and appurtenant materials be returned to the Plaintiff in a clean and sanitary condition; and,
- VI. The Court order such further relief as justice and the rights of the parties require including, without limitation, compensation for all of the work completed at the location Project heretofore.

COUNT TWO
(COUNT SOUNDING IN CONTRACT)

1-8. Diaz Construction realleges Paragraphs 1-8 of Count One as Paragraphs 1-8 of Count Two as if fully set forth herein.

WHEREFORE, Plaintiff Diaz Construction demands judgment for all damages, monies, costs, interest fees and counsel fees to which it is entitled after a hearing on this matter against Pincon, LLC.

COUNT THREE
(COUNT SOUNDING IN *QUANTUM MERUIT*)

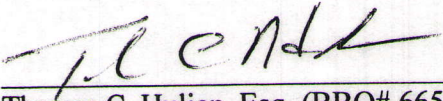
1-8. Diaz Construction realleges Paragraphs 1-8 of Count One as Paragraphs 1-8 of Count Three as if fully set forth herein.

WHEREFORE, Diaz Construction Co. Inc. demands judgment for all damages, monies, costs, interest fees and counsel fees to which it is entitled after a hearing on this matter against Defendant Pincon, LLC.

Respectfully submitted,

DIAZ CONSTRUCTION CO. INC.

By its attorney,



Thomas C. Hulien, Esq. (BBO# 665724)
Law Office of Thomas C. Hulien, L.L.C.
62 Main Street
Kingston, Massachusetts 02364
(781) 582-1136

Dated: May 14, 2008

CERTIFICATE OF SERVICE
I hereby certify that a true copy of the
above document was served upon the
attorney of record for each other party
by mail hand on May 15, 2008
Constable Don A. Power

“Exhibit A”

NOTICE OF CONTRACT

(Pursuant to Chapter 254, § 4 of the General Laws)

Notice is hereby given that by virtue of a written contract dated October 24, 2006 between **Diaz Construction Co. Inc.** (Subcontractor), 314 Howard St. Brockton, MA 02302 and **Pinncon, LLC**, 101 Campanelli Drive, Braintree, MA 02184, (General Contractor) said Subcontractor has furnished labor or material, or both labor and material or is to furnish or has furnished labor, materials, rental equipment, appliances or both in the erection, alteration, repair or removal of a building on a lot of land owned/operated by **Blue Hills Commons, LLC** (Owner), whose address is 780 Dedham Street, Suite 400 Canton, MA 02021.

Property Address: 10 Royall Avenue, Canton, MA 02021

Notice is hereby given that the work performed by virtue of a written contract dated April 11, 2006 between Blue Hill Commons, LLC as owner, and Diaz Construction Company as subcontractor, for the erection, alteration, repair or removal of a building, structure, or other improvement of real property described below, has been substantially completed as of the date of filing or recording of this notice. The lot of land or other interest in real property which is the subject of such contract is described as follows:

The land is shown on a site plan, entitled "Blue Hill Commons-Phase One Plan in Canton, Massachusetts," dated June 20, 2007 and recorded herewith (the "site plan"). The land is submitted to Chapter 183a subject to and with the benefit of (i) the rights, interests, encumbrances, easements and restrictions described in Exhibit A including those contained in the site plan approval issued by the Town of Canton Zoning Board of Appeals (84-04-SPA-SP), recorded with Norfolk Deeds in Book 22899, Page 43, as such may hereafter be further amended (the "site plan approval") and those contained in the special permit issued by the Town of Canton Planning Board (84-04-SPA-SP), recorded with Norfolk Deeds in Book 22899, Page 51 as such may hereafter be further amended (the "special permit"); (ii) the rights, interests and easements reserved by the declarant in this master deed including them declarant's development rights which in all instances shall be exercisable by the declarant and successors and assigns and (iii) the other rights, interests, easements, encumbrances and restrictions described in this master deed.

The land situated at Royall Street, Davenport Avenue and Washington Street, Canton, Norfolk County, Massachusetts, all more particularly described below:

10 Royall Street, Canton, Massachusetts certain parcel of land in Canton, Norfolk County, Massachusetts at the southwesterly corner of the intersection of Royall Street and Davenport Avenue and shown as Lot B containing 6,002 square feet of land on a plan entitled "Plan of Land in Canton, Mass." dated September 22, 1960 by Norwood Engineering Co. Incorporated, Civil Engineers, Norwood, Mass. duly recorded with the Norfolk County Registry of Deeds as Plan No. 1175 of 1960 Book 3848, Page 565.

PAGE ONE OF THREE – DIAZ CONSTRUCTION CO., INC.

NOTICE OF CONTRACT

RETURN ADDRESS: Law Office of Thomas H Julien, LLC, 62 Main Street Suite 201, Kingston, Massachusetts 02364 (Telephone 781-829-1096)

Original contract amount: \$475,000.00
Agreed change orders: \$ 3,250.00
Agreed change orders: \$ 406,200.00
Agreed change orders: \$ 751.00
Agreed change orders: \$ -250.00
Agreed change orders: \$ 0.00
Agreed change orders: \$ 0.00
Agreed change orders: \$ 3,850.00
Agreed change orders: \$ 25,600.00
Agreed change orders: \$ 3,250.00
Agreed change orders: \$ 6,400.00
Agreed change orders: \$ 750.00
Agreed change orders: \$ 2,240.00
Agreed change orders: \$ 4,500.00
Agreed change orders: \$ -3,250.00
Disputed Claims: \$0
Amount received: \$ 834,337.80
Amount currently due: \$93,954.16

The regular mailing address of the party recording or filing this notice is as follows: Law Office of Thomas C. H Julien, LLC, 62 Main Street suite 201, Kingston, Massachusetts 02364

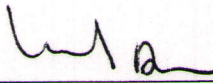
PAGE TWO OF THREE – DIAZ CONSTRUCTION CO., INC.

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Diaz Construction Co., Inc.

Diaz Construction Co., Inc.

By: 

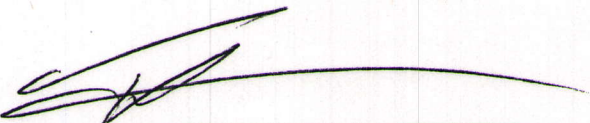
Lionel Diaz
President

Commonwealth of Massachusetts

County of Plymouth

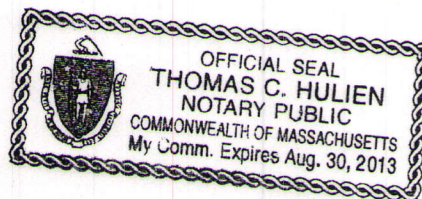
Date: April 3, 2008

Then personally appeared before me the above-named Lionel Diaz, who being duly sworn did say that he is the President of Diaz Construction Co., Inc., that the foregoing Notice of Contract was signed on behalf of said corporation by authority of its board of directors, and that said instrument was acknowledged to be the free act and deed of Diaz Construction Co., Inc. and of himself and that the statements contained herein are true.



Notary Public : Thomas Hulien, ESQ

My commission Expires:



PAGE THREE OF THREE – DIAZ CONSTRUCTION CO., INC.

NOTICE OF CONTRACT

**RETURN ADDRESS: Law Office of Thomas Hulien, LLC, 62 Main St. Suite 201
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“Exhibit B”

STATEMENT OF ACCOUNT

(Pursuant to Chapter 254, § 8 of the General Laws)

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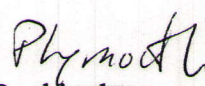
STATEMENT OF ACCOUNT

**RETURN ADDRESS: Law Office of Thomas Hulien, LLC, 62 Main St. Suite 201
Kingston, Massachusetts 02364 (Telephone 781-829-1096)**

Diaz Construction Co., Inc.

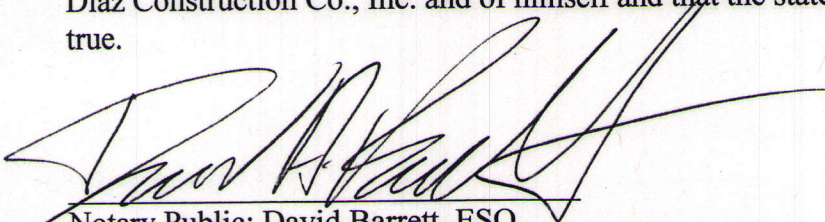
By: 

Lionel Diaz
President

 Commonwealth of Massachusetts
County of ~~Rockingham~~ Plymouth

Date: April 14, 2008

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Notary Public: David Barrett, ESQ

My commission Expires:

STATEMENT OF ACCOUNT

PAGE THREE OF THREE - DIAZ CONSTRUCTION CO., INC.

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Kingston, Massachusetts 02364 (Telephone 781-829-1096)**

