

SERVE: *

Osvaldo Tellez *

101 Wrightwood Place *

Sterling, VA 20164 *

Registered Agent *

and *

JOSEPH J. MAGNOLIA, INC. *

600 Gallatin Street, N.E. *

Washington, D.C. 20017 *

SERVE: *

TRAC – The Registered Agent Company *

1090 Vermont Avenue, NW, Suite 910 *

Washington, D.C. 20005 *

Registered Agent *

and *

FIDELITY AND DEPOSIT COMPANY *

OF MARYLAND *

1299 Zurich Way *

Schaumburg, IL 60196 *

Serve: *

Corporation Service Company *

1090 Vermont Avenue, N.W. *

Washington, D.C. 20005 *

Registered Agent *

Defendants.

* * * * *

**AMENDED COMPLAINT TO ESTABLISH AND ENFORCE MECHANIC’S LIEN TO
BE ENFORCED AS A JUDGMENT AGAINST TRUMP OLD POST OFFICE LLC AND
FIDELITY AND DEPOSIT COMPANY OF MARYLAND PURSUANT TO THE
MECHANIC’S LIEN UNDERTAKING**

Plaintiff, AES Electrical, Inc. d/b/a Freestate Electrical Construction Company
 (“Freestate”), by undersigned counsel, for its Complaint to Establish and Enforce Mechanic’s Lien
 to be Enforced as a Judgment against Trump Old Post Office LLC (“Trump”) and Fidelity and

Deposit Company of Maryland (“Fidelity”) Pursuant to the Mechanic’s Lien Undertaking and Order of the Court dated January 30, 2017, and including the additional Defendants required by the mechanic’s lien statute: Lend Lease (US) Construction, Inc. (“Lend Lease”), A&D Construction of Virginia LLC (“A&D”), and Joseph J. Magnolia, Inc. (“Magnolia”), respectfully states as follows:

THE PARTIES

1. Plaintiff, Freestate, is a California corporation maintaining a principal office address of 13335 Mid Atlantic Boulevard, Laurel, Maryland 20708. Plaintiff is properly registered to do business in the District of Columbia and is a licensed electrical contractor in the District of Columbia.

2. Defendant, Trump, is a Delaware limited liability company with a principal place of business located in Woodbury, New York and is registered to do business in the District of Columbia.

3. Defendant, Trump, is the owner of a leasehold interest in the real property at issue in this litigation located in the District of Columbia, and described as Square 323 and Lots 802 and 804 and Square 324 and Lots 808, 809, 812, 7000, 7001, and 7002, with a street address of 1100 Pennsylvania Avenue NW, Washington D.C. 20004 (the "Property"). The hotel located on the property is known as the Trump International Hotel Washington, D.C. (the “Trump Hotel”).

4. The United States of America, acting by and through the Administrator of General Services Portfolio Management (“GSA”) as Landlord, leased the Property to Trump as Tenant pursuant to a lease (the “Lease”) dated August 5, 2013. A memorandum of lease (the “Memorandum of Lease”) was recorded in the official records of the District of Columbia

Recorder of Deeds at Document No. 2013095328. A copy of the Memorandum of Lease is attached hereto as **Exhibit 1**.

5. GSA and Trump entered into a confirmation agreement (the “Confirmation Agreement”) recorded in the official records of the District of Columbia Recorder of Deeds on May 7, 2014 at Document No. 2014040129. A copy of the Confirmation Agreement is attached hereto as **Exhibit 2**. In the Confirmation Agreement, GSA and Trump confirm the leased premises as defined in the Memorandum of Lease is as more particularly described in Schedule 1 attached to the Confirmation Agreement.

6. Trump also entered into a Leasehold Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement (the “Deed of Trust”) recorded in the official records of the District of Columbia Recorder of Deeds on August 12, 2014 at Document No. 2014073616. A copy of the Deed of Trust is attached hereto as **Exhibit 3**. The Deed of Trust also contains a further updated legal description of the leased premises. The legal description of the leased Property as set forth in the Confirmation Agreement and Deed of Trust is adopted and incorporated by reference herein.

7. Defendant, Lend Lease, is a Florida corporation with a principal place of business located in New York, New York and is not registered to do business in the District of Columbia. Lend Lease is engaged in business as a construction general contractor/construction manager. Lend Lease was the general contractor/construction manager for the construction project located on the Property at issue in this litigation, located within the District of Columbia.

8. Defendant, A&D, is a Virginia limited liability company with a principal place of business located in Sterling, Virginia and is registered to do business in the District of Columbia.

A&D is claiming an interest in the Property pursuant to a Notice of Mechanic's Lien recorded in the land records of the District of Columbia on November 14, 2016 at Document No. 2016117375.

9. Defendant, Magnolia, is a Maryland corporation with a principal place of business located in Washington, D.C. and is registered to do business in the District of Columbia. Magnolia is claiming an interest in the Property pursuant to a Notice of Mechanic's Lien recorded in the land records of the District of Columbia on or about December 21, 2016 at Document No. 2016133190.

10. Defendant, Fidelity, is a Maryland insurance and surety company with a principal place of business located in Schaumburg, IL and is a registered insurance and surety company in the District of Columbia.

11. Fidelity and Trump are the parties to a Mechanic's Lien Undertaking filed in this action by Trump and accepted by the Court in its Order entered on January 30, 2017, pursuant to which both Trump and Fidelity agreed to pay and satisfy any judgment entered in this case in favor of Freestate and agreed that Fidelity is ipso facto made a party to this suit.

Jurisdiction

12. The Superior Court for the District of Columbia has subject matter jurisdiction over the claims asserted herein in accordance with D.C. Code Section 11-921 and D.C. Code Section 40-301.01 *et seq.* (the "Mechanic's Lien Statute").

13. The Superior Court for the District of Columbia has personal jurisdiction over all Defendants by virtue of their interest in the real property at issue in this litigation located in the District of Columbia and pursuant to D.C. Code Section 13-423.

Factual Background

14. Lend Lease entered into a contract with Trump (the "Prime Contract") for the renovation of the historical Old Post Office building located on the Property in order to convert it into the Trump Hotel (the "Project" and/or "Hotel").

15. Lend Lease entered into a subcontract with Freestate (the "Subcontract") pursuant to which Freestate performed electrical work required by the Prime Contract for the Project.

16. Freestate performed electrical work as required by its Subcontract as well as directed change work during the period between September 29, 2014 through the date of this filing, including minor post completion items of Freestate's work.

17. Freestate remains unpaid for electrical work performed and labor, material and services provided on the Project, in the amount of \$2,075,731.61, calculated as follows:

Original Contract Amt	\$13,400,000.00
Approved Change Orders	<u>\$2,156,722.00</u>
Total Adjusted Approved Contract Amt	\$15,556,722.00
Total Pending Change Order Amt	\$1,649,277.00
Total Earned	\$17,205,999.00
Paid to Date	<u>(\$15,130,267.39)</u>
Total Due	\$2,075,731.61

18. The total amount due consists of the following components: (1) \$388,817.98 in unpaid retainage on work performed; (2) \$37,636.63 in unpaid progress billings for base contract and approved change work performed; and (3) \$1,649,277.00 in unpaid change work performed for which Trump has refused to approve, by way of a change order, and has refused to pay.

19. Freestate incurred the majority of the change work costs because of Trump's directives, delivered through Lend Lease, to accelerate work and to perform extra work on the Project in order to permit the "soft opening" of the Trump Hotel by September 12, 2016, due to the fact that Trump had booked paid events and had planned for the use of Hotel rooms on or

about that date. Before this could happen, Freestate's electrical work and fire alarm work had to be completed, inspected and approved by DC code officials.

20. At the time of the "soft opening," Donald J. Trump, President of Defendant, Trump Old Post Office, LLC, was a U.S. presidential candidate and the "soft opening" had to occur to permit Mr. Trump's nationally televised campaign event from the Hotel on September 16, 2016, which was to honor U.S. veterans. But for Freestate's acceleration of work and performance of extra work on the Project, this event would not have been able to occur.

21. Acceleration of Freestate's work required Freestate's crews to work nonstop, seven days per week, 10 to 14 hours per day, for nearly 50 consecutive days, prior to the "soft opening," at significant additional cost and expense for which Freestate expected payment.

22. Subsequent to the Hotel's "soft opening", Freestate was required to continue its acceleration efforts and the performance of extra work in order to permit the "grand opening" of the Trump Hotel by October 26, 2016.

23. The "grand opening" of the Trump Hotel by this date, was also a nationally covered event, which was planned just prior to the U.S. presidential election in early November 2016, to provide an opportunity for positive press coverage for Mr. Trump's presidential campaign.

24. Although Mr. Trump's Hotel has now been opened and has operated for business since September 2016, and despite the fact that Mr. Trump was successfully elected as the next U.S. President, Trump refuses to pay the sums due for the account of work of subcontractors, like Freestate.

25. In this regard, Freestate attempted to invoice for retainage in its December 2016 payment requisition but, based on information from Lend Lease, Trump required subcontractors to delete requests for payment of retainage and resubmit their requisitions, unless the

subcontractors would agree to a significantly reduced payment for unpaid submitted change work and Project acceleration costs.

26. Further, despite the fact that Trump has acknowledged Freestate's entitlement to payment for change work and acceleration costs, Trump through Lend Lease, has offered to pay only a third of the value of Freestate's submitted costs for such work. In addition, Trump has refused to pay any retainage until Freestate agrees to accept Trump's unreasonable offer (essentially holding Freestate's retainage sums hostage unless and until Freestate capitulates to Trump's unreasonably low payment offer).

27. Lend Lease contends that, until payment from Trump is received for the account of work performed by Freestate, Lend Lease is under no obligation to pay Freestate.

28. On information and belief, Trump's actions in refusing to pay for work performed, after a project has opened, is a repeated practice of the Trump organizations on various projects; evidencing a typical business practice meant to force subcontractors to accept "pennies on the dollar" with respect to amounts owed for the cost of the work performed.

29. All conditions precedent to the filing of this action have occurred or were waived by the Defendants.

COUNT I

(Establishment and Enforcement of Mechanic's Lien)

30. The allegations set forth in paragraphs 1-29 above are incorporated herein by reference as if set forth in full.

31. On December 27, 2016 within the time and in the manner prescribed by statute, Plaintiff filed a Notice of Mechanic's Lien in the Office of the Recorder of Deeds for the District of Columbia, the same being recorded at Instrument Number 20166134999 (the "Notice"). A true

and accurate copy of the Notice is attached hereto as **Exhibit 4** and incorporated herein by reference.

32. Copies of the Notice were sent to Trump's resident agent via certified mail on December 27, 2016 and received by Trump's resident agent via certified mail on December 29, 2016 at Trump's resident agent's address (as listed on the face of the Notice and as shown in the tracking information and certified mailing receipt attached hereto as **Exhibit 5**).

33. Trump/Lend Lease are indebted to Freestate in the amount of \$2,075,731.61 for labor and materials supplied to the Project and the Property by Freestate.

34. Trump/Lend Lease have failed to pay the \$2,075,731.61 due for labor and materials supplied to the Project and the Property by Freestate.

35. The Notice was recorded during the Project and therefore before 90 days after the earlier of the completion or termination of the project. Although the Trump Hotel has opened, all work on the Project has not yet been deemed finally completed.

36. This Complaint is filed in the manner and within the time prescribed by statute.

WHEREFORE, AES Electrical, Inc. d/b/a Freestate Electrical Service Company respectfully requests this Court Order the following:

a. Enter judgment in favor of AES Electrical, Inc. d/b/a Freestate Electrical Service Company as to the validity and amount of AES Electrical, Inc. d/b/a Freestate Electrical Service Company's mechanic's lien;

b. In lieu of selling the property to satisfy the lien that would otherwise be the method of recovery under the mechanic's lien statute, and in accordance with the Undertaking and January 30, 2017 Order of the Court, enter judgment in favor of AES Electrical, Inc. d/b/a Freestate

Electrical Service Company in the amount of \$2,075,731.61 plus costs and interest against Trump Old Post Office LLC and Fidelity and Deposit Company of Maryland; and

- c. Grant such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

BY: /s/ Nicole L. Campbell
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Attorneys for Plaintiff,
AES Electrical, Inc. d/b/a
Freestate Electrical Construction Company

CERTIFICATE OF SERVICE

In addition to service upon the foregoing resident agents with the summons and original Complaint, I hereby certify that on this 13th day of February, 2017, a copy of the foregoing was served upon the following by Email and United States Mail, postage prepaid:

Jason N. Smith
SEYFARTH SHAW LLP
975 F Street, NW
Washington, DC 20004
Attorneys for Respondent,
TRUMP OLD POST OFFICE, LLC

/s/ Nicole L. Campbell
Nicole L. Campbell