

**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 amended

B E T W E E N :

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

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

Respondents

**RESPONDING APPLICATION RECORD
(Returnable On October 18, 2018)**

October 12, 2018

Beard Winter LLP
Barristers and Solicitors
130 Adelaide St. West, Suite 701
Toronto, ON M5H 2K4

Robert C. Harason LSUC#: 19535S
Tel: (416) 306-1707
Fax: (416) 593-7760

Lawyers for the Lien Claimant
Dircam Electric Limited

TO: THIS HONOURABLE COURT

AND TO: THE ATTACHED SERVICE LIST

AMENDED SERVICE LIST
(as at October 11, 2018)

TO:	<p>THORNTON GROUT FINNIGAN LLP TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, Ontario M5K 1K7 Fax: (416) 304-1313</p> <p>D.J. Miller Tel: (416) 304-0559 Email: djmiller@tgf.ca</p> <p>Leanne M. Williams Tel: (416) 304-0060 Email: lwilliams@tgf.ca</p> <p>Lawyers for the Applicant, Firm Capital Mortgage Fund Inc.</p>
AND TO:	<p>OWENS, WRIGHT LLP 20 Holly Street, Suite 300 Toronto, Ontario M4S 3B1 Fax: (416) 486-3309</p> <p>Randy H. Lebow Tel: (416) 848-4707 Email: rlebow@owenswright.com</p> <p>Real Estate counsel for the Applicant</p>
AND TO:	<p>RSM CANADA LIMITED Collins Barrow Place 11 King Street West, Suite 700 Toronto, Ontario M5H 4C7 Fax: (416) 480-2646</p> <p>Bryan A. Tannenbaum Tel: (416) 238-5055 Email: bryan.tannenbaum@rsmcanada.com</p> <p>Arif Dhanani Tel: (647) 725-0183 Email: arif.dhanani@rsmcanada.com</p> <p>Privately-appointed Receiver of the Respondents</p>

AND TO:	<p>MEYER, WASSENAAR & BANACH, LLP 5001 Yonge Street, Suite 301 North York, Ontario M2N 6P6 Fax: (416) 223-9405</p> <p>Joseph Fried Tel: (416) 223-9191 (ext. 230) Email: jfried@mwb.ca</p> <p>Lawyers for RSM Canada Limited, in its capacity as Receiver</p>
AND TO:	<p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide St. West Toronto, Ontario M5H 4E3 Fax: (416) 367-6749</p> <p>Roger Jaipargas Tel: (416) 367-6266 Email: rjaipargas@blg.com</p> <p>Xue Yan Tel: (416) 367-6322 Email: xyan@blg.com</p> <p>Lawyers for the Purchaser, Empire (Water Wave) Inc.</p>
AND TO:	<p>ROBINS APPLEBY LLP 2600-120 Adelaide Street W. Toronto, Ontario M5H 1T1 Fax: (416) 868-0306</p> <p>David A. Taub Tel: (416) 360-3354 Email: dtaub@robapp.com</p> <p>John Fox Tel: (416) 360-3349 Email: jfox@robapp.com</p> <p>Lawyers for the Respondents, Fortress Brookdale Inc. and Fortress Avenue Road (2015) Inc.</p>

AND TO:	<p>MILLER THOMSON LLP 100 New Park Place, Suite 700 Vaughan, Ontario L4K 0H9</p> <p>Enzo Di Iorio Tel: (905) 532-6613 Email: ediorio@millerthomson.com</p> <p>Riccardo Del Vecchio Tel: (905) 532-6617 Email: rdelvecchio@millerthomson.com</p> <p>GOLDMAN, SPRINGS, KICHLER & SANDERS LLP 40 Sheppard Avenue West, Suite 700 Toronto, Ontario M2N 6K9 Fax: (416) 225-4805</p> <p>Sheldon Spring Tel: (416) 225-9400 ext. 303 Email: sspring@goldmanspring.com</p> <p>Ari Reichman Tel: (416) 225-9400 ext. 342 Email: ari@goldmanspring.com</p> <p>Lawyers for the Respondent, Fernbrook Homes (Brookdale) Limited</p>
AND TO:	<p>CORSIANOS LEE 3800 Steeles Avenue West, Suite 203W Vaughan, Ontario L4L 4G9</p> <p>George Corsianos Tel: (905) 370-1092 Fax: (905) 370-1095 Email: gcorsianos@cl-law.ca</p> <p>Lawyers for Quincy Investments Limited, 969692 Ontario Limited, 969593 Ontario Limited, 2307271 Ontario Inc., Sasso Auto Consulting Inc., Angelo Grossi, David Mark Doubilet, Gus Stamatiou, Robert Di Matteo and Tonino Amendola</p>

AND TO:	<p>AGUECI & CALABRETTA 5700 Yonge Street, Suite 1110 Toronto, Ontario M2M 4K2</p> <p>James M. Butson Tel: (416) 250-5700 x 215 Fax: (416) 250-5797 Email: james.butson@aclaw.ca</p> <p>Lawyers for Jaekel Capital Inc.</p>
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AND TO:	<p>DLA PIPER (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 6000 PO Box 367 Toronto, Ontario M5X 1E2</p> <p>Derek J. Bell Tel: (416) 369-7960 Email: derek.bell@dlapiper.com</p> <p>Danny M. Nunes Tel: (416) 365-3421 Email: danny.nunes@dlapiper.com</p> <p>Lawyers for Computershare Trust Company of Canada, in its capacity as trustee pursuant to a trust indenture</p>
AND TO:	<p>COMPUTERSHARE TRUST COMPANY OF CANADA 100 University Avenue Toronto, Ontario M5J 2Y1</p> <p>Robert Armstrong Tel: (416) 263-9303 Email: robert.armstrong@computershare.com</p>
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AND TO:	AVIVA INSURANCE COMPANY OF CANADA c/o Aviva Trial Lawyers Ken Chan (Practice Assistant) 800 – 100 King Street West Toronto, Ontario M5X 2A2 Tel: (647) 788-7098 Email: ken.chan@aviva.com
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AND TO:	TARION WARRANTY CORPORATION 5160 Yonge St., 12 th Floor Toronto, Ontario M2N 6L9 Danielle M. Peck (Senior Counsel) Tel: (416) 229-3864 Fax: (416) 229-3845 Email: danielle.peck@tarion.com Timothy P. Schumacher (Vice-President & General Counsel) Tel: (416) 229-3874 Fax: (416) 229-3278 Email: tim.schumacher@tarion.com
AND TO:	OLYMPIA TRUST COMPANY 2200, 125-9 th Avenue SE Calgary, Alberta T2G 0P6 Jonathan Bahnuik (General Counsel) Tel: (403) 668-8365 Fax: (403) 265-1455 Email: bahnuikj@olympiatruster.com

AND TO:	<p>FASKEN MARTINEAU DUMOULIN LLP Bay Adelaide Centre 333 Bay Street, Suite 2400 P.O. Box 20 Toronto, Ontario M5H 2T6 Fax: (416) 364-7813</p> <p>Jonathan F. Lancaster Tel: (416) 865-4479 Email: jlancaster@fasken.com</p> <p>Lawyers for Fiera Capital Corporation</p>
AND TO:	<p>CITY OF TORONTO Legal Services 26th Floor, Metro Hall Stn. 1260, 55 John Street Toronto, Ontario M5V 3C6 Fax: (416) 397-5624</p> <p>Amanda S. Hill Tel: (416) 338-5790 Email: ahill@toronto.ca</p> <p><u>Christopher J. Henderson</u> Tel: (416) 397-5624 Email: Christopher.Henderson@toronto.ca</p>

AND TO:	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, Ontario M5J 2T9 Fax: (416) 863-1515</p> <p>Courtney V. Raphael Tel: (416) 865-3088 Email: craphael@airdberlis.com</p> <p>Sam Babe Tel: (416) 865-7718 Email: sbabe@airdberlis.com</p> <p>Danielle Muisse Tel: (416) 865-3963 Email: dmuise@airdberlis.com</p> <p>Lawyers for the Lien Claimant, Summit Concrete & Drain Ltd.</p>
AND TO:	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, Ontario M5J 2T9 Fax: (416) 863-1515</p> <p>Courtney V. Raphael Tel: (416) 865-3088 Email: craphael@airdberlis.com</p> <p>Sam Babe Tel: (416) 865-7718 Email: sbabe@airdberlis.com</p> <p>Danielle Muisse Tel: (416) 865-3963 Email: dmuise@airdberlis.com</p> <p>Lawyers for the Lien Claimant, Summit Forming Ltd.</p>

AND TO:	<p>BIANCHI PRESTA LLP 9100 Jane Street 3rd Floor, Building A Vaughan, Ontario L4K 0A4 Fax: (905) 738-0528</p> <p>Domenic C.S. Presta Tel: (905) 738-1078 ext. 2223 Email: dpresta@bianchipresta.com</p> <p>Lawyers for the Lien Claimant, D. Zentil Mechanical Inc.</p>
AND TO:	<p>BARRY S. GREENBERG 7626A Yonge Street Thornhill, Ontario L4J 1V9</p> <p>Tel: (905) 886-9535 Fax: (905) 886-9540 Email: bsgreenberg@rogers.com</p> <p>Lawyer for the Lien Claimant, Atlas Dewatering Corporation</p>
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AND TO:	<p>BEARD WINTER LLP 130 Adelaide Street West, 7th Floor Toronto, Ontario M5H 2K4</p> <p>Robert C. Harason Tel: (416) 306-1707 Email: rharason@beardwinter.com</p> <p><u>Lawyers for the Lien Claimant, Dircam Electric Limited</u></p>
AND TO:	<p>SHIBLEY RIGHTON LLP 250 University Avenue Suite 700 Toronto, Ontario M5H 3E5 Fax: (416) 214-5400</p> <p>Andrea Lee White Tel: (416) 214-5200 Email: andrea.white@shibleyrighton.com</p> <p>Thomas McRae Tel: (416) 214-5206 Email: thomas.mcrae@shibleyrighton.com</p> <p><u>Lawyers for the Lien Claimant, Gilbert Steel Limited</u></p>
AND TO:	<p>RICHTER LAW 15 Bold St. Hamilton, Ontario L8P 1T3 Fax: (905) 523-6285</p> <p>Nicholas A. Richter Tel: (905) 523-7994 Email: nrichter@richterlaw.ca</p> <p><u>Lawyers for the Lien Claimant, Gilbert Steel Limited</u></p>

AND TO:	<p>HAMMOND FLESIAS 3800 Steeles Avenue West Suite 300 Vaughan, Ontario L4L 4G9 Fax: (905) 850-9998</p> <p>Richard Hammond Tel: (905) 850-8550 ext. 400 Email: rhammond@hammond flesias.com</p> <p><u>Lawyers for the Lien Claimant, Concrane Equipment Inc.</u></p>
AND TO:	<p>JOSEPH P. MAGGISANO 201 Lonsmount Drive, Suite 100 Toronto, Ontario M5P 2Y6</p> <p>Tel: (416) 653-5353 Fax: (416) 653-2610 Email: jmaggisano@jpmlaw.ca</p> <p><u>Lawyers for the Lien Claimant, Global Precast Inc.</u></p>
AND TO:	<p>MICHAEL A. HANDLER PROFESSIONAL CORPORATION 10 Director Court, Suite 101 Woodbridge, Ontario L4L 7E8 Fax: (905) 265-2235</p> <p>Michael A. Handler Tel: (905) 265-2252 Email: mhandler@mhandlerlaw.com</p> <p><u>Lawyers for the Lien Claimant, The Fence People Limited</u></p>

AND TO:	<p>GOLDMAN SLOAN NASH & HABER LLP 480 University Avenue, Suite 1600 Toronto, ON M5G 1V2 Fax: (416) 597-3370</p> <p>Catherine E. Willson Tel: (416) 597-6488 Email: willson@gsnh.com</p> <p>Christine Kellowan Tel: (416) 597-7877 Email: kellowan@gsnh.com</p> <p>Tyronne Hodgins (Law Clerk) Tel: (416) 597-9922 ext. 142 Email: hodgins@gsnh.com</p> <p>Lawyers for the Lien Claimant, Aluma Systems Inc.</p>
AND TO:	<p>FREDERIKSE LAW Barristers & Solicitors 4391 Harvester Road, Unit 5A Burlington, Ontario L7L 4X1 Fax: (289) 816-0353</p> <p>Barbara Frederikse Tel: (289) 813-2668 Email: barbara@frederlaw.ca</p> <p>Lawyers for the Lien Claimant, Stephenson's Rental Services Inc.</p>
AND TO:	<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 33 King Street West, 6th Floor Oshawa, Ontario L1H 8H5 Fax: (905) 436-4510</p> <p>Kevin O'Hara Tel: (905) 433-6934 Email: kevin.ohara@ontario.ca</p>

AND TO:	DEPARTMENT OF JUSTICE Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1 Diane Winters Tel: (416) 973-3172 Email: diane.winters@justice.gc.ca
AND TO:	THE PURCHASERS OF RESIDENTIAL CONDOMINIUM UNITS

**E-Service List
(as at October 11, 2018)**

djmiller@tgf.ca; lwilliams@tgf.ca; bryan.tannenbaum@rsmcanada.com;
arif.dhanani@rsmcanada.com; jfried@mwb.ca; rjaipargas@blg.com; xyan@blg.com;
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rhammond@hammondflerias.com; jmaggisano@jpmlaw.ca; mhandler@mhandlerlaw.com;
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barbara@frederlaw.ca; vdare@foglars.com; kellowan@gsnh.com; hodgins@gsnh.com

COURIER SERVICE LIST
(as at October 9, 2018)

TO:	FORTRESS REAL DEVELOPMENTS INC. 25 Brodie Drive, Unit 1 Richmond Hill, ON L4B 3K7 Attention: Vince Petrozza
AND TO:	CITYZEN DEVELOPMENT (2005) CORPORATION 56 The Esplanade, Suite 301 Toronto, ON M5E 1A7 Attention: Sam Crignano
AND TO:	CITYZEN DEVELOPMENT (2005) CORPORATION 56 The Esplanade, Suite 308 Toronto, ON M5E 1A7 Attention: Sam Crignano
AND TO:	AVIVA C/O WESTMOUNT GUARANTEE SERVICES INC. 600 Cochrane Dr. Suite 205 Markham, Ontario L3R 5K3
AND TO:	VINCENZO PETROZZA a.k.a. Vince Petrozza 471 Sunset Beach Road Richmond Hill, ON L4E 3J3
AND TO:	JAWAD RATHORE 2 Scandia Court Unionville, ON L6C 1G6

**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 amended**

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

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

Respondents

AFFIDAVIT OF KAREN LOUZADO

I, Karen Louzado, of the City of Mississauga in the Province of Ontario MAKE
OATH AND SAY:

1. I am a legal assistant with the law firm Beard Winter LLP, the lawyers for the Lien Claimant Dircam Electric Limited ("Dircam"), and as such have knowledge of the matters hereinafter deposed to.
2. Now shown to me and marked as **Exhibit A** to this my affidavit is a true copy of a Statement of Claim issued by the lien claimant Dircam Electric Limited, which was served on the Defendants on April 12, 2018.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario this 12th day of
October, 2018.



A Commissioner for taking Affidavits (or as may be)



Karen Louzado

Indra Christina Boorhan, a Commissioner, etc.,
Province of Ontario, for Beard Winter LLP,
Barristers and Solicitors.
Expires August 23, 2019.

CV-18595506

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED

BETWEEN:

DIRCAM ELECTRIC LIMITED

Plaintiff

- and -

FORTRESS BROOKDALE INC., FORTRESS AVENUE ROAD (2015) INC.,
FERNBROOK HOMES (BROOKDALE) LIMITED, 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, RW FORTRESS INC., JAEKEL CAPITAL INC.,
BUILDING & DEVELOPMENT MORTGAGES CANADA INC., CENTRO MORTGAGE
INC., COMPUTERSHARE TRUST COMPANY OF CANADA and OLYMPIA TRUST
COMPANY

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.~~

Dr

Dr

This is Exhibit A referred to in the
affidavit of Karen Louzardo
sworn before me, this 12th
day of October 2018.

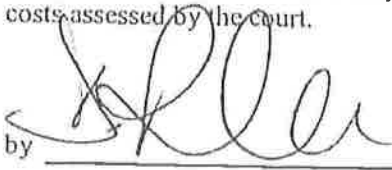
Christine Gedha

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 \$5,000.00 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.

ISSUE

Date April 10, 2018

Issued by 
Local registrar

Address of 393 University Avenue, 10th floor,
court office Toronto, Ontario M5G 1E6

- TO: Fortress Brookdale Inc.
2220 Highway 7 West, Suite #5
Concord, Ontario
L4K 1W7
- Fortress Avenue Road (2015) Inc.
Unit 1-25 Brodie Drive
Richmond Hill, Ontario
L4B 3K7
- Fembrook Homes (Brookdale) Limited
2220 Highway 7 West, Suite #5
Concord, Ontario
L4K 1W7
- Firm Capital Mortgage Fund Inc.
163 Cartwright Avenue
Toronto, Ontario
M6A 1V5
- Quincy Investments Limited
31 Densley Avenue
Toronto, Ontario
M6M 2P5

969592 Ontario Limited
31 Densley Avenue
Toronto, Ontario
M6M 2P5

969593 Ontario Limited
31 Densley Avenue
Toronto, Ontario
M6M 2P5

2307271 Ontario Inc.
40 Hazelridge Court
Kleinberg, Ontario
L0J 1C0

Sasso Auto Consulting Inc.
185 Bishop Avenue
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Angelo Grossi
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L4C 6X2

David Mark Doubilet
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M4T 1S3

Gus Stamatiou
54 Kettle Court
Vaughan, Ontario
L6A 2M2

Robert Di Matteo
20 Cachet Woods Court, Unit 2
Markham, Ontario
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Tonino Amendola
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RW Fortress Inc.
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L4C 3B8

Jackel Capital Inc.
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Richmond Hill, Ontario
L4C 3B8

Building & Development Mortgages Canada Inc.
25 Brodie Drive, Unit 8
Richmond Hill, Ontario
L4B 3K7

Centro Mortgage Inc.
25 Brodie Drive, Unit 8
Richmond Hill, Ontario
L4B 3K7

Computershare Trust Company of Canada
100 University Avenue, 8th floor
Toronto, Ontario
M5J 2Y1

Olympia Trust Company
2300 - 125-9th Avenue SE
Calgary, Alberta
T2G 0P6

CLAIM

1. The Plaintiff Dircam Electric Limited ("Dircam") claims from the Defendants:
 - (a) payment of the sum of \$818,843.20;
 - (b) in the alternative, damages in, or in the further alternative, payment of, the sum of \$818,843.20 under its agreement with the Defendant Fortress Brookdale Inc. on its own behalf and/or on behalf of Fortress Avenue Road (2015) Inc. and Fernbrook Homes (Brookdale) Limited (collectively, "Fortress"), or in the alternative, on the basis of quantum meruit, restitution and/or unjust enrichment;
 - (c) in the further alternative, a personal judgment against these Defendants for payment of the sum of \$818,843.20;
 - (d) damages, including without limitation, damages for delay and lost profit in the sum of \$1,500,000.00;
 - (e) a declaration that on or about February 6, 2018, Dircam accepted the repudiation of the agreement between it and Fortress and brought the agreement to an end, reserving to itself its claims for the payment of, inter alia (i) the price of services and materials supplied by it to the "Brookdale on Avenue Road project" located on the property municipally described as 1678-1704 Avenue Road, 375-377 Fairlawn Avenue and 412-414 Brookdale Avenue, Toronto, Ontario, as more particularly set forth in Schedule A attached hereto (the "Lands") and (ii) its damages suffered in consequence of the breach by Fortress of the agreement, including without limitation, damages for delay, lost profit and premature demobilization, thereby relieving Dircam from any obligation of further performance of its obligations to Fortress under the agreement;
 - (f) as against Fortress, damages in the sum of \$818,843.20 for its failure to provide the information or access to the information to which the Plaintiff is

entitled under s. 39 of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended;

- (g) full priority over the charges of Firm Capital Mortgage Fund Inc. ("Firm Capital"), 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 and Tonino Amendola (collectively, "Quincy"), RW Fortress Inc. ("RW"), Jaekel Capital Inc. ("Jaekel"), Building & Development Mortgages Canada Inc. ("BDMC"), Centro Mortgage Inc. ("Centro"), Computershare Trust Company of Canada ("Computershare") and Olympia Trust Company ("Olympia") or in the alternative, priority over the said charges to the extent that the advances made pursuant to them, if any, exceeded the actual value of the Lands at the time the first lien arose, priority over all advances made under the aforesaid charges after the registration of any claims for lien, including the claims for lien hereinafter set forth, or after the receipt of a written notice of a lien, and priority over the said charges to the extent of the unadvanced portions thereof;
- (h) priority over the charges as aforesaid to the extent of the deficiency in the holdbacks required to be retained by Fortress, under Part IV of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended;
- (i) pre-judgment interest from the dates of each of the Plaintiff's unpaid invoices to the date of payment or judgment, pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- (j) post-judgment interest from the date of judgment, pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- (k) its costs of this action on a substantial indemnity basis, or in the alternative, on a partial indemnity basis;
- (l) in default of the payment of the said sum of \$818,843.20, together with interest thereon and the costs of this action by the Defendants or any of them, that all

of the estate and interest of the Defendants in the Lands may be sold and the proceeds applied in and towards payment of the Plaintiff's claim, costs and interest pursuant to the provisions of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended;

- (m) for the purposes as aforesaid and for all other purposes that all proper directions be given, enquiries made and accounts taken;
- (n) such further and other relief as the nature of this case may require.

2. The Plaintiff Dircam Electric Limited claims from the Defendants:

- (a) payment of the sum of \$321,158.43;
- (b) in the alternative, damages in, or in the further alternative, payment of, the sum of \$321,158.43 under its agreement with the Defendant Fortress Brookdale Inc. on its own behalf and/or on behalf of Fortress Avenue Road (2015) Inc. and Fernbrook Homes (Brookdale) Limited (collectively, "Fortress"), or in the alternative, on the basis of quantum meruit, restitution and/or unjust enrichment;
- (c) in the further alternative, a personal judgment against these Defendants for payment of the sum of \$321,158.43;
- (d) damages, including without limitation, damages for delay and lost profit in the sum of \$750,000.00;
- (e) a declaration that on or about February 6, 2018, Dircam accepted the repudiation of the agreement between it and Fortress and brought the agreement to an end, reserving to itself its claims for the payment of, inter alia (i) the price of services and materials supplied by it to the "Brookdale on Avenue Road project" located on the property municipally described as 1678-1704 Avenue Road, 375-377 Fairlawn Avenue and 412-414 Brookdale Avenue, Toronto, Ontario, as more particularly set forth in Schedule A

attached hereto (the "Lands") and (ii) its damages suffered in consequence of the breach by Fortress of the agreement, including without limitation, damages for delay, lost profit and premature demobilization, thereby relieving Dircam from any obligation of further performance of its obligations to Fortress under the agreement;

- (f) as against Fortress, damages in the sum of \$321,158.43 for its failure to provide the information or access to the information to which the Plaintiff is entitled under s. 39 of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended;
- (g) full priority over the charges of Firm Capital Mortgage Fund Inc. ("Firm Capital"), 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 and Tonino Amendola (collectively "Quincy"), RW Fortress Inc. ("RW"), Jaekel Capital Inc.) ("Jaekel"), Building & Development Mortgages Canada Inc. ("BDMC"), Centro Mortgage Inc. ("Centro"), Computershare Trust Company of Canada ("Computershare") and Olympia Trust Company ("Olympia") or in the alternative, priority over the said charges to the extent that the advances made pursuant to them, if any, exceeded the actual value of the Lands at the time the first lien arose, priority over all advances made under the aforesaid charges after the registration of any claims for lien, including the claims for lien hereinafter set forth, or after the receipt of a written notice of a lien, and priority over the said charges to the extent of the unadvanced portions thereof;
- (h) priority over the charges as aforesaid to the extent of the deficiency in the holdbacks required to be retained by Fortress, under Part IV of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended;
- (i) pre-judgment interest from the dates of each of the Plaintiff's unpaid invoices to the date of payment or judgment, pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;

- (j) post-judgment interest from the date of judgment pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- (k) its costs of this action on a substantial indemnity basis, or in the alternative, on a partial indemnity basis;
- (l) in default of the payment of the said sum of \$321,158.43, together with interest thereon and the costs of this action by the Defendants or any of them, that all of the estate and interest of the Defendants in the Lands may be sold and the proceeds be applied in and towards payment of the Plaintiff's claim, costs and interest pursuant to the provisions of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended;
- (m) for the purposes as aforesaid and for all other purposes that all proper directions be given, enquiries made and accounts taken;
- (n) such further and other relief as the nature of this case may require.

3. The Plaintiff, Dircam Electric Limited ("Dircam") is a private Ontario corporation carrying on business throughout Southern Ontario as an electrical contractor.

4. The Defendants Fortress Brookdale Inc., Fortress Avenue Road (2015) Inc. and Fernbrook Homes (Brookdale) Limited (collectively, "Fortress") are private Ontario corporations carrying on business throughout Southern Ontario as builders and developers, and were at all material times the registered and/or beneficial owners of the Brookdale on Avenue Road residential condominium project, located on the property municipally described as 1678-1704 Avenue Road, 375-377 Fairlawn Avenue and 412-414 Brookdale Avenue, Toronto, Ontario, as more particularly set forth in Schedule A attached hereto (the "Lands") and the owner of the Lands pursuant to the provisions of Section 1 (1), item 15 of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

5. The Defendant Firm Capital Mortgage Fund Inc. ("Firm Capital") is a private Ontario corporation carrying on business throughout Canada as a supplier of construction financing which was at all material times the holder of a Charge/Mortgage of Land granted to it by

Fortress and registered on June 7, 2017 as Instrument No. AT4591073 in the principal sum of \$18,500,000.00, which was taken with the intention to secure the financing of the improvement on the Lands.

6. The Defendants 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 and Tonino Amendola (collectively "Quincy") are private Ontario corporations and individuals carrying on business throughout Canada as suppliers of construction financing which were at all material times the holders of a Charge/Mortgage of Land granted to them by Fortress and registered on November 13, 2015 as Instrument No. AT4065378 in the principal sum of \$5,330,000.00, which was taken with the intention to secure the financing of the improvement on the Lands.

7. The Defendants RW Fortress Inc. ("RW") and Jaekel Capital Inc. ("Jaekel") are private Ontario corporations carrying on business throughout Canada as suppliers of construction financing which were, respectively, the holder and the assignee and/or trustee of a Charge/Mortgage of Land granted to RW by Fortress and registered on May 28, 2015 as Instrument No. AT3894769 in the principal sum of \$6,600,000.00, which was taken with the intention to secure the financing of the improvement on the Lands.

8. The Defendants Building & Development Mortgages Canada Inc. ("BDMC") and Computershare Trust Company of Canada ("Computershare") are private Ontario corporations carrying on business throughout Canada as suppliers of construction financing which were at all material times, respectively, the holder and assignee and/or trustee of a Charge/Mortgage of Land granted to BDMC by Fortress and registered on October 17, 2017 as Instrument No. AT4707175 in the principal sum of \$4,800,000.00, which was taken with the intention to secure the financing of the improvement on the Lands.

9. The Defendants Centro Mortgage Inc. ("Centro"), BDMC and Olympia Trust Company ("Olympia") are private Ontario corporations carrying on business throughout Canada as suppliers of construction financing which were at all material times, respectively, the holder and assignee and/or trustee of a Charge/Mortgage of Land granted to Centro by Fortress and registered on July 23, 2015 as Instrument No. AT3955352 in the principal sum of

\$10,300,000.00, which was taken with the intention to secure the financing of the improvement on the Lands.

10. In or about 2017, Dircam entered into an agreement with Fortress whereby Dircam agreed, provided that it was paid for its work when invoiced, to perform certain of the electrical work required to construct the project for the price of \$1,706,300.00.

11. Pursuant to this agreement, Dircam has performed, in a good and workmanlike manner and without defect or deficiency, certain of the electrical work required to construct the project and has supplied services and materials to the improvement on the Lands having a total value of \$900,610.00, against which Dircam has been paid the sum of \$81,766.80 on account, leaving a balance due and owing by Fortress to Dircam of \$818,843.20 for the price of services and materials supplied by Dircam to the improvement on the Lands.

12. In or about 2017, Dircam entered into an agreement with Fortress whereby Dircam agreed to supply certain of the electrical fixtures required to construct the project for the price of \$337,735.53 and Fortress agreed to pay this price to Dircam once Dircam purchased and took delivery of these fixtures from its supplier.

13. Pursuant to this agreement, Dircam has supplied, by purchasing and taking delivery of these fixtures from its supplier and, at the request of Fortress, delivering certain of these fixtures to the project, these materials to the improvement on the Lands having a total value of \$337,735.53, against which Dircam has been paid the sum of \$16,577.10 on account, leaving a balance due and owing by Fortress to Dircam of \$321,158.43 for the price of the materials supplied by Dircam to the improvement on the Lands.

14. To date, Fortress has failed or refused to pay Dircam the outstanding balance of the price of the services and materials supplied by it to the improvement on the Lands in the sum of \$1,140,001.60.

15. As of January 30, 2018, Fortress was in default of and in breach of its obligations to Dircam under the agreements, inasmuch as Fortress had, inter alia:

- (a) failed to make payment to Dircam of (i) \$154,838.25 pursuant to its invoice dated September 30, 2017, (ii) \$9,153.00 pursuant to its invoice dated September 30, 2017 and (iii) \$43,476.75 pursuant to its invoice dated October 31, 2017; and
- (b) failed to comply with the construction schedule, inasmuch as, inter alia (i) Dircam no longer had sufficient work remaining to justify its presence on site and (ii) since January 12, 2018, there had been no further deliveries of concrete or steel to the site, which prevented the concrete forming contractor from performing its work and in turn prevented Dircam from performing its work which was dependent on the concrete forming,

and, as a result, without prejudice to any other right or remedy that it might have, Dircam gave Fortress (i) notice in writing that it was in default of its obligations to Dircam under the agreements and (ii) three working days to cure its default, failing which Dircam advised that it would, inter alia, exercise those rights and remedies available to it in consequence of Fortress' default and breach of agreement.

16. Fortress failed or refused to cure its default. As a result, on February 6, 2018, Dircam accepted Fortress' repudiation and breach of its obligations under the agreements and brought the agreements between them to an end, while reserving to Dircam its claims for payment of, inter alia (i) the price of its services and materials supplied to the project and (ii) its damages suffered in consequence of the breach by Fortress of the agreements, including, without limitation, damages for lost profit and premature demobilization, which thereby relieved Dircam from any obligation of further performance of its obligations to Fortress under the agreements.

17. As of the date hereof, Fortress is indebted to Dircam in the sums of \$818,843.20 for the price of electrical work performed on and \$321,158.43 for the price of electrical fixtures supplied to the improvement on the Lands by Dircam.

18. By reason of the performance of work and the supply and installation of materials as aforesaid, the Plaintiff is entitled to a lien upon the estate and interest of the Defendants in the

Lands in the sums of \$818,843.20 and \$321,158.43, together with interest thereon from the date of each invoice making up the balance outstanding, and its costs of this action, pursuant to the provisions of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

19. Dircam is entitled to payment of the outstanding balance of the price of services and materials supplied by it to the project, as aforesaid, in the sum of \$1,140,001.60.

20. In the alternative, Dircam claims payment from Fortress of the unpaid balance of the reasonable value of the work done, and the materials supplied and installed by it as aforesaid, in the sum of \$1,140,001.60, on the basis of quantum meruit, restitution and unjust enrichment.

21. In the further alternative, Dircam claims payment of its damages suffered in consequence of the breach of agreement by Fortress in the sum of \$1,140,001.60.

22. In the further alternative, Dircam claims a personal judgment from Fortress in the sum of \$1,140,001.60 for payment of the unpaid balance of the price of its services and materials supplied to the project, or in the alternative, on the basis of quantum meruit, restitution and unjust enrichment.

23. On February 15, 2018, the Plaintiff caused to be registered in the Land Registry office (No. 80) at Toronto, Ontario, its claim for lien having Instrument No. AT 4803253, for the unpaid balance of the price of the services and materials supplied by Dircam to the improvement on the Lands under the agreement for the supply of certain of the electrical fixtures required to construct the project, against title to the Lands, being the lands and premises more particularly described in Schedule "A" attached hereto.

24. On February 15, 2018, the Plaintiff caused to be registered in the Land Registry office (No. 80) at Toronto, Ontario, its claim for lien having Instrument No. AT 4803254, for the unpaid balance of the price of the services and materials supplied by Dircam to the improvement on the Lands under the agreement for the performance of certain of the electrical work required to construct the project, against title to the Lands, being the lands and premises more particularly described in Schedule "A" attached hereto.

25. The Plaintiff states and the fact is that Fortress, Firm Capital, Quincy, RW, Jackel, BDMC, Centro, Computershare and Olympia were at all material times persons and corporations (or assignees and/or trustees of persons and corporations) at whose express or implied request and upon whose credit, or on whose behalf, or with whose privity or consent, or for whose direct benefit, the improvements were made to the Lands and further that they were and are "owners" of the Lands described herein within the meaning of Section 1(1) item 15 of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

26. In the alternative, if any funds were advanced under the charges as aforesaid, the said advances were made prior to the date upon which the first lien arose upon the Lands and were in excess of the actual value of the same at that time, and the Plaintiff therefore claims priority over the said charges to the extent that the advances made pursuant to them, if any, exceeded the actual value of the aforesaid Lands at the time the first lien arose, pursuant to the provisions of s. 78 of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

27. If any funds were advanced under the charges as aforesaid, the advances were made after the registration of a claim or claims for lien, including the claims for lien hereinbefore set forth, and/or after the receipt of a written notice of a lien, and the Plaintiff therefore claims priority over all advances made under the aforesaid charges after the registration of any claim or claims for lien, including the claims for lien hereinbefore set forth, and/or after the receipt of a written notice of a lien, pursuant to the provisions of s. 78 of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

28. The Plaintiff states that there is a deficiency in the holdbacks required to be retained by Fortress under Part IV of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, and therefore claims priority over the said charges to the extent of the deficiency in the holdbacks required to be retained by Fortress under Part IV of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended, pursuant to the provisions of s. 78 thereof.

29. On or about January 30, 2018, Dircam gave written notice of its lien to Fortress and requested the information to which it was entitled under s. 39 of the Construction Lien Act, R.S.O. 1990, c. C.30, as amended.

30. To date, Fortress has not provided the information and documentation requested, or access to the information and documentation requested, and Dircam has suffered damages as a result in the sum of \$1,140,001.60. Dircam claims payment of these damages from Fortress.

31. Fortress remains indebted to Dircam in the sum of \$1,140,001.60, together with interest and costs as claimed in paragraphs 1 and 2 hereof.

Date: April 10, 2018

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Lawyers for the Plaintiff

SCHEDULE A

Description of Premises:

PIN : 10189-0865

Lots 33 and 34 Plan 2372, Part Lot 42A and Lot 43A Plan 2247, Part 1 66R29204; together with an easement over Part 3 66R29204 as in AT4379990; subject to an easement as in AT4660181; subject to an easement as in AT4753130; City of Toronto.

PIN 10189-0866

Lot 32 Plan 2371 York Part 2 66R29204; subject to an easement as in AT 4660181; subject to an easement as in AT4753130; City of Toronto.

Dircam Electric Limited v. Fortress Brookdale Inc. et al.

Court File No.

CV-18-595-506

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

RESPONDING APPLICATION RECORD

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