

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

*In the matter of Sections 97 and 100 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as
am.*

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

**FORTRESS BROOKDALE INC., FORTRESS AVENUE ROAD (2015) INC. and
FERNBROOK HOMES (BROOKDALE) LIMITED**

Respondents

**FACTUM OF
COMPUTERSHARE TRUST COMPANY OF CANADA,
in its capacity as trustee under a trust indenture dated November 26, 2013**

(Motion for Directions on Construction Lien Actions,
Returnable December 19, 2018)

December 14, 2018

DLA PIPER (CANADA) LLP
1 First Canadian Place
100 King Street West, Suite 6000
P.O. Box 367
Toronto ON M5X 1E2

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Lawyers for Computershare Trust
Company of Canada

TO: THE SERVICE LIST

**BRIEF SUBMISSIONS OF
COMPUTERSHARE TRUST COMPANY OF CANADA**

1. Computershare Trust Company of Canada (“**Computershare**”) is the plaintiff in a proceeding styled *Computershare Trust Company of Canada v. Fortress Brookdale Inc. et al.* (CV-17-585584-00CL) (the “**Equitable Mortgage Proceeding**”).

Statement of Claim, Appendix “A” to this Factum

2. In the Equitable Mortgage Proceeding, Computershare asserts that it is entitled to an equitable mortgage in the principal amount of \$9,028,000, secured on title to the Project Lands that were the subject of Firm Capital Mortgage Fund’s (“**Firm Capital**”) vesting order proceedings. Several of the defendants in the Equitable Mortgage Proceeding are registered mortgagees over the Project Lands.

Statement of Claim, Appendix “A” to this Factum

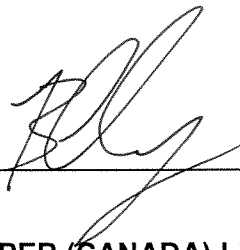
3. The issues raised in the Equitable Mortgage Proceeding, and in particular, the relative priorities as among Computershare and the registered mortgagees, have not been determined. Computershare agreed to, and has in fact, released Firm Capital from those proceedings.

4. With respect to the three issues to be determined at the December 19 motion as set out in the endorsement of Justice McEwan issued October 18, 2018 (the “**October 18 Endorsement**”), Computershare expects to support the position of Building & Development Mortgages Canada Inc. with respect to the procedure for determination of construction lien claims. In particular, Computershare fully agrees that Firm Capital should not remain a party to any of the construction lien actions.

5. As the October 18 Endorsement did not address the procedure to be followed with respect to the conduct of the Equitable Mortgage Proceedings (and the priority determinations to be made therein), this will not be addressed at the December 19 motion. Computershare expects to have scheduling issues relating to the conduct of the Equitable Mortgage Proceedings determined at a 9:30 attendance to be held in January 2019, if the parties to the Equitable Mortgage Proceedings cannot work out a procedure and schedule among themselves.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

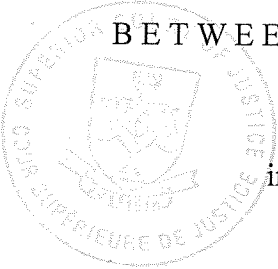
December 14, 2018



DLA PIPER (CANADA) LLP
E. CLANCY 60548J

Court File No.
CV-17-585584-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**



BETWEEN:

COMPUTERSHARE TRUST COMPANY OF CANADA
in its capacity as trustee under a trust indenture dated November 26, 2013

Plaintiff

- and -

**FORTRESS BROOKDALE INC., BROOKDALE REALTY CORPORATION,
MADY AVENUE ROAD LTD.,
OLYMPIA TRUST COMPANY, FIRM CAPITAL MORTGAGE FUND INC.,
QUINCY INVESTMENTS LIMITED
969592 ONTARIO LIMITED, 969593 ONTARIO LIMITED
2307271 ONTARIO INC., SASSO AUTO CONSULTING INC.
ANGELO GROSSI, DAVID MARK DOUBILET, GUS STAMATIOU,
ROBERT DI MATTEO, TONINO AMENDOLA,
JAEKEL CAPITAL INC.
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.,
FORTRESS AVENUE ROAD (2015) INC.
JOHN DOE AND JOHN DOE INC.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

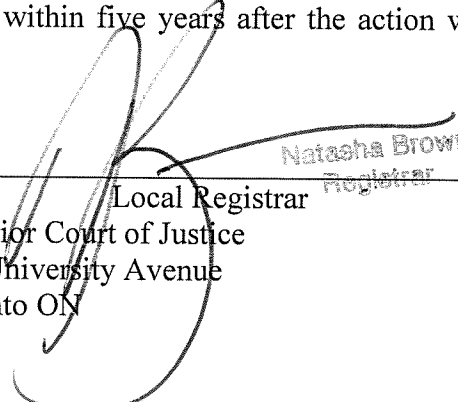
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$4,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Oct 31st / 17 Issued by  _____
Local Registrar
Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON

TO: FORTRESS BROOKDALE INC.
2220 Highway 7 West
Suite 5
Concord, Ontario, L4K 1W7

AND TO: BROOKDALE REALTY CORPORATION
1600, 421-7th Avenue SW
Calgary AB T2P 4K9

AND TO: MADY AVENUE ROAD LTD.
8791 Woodbine Avenue, Suite 100
Markham, ON L3F 0P4

AND TO: OLYMPIA TRUST COMPANY
2200, 125 - 9th Avenue SE
Calgary, AB T2G 0P6

AND TO: FIRM CAPITAL MORTGAGE FUND INC.
163 Cartwright Avenue
Toronto, ON M6A 1V5

AND TO: QUINCY INVESTMENTS LIMITED
31 Densley Avenue
Toronto, ON M6M 2P5

AND TO: 969592 ONTARIO LIMITED
31 Densley Avenue
Toronto, ON M6M 2P5

AND TO: 969593 ONTARIO LIMITED
31 Densley Avenue
Toronto, ON M6M 2P5

AND TO: 2307271 ONTARIO INC.
40 Hazelridge Court
Kleinburg, ON L0J 1C0

AND TO: SASSO AUTO CONSULTING INC.
185 Bishop Avenue
Toronto, ON M2M 1Z7

AND TO: ANGELO GROSSI
36 Pebblelane Court
Richmond Hill, ON L4C 6X2

AND TO: DAVID MARK DOUBILET
70 Heath Street East
Toronto, ON M4T 1S3

AND TO: GUS STAMATIOU
54 Kettle Court
Vaughan, ON L6A 2M2

AND TO: ROBERT DI MATTEO
20 Cachet Woods Court, Unit 2
Markham, ON L6C 3G1

AND TO: TONINO AMENDOLA
18 Norcross Road
Toronto, ON, M3H 2R4

AND TO: JAEKEL CAPITAL INC.
Suite 203, 10376 Yonge Street
Richmond Hill, ON L4C 3B8

AND TO: BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: FORTRESS AVENUE ROAD (2015) INC.
25 Brodie Drive, Unit 1
Richmond Hill, ON L4B 3K7

AND TO: JOHN DOE

AND TO: JOHN DOE INC.

CLAIM

1. The plaintiff, Computershare Trust Company of Canada in its capacity as trustee under a trust indenture dated November 26, 2013 (the “Trustee”), claims:

(a) a declaration that, or to the effect that, the Trustee and/or the Bondholders (defined below) are entitled to an equitable mortgage in the principal amount of \$9,028,000 (plus all other amounts, including interest owing and accruing thereon, under the Trust Indenture (defined below)), secured on title to the Project Lands (defined below), as a first ranking security interest, subject only to Senior Indebtedness (defined below);

(b) a declaration that, or to the effect that, the Trustee and/or the Bondholders are entitled to an equitable mortgage in the principal amount of \$9,028,000 (plus all other amounts, including interest owing and accruing thereon, under the Trust Indenture (defined below)), secured on title to the Project Lands, in priority to all Subsequent Encumbrances (defined below), but subject to valid encumbrances duly registered before the statement of claim was served on the Subsequent Encumbrancer (defined below), provided that such party did not have prior notice of the Trustee’s and/or the Bondholders’ rights to a mortgage on the Project Lands;

(c) a declaration that, or to the effect that, the Trustee and/or the Bondholders are entitled to an equitable general security agreement to secure payment or performance of the Bond Obligations (as defined in the Trust Indenture);

(d) further, or in the alternative to paragraphs 1(a) and (b), an order that the Project Lands be sold in accordance with Part II of the *Mortgages Act*, R.S.O. 1990, c. M.40;

(e) further, or in the alternative to paragraphs 1(a) and (b) and in the alternative to paragraph 1(d), an order that the Project Lands be partitioned or sold, pursuant to the *Partition Act*, R.S.O. 1990, c. P.4;

(f) an order for the issuance of a certificate of pending litigation (“CPL”) to be registered on title to the lands legally described as follows:

(i) Lot 33 and 34 and Part Lots 42A and Lot 43A Plan 2247 designated as Part 1 on Reference Plan 66R29204; City of Toronto, being all of PIN 10189-0865(LT); and

(ii) Lot 32 Plan 2371 York designated as Part 2 on Reference Plan 66R29204; City of Toronto, being all of PIN 10189-0866(LT),

(collectively, the “**Project Lands**”);

(g) an order that the land registrar make such entries in the register as are necessary to give effect to the orders of this court, in accordance with, *inter alia*, section 25 of the *Land Titles Act*, R.S.O. 1990, c. L. 5;

(h) an order that the registrar of personal property security at the Ontario Ministry of Government and Consumer Affairs make such entries in the personal property security registration system as are necessary to give effect to the orders of this court, in accordance with the *Personal Property Security Act*, R.S.O. 1990, c. P.10;

(i) as against the Issuer (defined below), the Guarantor (defined below), the Current Registered Owner (defined below) and the Beneficial Owner (defined below), the sum of, or

damages in the amount of, \$9,028,000, being the debt currently owed to the Trustee and/or the Bondholders in accordance with the Trust Indenture (defined below);

(j) an order appointing a receiver or receiver and manager, pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “*Courts of Justice Act*”), and section 60 of the *Personal Property Security Act*, R.S.O. 1990, c.P.10;

(k) costs of this proceeding on a full indemnity basis, in accordance with section 14.12 of the Trust Indenture (defined below);

(l) as against the Issuer, the Guarantor, the Current Registered Owner and the Beneficial Owner, prejudgment and postjudgment interest at the Interest Rate defined and calculated in accordance with the Trust Indenture;

(m) in the alternative to paragraph 1(l), as against the Issuer, the Guarantor, the Current Registered Owner and the Beneficial Owner, prejudgment and postjudgment interest in accordance with the *Courts of Justice Act*; and

(n) such further and other relief, including mandatory, ancillary, interim, interlocutory and declaratory relief, as counsel may advise.

Overview

2. This action is brought by the Trustee in its capacity as trustee under a trust indenture dated as of November 26, 2013 (the “**Trust Indenture**”) for the corporations and individuals listed in Schedule “A” (individually, a “**Bondholder**” and, collectively, the “**Bondholders**”).

3. Each Bondholder subscribed for bonds (the “**Bonds**”) issued under the Trust Indenture.

4. The principal amount of the Bonds subscribed by each Bondholder is the dollar amount of the subscriptions listed in Schedule “A” (i.e. an aggregate of \$9,028,000).

5. The parties to the Trust Indenture were Brookdale Realty Corporation, as issuer (the “**Issuer**”), Olympia Trust Company,¹ as trustee, and Mady Avenue Road Ltd., as guarantor.

6. The Bonds were issued to finance the development of a condominium project on the Project Lands.

7. Under the Trust Indenture, the Bonds were guaranteed by Mady Avenue Road Ltd. (the “**Guarantor**”), and were to be secured by a general security agreement, and by a mortgage granted by the Guarantor on the Project Lands. These instruments were to be registered on or before October 31, 2015 (the “**Registration Date**”). The registrations were not done.

8. The Guarantor was acting as agent for and bare trustee of the Beneficial Owner, which is liable for the obligations under the Trust Indenture.

9. Certain events of default have occurred and are continuing under the Trust Indenture, including the Issuer’s failure to pay interest instalments due on or before April 15, 2017. On July 15, 2017 and October 15, 2017, further failures to pay interest instalments occurred.

¹ As discussed below, Computershare Trust Company of Canada (i.e. the “Trustee”) succeeded Olympia Trust Company as trustee under the Trust Indenture.

10. The Trustee pleads and relies on the terms of the Trust Indenture. Pursuant to the Trust Indenture, and in light of the failures to cause the mortgage and general security agreement to be registered, the Trustee, for the Bondholders, is entitled to the relief sought herein.

The Parties and Bondholders

11. The plaintiff, the Trustee, is a corporation incorporated pursuant to the laws of Canada. Pursuant to the Trust Indenture, the Trustee is entitled to, *inter alia*, enforce all of the provisions of the Trust Indenture against the Issuer, for and on behalf of the Bondholders.

12. The Bondholders subscribed for Bonds and, in accordance with the Trust Indenture, are entitled, *inter alia*, to hold a mortgage on the Project Lands as security for the Bonds.

13. The defendant, Fortress Brookdale Inc. (the “**Current Registered Owner**”), is the current registered owner of the Project Lands. The Current Registered Owner is incorporated under the laws of the Province of Ontario.

14. The defendant, Brookdale Realty Corporation (i.e. the Issuer), was incorporated under the laws of Alberta. It was dissolved under the *Business Corporations Act*, RSA 2000, c. B-9 (the “**ABCA**”) on January 2, 2017. The Trustee relies on section 227(2)(b) of the ABCA to bring this action against the Issuer.

15. The defendant, Mady Avenue Road Ltd. (i.e. the Guarantor), is a corporation incorporated pursuant to the laws of Ontario. Pursuant to a covenant contained in the Trust Indenture, the Guarantor agreed to guarantee the outstanding Bonds.

16. The defendant, Olympia Trust Company ("**Olympia**"), is a corporation incorporated pursuant to the laws of Alberta. Olympia was the trustee under the Trust Indenture, but was replaced by the Computershare Trust Company of Canada (i.e. the Trustee) on December 12, 2013. Olympia acts as the registered holder and holds Bonds on behalf of a series of beneficial owners, each of which is identified on Schedule "A". Olympia is also a chargee on the Project Lands, as to a 57.25% interest, under a mortgage registered on title to the Project Lands as instrument AT4645430.

17. The defendants listed in Schedule "B" registered a charge on title to the Project Lands after the Registration Date (defined below) or had notice of the Trustee's Mortgage (defined below) and GSA (defined below) (individually a "**Subsequent Encumbrancer**" and, collectively, the "**Subsequent Encumbrancers**").

18. The defendants listed in Schedule "C" registered a charge on title to the Project Lands prior to the Registration Date; however, to the extent that they had notice, at the time of registration of their respective charges, of the Trustee's and/or the Bondholders' rights to the Trustee's Mortgage and the GSA, they also are defined herein as Subsequent Encumbrancers.

19. The defendants, John Doe and John Doe Inc., are one or more individuals and corporations, which are unknown to the Trustee but are together the beneficial owners of the Project Lands, together with, *inter alia*, the defendant Fortress Avenue Road (2015) Inc. ("**Fortress 2015**") (collectively, the "**Beneficial Owner**").

The Bonds and the Security Documents

20. Pursuant to a subscription agreement dated September 22, 2014 (the “**Subscription Agreement**”), the Issuer issued the Bonds for the purpose of loaning the proceeds to the Guarantor to be used by the Guarantor to pay certain development fees and costs associated with the Project Lands owned by the Beneficial Owner.

21. The Bonds mature on April 30, 2018.

22. As continuing security for the Bond Obligations (as defined in the Trust Indenture), the Issuer and the Guarantor were required to provide to the Trustee, for and behalf of the Trustee and the Bondholders, the following guarantee and security documents in form and substance satisfactory to the Trustee:

(a) a guarantee of all of the Bond Obligations, executed by the Guarantor (the “**Guarantee**”);

(b) a registered mortgage and charge on the Project Lands granted by the Guarantor (the “**Trustee’s Mortgage**”) in the amount equal to the aggregate principal amount of the Bonds outstanding on the Interest Payment Date (as defined in the Trust Indenture) directly preceding the date of registration and in any event in an amount of not more than \$10,800,000;

(c) a registered general security agreement from the Guarantor (the “**GSA**”); and

(d) such further and/or other reasonable security as shall be requested prior to the first issuance of the Bonds under the Trust Indenture,

(collectively, the “**Security Documents**”).

23. The Security Documents were to be provided to the Trustee on or before the Registration Date of October 31, 2015. The Guarantor also was required on or before the Registration Date, to register, record and file the Security Documents and the Security Interests (as defined in the Trust Indenture) created by the Security Documents, including all renewals thereof, in all places where such registration, recording or filing is necessary or desirable to give the Bondholders and the Trustee the benefit of the Security Documents, and the Security Interests created by the Security Documents. To date, none of these steps have taken place.

The Project Lands, the Beneficial Owner and the Current Registered Owner's Notice

24. At the time that the Trust Indenture was entered into, the Guarantor was the registered owner of the Project Lands. The Guarantor was acting as agent for and bare trustee of the Beneficial Owner, which is bound by the Guarantor and to the Trust Indenture.

25. On February 10, 2015, the Guarantor transferred the Project Lands to the Current Registered Owner and, at a time unknown to the Trustee, the beneficial ownership was transferred to the Beneficial Owner.

26. In any event, the Current Registered Owner and the Beneficial Owner had notice of the Trustee's and/or the Bondholders' interest in the Project Lands and the Security Documents. The Current Registered Owner, the Guarantor, the Issuer and the Beneficial Owner are associates within the meaning of section 1(e) of the ABCA and had common officers, directors and/or shareholders.

27. The Current Registered Owner's interest in the Project Lands and other property transferred to it by the Guarantor are subject to the interests reflected in the Security Documents, as is the interest of the Beneficial Owner.

Mortgages Act

28. In the alternative, the Guarantor transferred the Project Lands to the Current Registered Owner under such circumstances that the Current Registered Owner is by express covenant or otherwise obligated to indemnify the Guarantor with respect to the Trustee's Mortgage.

29. As a result, the Trustee and/or the Bondholders have the right to recover from the Current Registered Owner the amount of the debt under the Trustee's Mortgage.

30. The Trustee pleads and relies on the *Mortgages Act*, R.S.O. 1990, c. M.40, s.20.

31. In addition, the current Registered Owner and/or the Beneficial Owner assumed the obligations under the Trust Indenture, as evidenced by, *inter alia*, their payments thereunder and their agreements with the Guarantor and the original beneficial owner.

Priority of Trustee's Mortgage Against Subsequent Encumbrances

32. As described above, the Trust Indenture provided for the registration of the Trustee's Mortgage on title to the Project Lands, as a first ranking security interest, subject only to Senior Indebtedness taking into account indebtedness in respect of:

- (a) a Construction Financing Mortgage (as defined in the Trust Indenture);
- (b) a First Mortgage (as defined in the Trust Indenture); and
- (c) a Second Mortgage (as defined in the Trust Indenture),

unless, in any case, the terms of the instrument creating or evidencing such indebtedness provide that payment of such indebtedness ranks subordinate in right of payment to the Bonds (collectively, “**Senior Indebtedness**”), as more particularly defined in the Trust Indenture.

33. The Subsequent Encumbrancers had actual notice of the Trustee’s and/or the Bondholders’ rights and interests in the Project Lands, including their entitlement to a charge in priority to that of the Subsequent Encumbrancers. For example, Olympia was the original trustee under the Trust Indenture, and Fortress 2015 and Building & Development Mortgages Canada Inc. are owned or controlled by the same persons or have the same directing minds.

34. In light of the covenants, warranties and representations in the Trust Indenture, the equitable mortgage sought herein should be registered on title to the Project Lands, as a first ranking security interest, subject only to Senior Indebtedness.

Defaults Under the Trust Indenture

35. A number of events of default under the Trust Indenture (“**Events of Default**”) have occurred and are continuing, including the failure of the Issuer to:

- (a) pay interest within 10 business days of April 1, 2017;
- (b) pay interest within 10 business days of July 1, 2017;
- (c) pay interest within 10 business days of October 1, 2017; and
- (d) cure the defaults resulting from the breach of covenant for failing to register the Security Documents and failing to deliver annual compliance certificates within 60 days’ notice of same.

36. The Trustee has notified the Issuer, the Guarantor and the Bondholders of these Events of Default.

37. By letter dated February 3, 2017, the Trustee provided the Issuer and the Guarantor with a Notice of Default under the Trust Indenture (the “**Notice of Default**”). Specifically, the Trustee noted that the Issuer failed to: (a) deliver within 120 days after the end of each calendar year a compliance certificate certifying that the Issuer was in compliance with all conditions and covenants and all of its obligations under the Trust Indenture, contrary to section 17.10 of the Trust Indenture; and (b) provide on or before the Registration Date a guarantee executed by the Guarantor, a registered mortgage and a registered GSA, contrary to section 5.1 of the Trust Indenture.

38. By letter dated April 27, 2017, the Trustee provided the Issuer and the Guarantor with a Notice of Events of Default under the Trust Indenture (the “**Notice of Events of Default**”). Specifically, the Trustee noted that the Issuer failed to: (a) make the required interest payment to the Bondholders on April 15, 2017, contrary to section 9.1 of the Trust Indenture; and (b) remedy the defaults specified in the Notice of Default within 60 days’ of such notice, contrary to section 9.1(d) of the Trust Indenture.

39. By letter dated April 27, 2017, the Trustee provided the Bondholders with a notice of the Events of Default under the Trust Indenture, including a copy of the Notice of Events of Default delivered to the Issuer and the Guarantor.

40. In light of the defaults under the Trust Indenture, the Bondholders are entitled to payment of the principal amount of the Bonds, together with all interest, fees, costs and expenses owed thereon, in accordance with their respective entitlements.

Indemnity

41. Section 14.12 of the Trust Indenture provides as follows:

14.12 Indemnity

The Issuer and the Guarantor hereby agree to indemnify and save harmless the Trustee, the Bondholders and their respective directors, trustees, officers, employees and agents (as applicable), and all of their successors and assigns (collectively the "Indemnified Parties"), from and against all losses, demands, claims, liabilities, damages, costs, actions, penalties, obligations and expenses (including legal fees and disbursements on a solicitor and client basis), howsoever arising, in connection with the Bonds, this Indenture, the Property and/or all assets relating thereto save and except liability arising from the Trustee's gross negligence, fraud or willful misconduct in the performance of its obligations hereunder.

42. The Trustee claims against the Issuer, the Guarantor, the Current Registered Owner and the Beneficial Owner for all obligations under the Trust Indenture.

Unjust Enrichment

43. The Guarantor, the Current Registered Owner and the Beneficial Owner received a benefit from the Bond proceeds and the Trustee for the Bondholders suffered a corresponding deprivation. There is no juristic reason for the enrichment.

44. The Trustee claims on the basis of unjust enrichment and seeks to trace the Bond proceeds into the Project Lands or, in the alternative, damages.

Governing Law

45. The Trust Indenture provides that the Bond Documents (as defined therein) shall be governed by and construed in accordance with the laws of the Province of Alberta; however, the Trust Indenture does not limit proceedings to the courts of Alberta. This action is appropriately brought in Ontario.

Service Outside of Ontario

46. The statement of claim may be served outside of Ontario, without a court order, because the proceeding consists of claims:

- (a) in respect of real or personal property in Ontario;
- (b) for the enforcement of a contract in respect of real or personal property in Ontario;
- (c) for the sale of, and payment in respect of, a mortgage on real property in Ontario;
- (d) in respect of a contract where the contract was made in Ontario and a breach of the contract has been committed in Ontario; and
- (e) against a person ordinarily resident in or carrying on business in Ontario.

Statutes and Rules

47. The plaintiff pleads and relies on sections 5(3) and 24 of the *Conveyancing and Law of Property Act*, R.S.O. c.C34, the *Courts of Justice Act*, including sections 11, 96, 97, 100, 101, 103, 128 and 129, the *Land Titles Act*, R.S.O. 1990, c. L.5, including section 25, the *Mortgages Act*, R.S.O. 1990, c. M.40, including section 20 and Part II thereof, the *Partition Act*, R.S.O. 1990, c. P.4, including section 3 thereof, the *Personal Property Security Act*, R.S.O., 1990, c. P.10 including sections 58, 59, 60, 61, 62, 63, 64 and 72 thereof, and rules 1.04, 1.05, 17.02(a), (c), (e), (f) and (p), 41, 42.01 and 66 of the *Rules of Civil Procedure*.

October 31, 2017

DLA PIPER (CANADA) LLP
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100 King Street West, Suite 6000
P.O. Box 367
Toronto ON M5X 1E2

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Fax: 416-777-7910

Russel W. Drew
russel.drew@dlapiper.com
T 416.369.5260
F 416.777.7425

Lawyers for the Plaintiff

SCHEDULE "A"

LIST OF BONDHOLDERS	BONDS SUBSCRIBED
1165713 ONTARIO INC.	100,000
ZAHRA BARDAI	100,000
OLYMPIA TRUST COMPANY TR BRIAN MCCLUSKEY	64,000
OLYMPIA TRUST COMPANY TR SHARON MCCLUSKEY	55,000
DR. A. STONE MEDICINE PROFESSIONAL CORPORATION	125,000
DRS. PAUL JOZA & EVA JOZA MEDICINE PROFESSIONAL CORPORATION	50,000
FIERA MULTI-STRATEGY INCOME FUND	5,000,000
CHRISTOPHER GIFFIN	100,000
GABRIEL HEBERT	30,000
PAUL HEBERT & SYLVIE DUMONT TEN COM	30,000
ANIS KHAN	250,000
MAX NEIMAN DENTISTRY PROFESSIONAL CORPORATION	200,000
CAROLE MURPHY	25,000
OLYMPIA TRUST COMPANY FOR STEFANO PERRONE	25,000
OLYMPIA TRUST COMPANY FOR DANA SACCO	75,000
OLYMPIA TRUST COMPANY FOR MICHAEL LAYDEN	25,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	32,000
OLYMPIA TRUST COMPANY FOR ROSETTA BILOTTA	67,000
OLYMPIA TRUST COMPANY FOR GERRY SOKALSKY	100,000
OLYMPIA TRUST COMPANY FOR ANDREAS JOANNOU	85,000

LIST OF BONDHOLDERS	BONDS SUBSCRIBED
OLYMPIA TRUST COMPANY FOR GEORGIA JOANNOU	70,000
OLYMPIA TRUST COMPANY FOR MARILYN COOK	389,000
OLYMPIA TRUST COMPANY FOR JUNG PARK	50,000
OLYMPIA TRUST COMPANY FOR PIETRO BITONDO	25,000
OLYMPIA TRUST COMPANY FOR DONNA DOUGHERTY	100,000
OLYMPIA TRUST COMPANY FOR JAMES STURINO	31,000
OLYMPIA TRUST COMPANY FOR SANDRA L. JACKSON	30,000
OLYMPIA TRUST COMPANY FOR ANNA RUFFOLO	172,000
OLYMPIA TRUST COMPANY FOR SHARON THERESE ELLIS	35,000
OLYMPIA TRUST COMPANY FOR MICHAEL BARKER	160,000
OLYMPIA TRUST COMPANY FOR MICHAEL BARKER	33,000
OLYMPIA TRUST COMPANY FOR LEE ANN TERNOEY	70,000
OLYMPIA TRUST COMPANY FOR DRAGANA PILAVDZIC	25,000
OLYMPIA TRUST COMPANY FOR CHRISTOPHER D'ATRI	225,000
OLYMPIA TRUST COMPANY FOR KAMLA BHAGWANDAS JUTA	25,000
OLYMPIA TRUST COMPANY FOR HARRY T. EARLE	75,000
OLYMPIA TRUST COMPANY FOR ALI NOURALIEI	153,000
OLYMPIA TRUST COMPANY FOR DOMENICO FILOSO	25,000
OLYMPIA TRUST COMPANY FOR RYAN MCCONAGHY	45,000
OLYMPIA TRUST COMPANY FOR KATHLEEN CHUNG	25,000
OLYMPIA TRUST COMPANY FOR MICHAEL PRENDERGAST	50,000
OLYMPIA TRUST COMPANY FOR ROBERT M. DWYER	25,000

LIST OF BONDHOLDERS	BONDS SUBSCRIBED
OLYMPIA TRUST COMPANY FOR WILMA WATSON	40,000
OLYMPIA TRUST COMPANY FOR PETER ACCARDI	40,000
OLYMPIA TRUST COMPANY FOR CINDI S. STEWART	25,000
OLYMPIA TRUST COMPANY FOR DAVID D. STEWART	25,000
OLYMPIA TRUST COMPANY FOR KREASAN RAJAGOPAL	100,000
OLYMPIA TRUST COMPANY FOR ROSARIO RUFFOLO	172,000
OLYMPIA TRUST COMPANY FOR PATRICK CORNWALL	75,000
RJ INSURANCE SERVICES LIMITED	50,000
SHANA ZAMERET	25,000
RUTH ZNOTINS	100,000
TOTAL OUTSTANDING	9,028,000

SCHEDULE "B"

CHARGE	REGISTRATION DATE	CHARGE
AT4707175	OCTOBER 17, 2017	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
AT4591073	JUNE 7, 2017	FIRM CAPITAL MORTGAGE FUND INC.
AT4065378	NOVEMBER 13, 2015	QUINCY INVESTMENTS LIMITED AS TO 52.50% INTEREST 969592 ONTARIO LIMITED AS TO A 7.50% INTEREST 969593 ONTARIO LIMITED AS TO A 7.50% INTEREST 2307271 ONTARIO INC. AS TO A 10.00% INTEREST SASSO AUTO CONSULTING INC. AS TO A 2.50% INTEREST ANGELO GROSSI AS TO A 7.50% INTEREST DAVID MARK DOUBILET AS TO A 7.50% INTEREST GUS STAMATIOU AS TO A 2.50% INTEREST ROBERT DI MATTEO AS TO A 1.25% INTEREST TONINO AMENDOLA AS TO A 1.25% INTEREST

SCHEDULE "C"

CHARGE	REGISTRATION DATE	CHARGE
<p>AT3955352</p> <p>AT4645430</p>	<p>ORIGINALLY REGISTERED JULY 23, 2015</p> <p>CURRENT TRANSFER OF CHARGE REGISTERED AUGUST 2, 2017</p>	<p>ORIGINALLY CENTRO MORTGAGE INC. CURRENTLY BUILDING & DEVELOPMENT MORTGAGES CANADA, IN TRUST AS TO A 42.75% INTEREST AND OLYMPIA TRUST COMPANY INC. AS TO A 57.25 % INTEREST</p>
<p>AT3894769</p>	<p>MAY 28, 2015</p>	<p>JAEKEL CAPITAL INC</p>

COMPUTERSHARE TRUST COMPANY OF CANADA in its
capacity as trustee under a trust indenture dated November 26, 2013
Plaintiff

-and- FORTRESS BROOKDALE INC. *et. al.*

CH7-5855-84-000
Defendants
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceeding commenced at
Toronto, Ontario

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

FIRM CAPITAL MORTGAGE FUND INC.
Applicant

-and-

FORTRESS BROOKDALE INC. *et. al.*
Respondents

Court File No. 18-604993-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

PROCEEDING COMMENCED AT TORONTO, ONTARIO

**FACTUM OF COMPUTERSHARE
(MOTION RETURNABLE DEC 19 2018)**

DLA PIPER (CANADA) LLP

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Lawyers for Computershare Trust Company of Canada, in its capacity as trustee under a Trust Indenture dated November 26, 2013