

IN THE CIRCUIT COURT OF THE 7<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR FLAGLER  
COUNTY, FLORIDA

Case No: 2010 CA 1685

BANKATLANTIC,  
  
Plaintiff,

v.

JX PROPERTIES, L.L.C., a Florida limited  
liability company; THE ESTATE OF  
FRANK BLAZEVIK, by and through its  
executor MICHAEL BLAZEVIK; and  
3 MICHAEL BLAZEVIK, an individual,  
  
Defendants.

2010 SEP - 1 PM 2:15:30 AM 10:40  
CLERK OF COURT  
FLAGLER COUNTY, FLA.  
IN THE OFFICE OF THE  
CLERK OF COURT  
FLAGLER COUNTY, FLA.

COMPLAINT

The Plaintiff, BANKATLANTIC, by and through the undersigned counsel, and pursuant to the Florida Rules of Civil Procedure, hereby files its Complaint against the Defendants, JX PROPERTIES, L.L.C. ("JX PROPERTIES"), THE ESTATE OF FRANK BLAZEVIK, by and through its Executor MICHAEL BLAZEVIK, Deceased ("ESTATE"), and MICHAEL BLAZEVIK ("M. BLAZEVIK"), for foreclosure of a mortgage on real property and damages and, as grounds therefore, states, asserts and alleges as follows:

GENERAL ALLEGATIONS

1. This is an action for damages that exceed Fifteen Thousand and 00/100 Dollars (\$15,000.00), exclusive of costs, interest and attorneys' fees, and to foreclose a mortgage and other security interests encumbering real property located in Flagler County, Florida.



2. Venue is proper in Flagler County, Florida because that is the location where the causes of action accrued and is where the property that is the subject of this action is located.

3. The Plaintiff is a banking institution that conducts business in Flagler County, Florida and is the holder of the various security instruments that encumber the Defendant, JX PROPERTIES's, interests in and to the real property that is the subject of this case.

4. JX PROPERTIES is a Florida limited liability company that conducts business in Flagler County, Florida and is the owner of the real property that is the subject of this case.

5. M. BLAZEVIK is a sui juris individual over the age of eighteen who conducts business in Flagler County, Florida and who has guaranteed the performance of the Defendant, JX PROPERTIES's, obligations owed to the Plaintiff that are the subject of this case.

6. The ESTATE is currently pending in the 19<sup>th</sup> Judicial Circuit Court in and for Lake County, Illinois, under Case Number 10 P 622. Prior to his death, FRANK BLAZEVIK, deceased ("F. BLAZEVIK"), was a sui juris individual over the age of eighteen who conducted business in Flagler County, Florida and guaranteed the performance of the Defendant, JX PROPERTIES's, obligations owed to the Plaintiff that are the subject of this case.

7. On or about December 24, 2003, the Defendant, JX PROPERTIES, executed and delivered two Promissory Notes (collectively, the "Original Notes") to Plaintiff in the amount of Three Million Three Hundred Forty Thousand and 00/100 Dollars (\$3,340,000.00) and One Million One Hundred Forty Thousand and 00/100 Dollars (\$1,140,000.00), respectively. True and correct copies of the Original Notes are attached hereto as Composite Exhibit "A" and are incorporated into, adopted, and made a part hereof by this reference.

8. Additionally, on or about December 24, 2003, the Defendant, M. BLAZEVIK and F. BLAZEVIK, each executed and delivered an "Absolute Unconditional and Continuing

Guaranty” (collectively, the “Guarantees”) in which the Defendant, M. BLAZEVIK and F. BLAZEVIK, guaranteed the “prompt and full payment” and “performance of all obligations” of the Defendant, JX PROPERTIES, in connection with any indebtedness owed by the Defendant, JX PROPERTIES, to the Plaintiff. True and correct copies of the Guarantees are attached hereto as Composite Exhibit “B” and are incorporated into, adopted, and made a part hereof by this reference.

9. As security for the Original Notes and any and all other sums, indebtedness, obligations and liabilities of every kind that became or is to become due and owing from the Defendant, JX PROPERTIES, to the Plaintiff, the Defendant, JX PROPERTIES, executed and delivered a Mortgage to Plaintiff on December 24, 2003, which Mortgage was recorded in Book 1027, Page 217 of the public records of Flagler County, Florida on January 1, 2004. The Mortgage encumbers the Defendant, JX PROPERTIES’s, interest in and to the real property identified in the Mortgage (the “Mortgaged Property”). A true and correct copy of the Mortgage is attached hereto as Exhibit “C” and is incorporated into, adopted, and made a part hereof by this reference.

10. As further and additional security for the Original Notes, the Guarantees, and any and all other sums, indebtedness, obligations and liabilities of every kind that became due or is to become due and owing from the Defendant, JX PROPERTIES, to the Plaintiff, the Defendant, JX PROPERTIES, executed and delivered a “Collateral Assignment of Rights and Agreements Affecting Real Estate” (“Collateral Assignment”) to the Plaintiff on December 24, 2003. A true and correct copy of the Collateral Assignment is attached hereto as Exhibit “D” and is incorporated into, adopted, and made a part hereof by this reference.

11. Further, on December 31, 2003 the Plaintiff recorded a UCC-1 financing statement with the Florida Secured Transaction Registry and on January 2, 2004 in Book 1027, Page 251 in the public records of Flagler County, Florida (the "UCC-1 Financing Statements"), which served as further and additional security for the Note, the Guarantees, and any and all other sums, indebtedness, obligations and liabilities of every kind that became or is to become due and owing from the Defendant, JX PROPERTIES, to the Plaintiff. True and correct copies of the UCC-1 Financing Statements are attached hereto as Composite Exhibit "E" and are incorporated into, adopted, and made a part hereof by this reference.

12. On or about April 1, 2007, the Defendant, JX PROPERTIES, executed and delivered a "Future Advance/Amended and Restated Consolidated Promissory Note" (the "Restated Note") to Plaintiff in the amount of Eleven Million Five Hundred Fifty Thousand and 00/100 Dollars (\$11,550,000.00). A true and correct copy of the Note is attached hereto as Exhibit "F" and is incorporated into, adopted, and made a part hereof by this reference.

13. On or about April 15, 2007, the Defendant, M. BLAZEVIK, and F. BLAZEVIK, each executed and delivered an "Amended and Restated Absolute Unconditional and Continuing Guaranty" (collectively, the "Restated Guarantees") in which the Defendant, M. BLAZEVIK, and F. BLAZEVIK, guaranteed the "prompt and full payment" and "performance of all obligations" of the Defendant, JX PROPERTIES, in connection with any indebtedness owed by the Defendant, JX PROPERTIES, to the Plaintiff. True and correct copies of the Restated Guarantees are attached hereto as Composite Exhibit "G" and are incorporated into, adopted, and made a part hereof by this reference.

14. As security for the Restated Note, the Restated Guarantees, and any and all other sums, indebtedness, obligations and liabilities of every kind that became or is to become due and



owing from the Defendant, JX PROPERTIES, to the Plaintiff, the Defendant, JX PROPERTIES, executed and delivered a "Receipt for Future Advance and Mortgage Modification Agreement" ("Modification Agreement") to the Plaintiff on or about April 1, 2007, which Modification Agreement was recorded in Book 1565, Page 1953 of the public records of Flagler County, Florida on April 24, 2007. The Modification Agreement amends the Mortgage and provides that the Note is secured by, among other security instruments, the Restated Guarantees, the Mortgage, and other documents incident to the transactions contemplated by the Modification Agreement. A true and correct copy of the Modification Agreement is attached hereto as Exhibit "H" and is incorporated into, adopted, and made a part hereof by this reference.

15. As further and additional security for the Restated Note, the Restated Guarantees, and any and all other sums, indebtedness, obligations and liabilities of every kind that became or is to become due and owing from the Defendant, JX PROPERTIES, to the Plaintiff, the Defendant, JX PROPERTIES, executed and delivered an "Assignment of Rents, Leases and Deposits" ("Assignment of Rents") to the Plaintiff on April 1, 2007, which Assignment of Rents was recorded in Book 1565, Page 1965 of the public records of Flagler County, Florida on April 24, 2007. The Assignment of Rents provided the Defendant, JX PROPERTIES, with a revocable license to, *inter alia*, manage and operate the Mortgaged Property and to collect, receive and apply for its own account all rents, issues and profits derived from the leases concerning the Mortgaged Property, which license would be revoked upon the occurrence of a default as described in the Mortgage. A true and correct copy of the Assignment of Rents is attached hereto as Exhibit "I" and is incorporated into, adopted, and made a part hereof by this reference.

16. As further and additional security for the Restated Note, the Restated Guarantees, and any and all other sums, indebtedness, obligations and liabilities of every kind that became or

is to become due and owing from the Defendant, JX PROPERTIES, to the Plaintiff, the Defendant, JX PROPERTIES, executed and delivered a “Collateral Assignment of Purchase Contracts” to the Plaintiff on or about April 1, 2007. A true and correct copy of the Collateral Assignment of Purchase Contracts is attached hereto as Exhibit “J” and is incorporated into, adopted, and made a part hereof by this reference.

17. As further and additional security for the Restated Note, the Restated Guarantees, and any and all other sums, indebtedness, obligations and liabilities of every kind that became or is to become due and owing from the Defendant, JX PROPERTIES, to the Plaintiff, the Defendant, JX PROPERTIES, executed and delivered a “Collateral Assignment of Rights of Developer” to the Plaintiff on or about April 1, 2007. A true and correct copy of the Collateral Assignment of Rights of Developer is attached hereto as Exhibit “K” and is incorporated into, adopted, and made a part hereof by this reference.

18. On or about May 24, 2010, the Plaintiff notified the Defendants, JX PROPERTIES and M. BLAZEVIK, and F. BLAZEVIK in writing that they were in default under the Restated Note and the Guarantees as payment under the Note had not been timely made. A true and correct copy of the May 24, 2010 correspondence is attached hereto as Exhibit “L” and is incorporated into, adopted, and made a part hereof by this reference.

19. All conditions precedent to filing this action have been met by Plaintiff or have otherwise been waived by the Defendants.

20. Plaintiff has retained the undersigned attorneys to bring this action and has agreed to pay a reasonable fee for said attorneys’ fees and costs; and Plaintiff is entitled to recover its costs and attorneys’ fees for bringing this action pursuant to, without necessarily any limitation,

the Original Notes, the Guarantees, the Restated Notes, the Restated Guarantees, the Mortgage, and the Modification Agreement.

**COUNT I – BREACH OF RESTATED NOTE**

21. Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) as if set forth at length herein.

22. The Plaintiff owns and holds the Restated Note.

23. The Restated Note provides that the Defendant, JX PROPERTIES, was required to pay monthly payments of interest only on or before the first day of each month beginning May 1, 2007 until the maturity date of April 1, 2010, on which date the entire principal balance, together with interest and other applicable charges, became due and payable in full.

24. The Defendant, JX PROPERTIES, has defaulted under and breached the Restated Note by, without necessarily any limitation, failing and refusing to pay the Restated Note in full on or before April 1, 2010.

25. Plaintiff has suffered damages as a result of the Defendant, JX PROPERTIES's, default and breach of the Restated Note.

WHEREFORE, the Plaintiff, BANKATLANTIC, hereby demands judgment for damages against the Defendant, JX PROPERTIES, LLC, together with prejudgment interest, attorneys' fees and costs, as well as such further and additional relief as this Honorable Court deems just, reasonable, necessary, and/or proper.

**COUNT II – BREACH OF RESTATED GUARANTY AGAINST M. BLAZEVIK**

26. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) above as if set forth at length herein.

27. The Defendant, M. BLAZEVIK has guaranteed the performance of the Defendant, JX PROPERTIES's, obligations under the Restated Note pursuant to the Restated Guaranty executed and entered into by the Defendant, M. BLAZEVIK, a true and correct copy of which is attached as part of Composite Exhibit "G".

28. Plaintiff owns and holds the Restated Note.

29. The Defendant, JX PROPERTIES, has breached and defaulted under the Restated Note by, among other things, failing to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

30. As a result of the Defendant, JX PROPERTIES's, breach and default under the Restated Note, the Defendant, M. BLAZEVIK, is obligated to pay the principal and all accrued and unpaid interest due and owing the Plaintiff under the Restated Note.

31. The Plaintiff has demanded that the Defendant, M. BLAZEVIK, pay to the Plaintiff the amounts due and owing the Plaintiff under the Restated Note, however, to date the Defendant, M. BLAZEVIK, has failed to do same.

32. The Defendant, M. BLAZEVIK, has breached the Restated Guaranty executed and entered into by the Defendant, M. BLAZEVIK, attached hereto as part of Composite Exhibit "G" by failing and refusing to pay to the Plaintiff the amounts due and owing the Plaintiff under the Restated Note.

33. Plaintiff has suffered damages as a result of the Defendant, M. BLAZEVIK's, breach of the Restated Guaranty executed and entered into by the Defendant, M. BLAZEVIK, attached hereto as part of Composite Exhibit "G".

WHEREFORE, the Plaintiff, BANKATLANTIC, hereby demands judgment for damages against the Defendant, MICHAEL BLAZEVIK, together with prejudgment interest, attorneys'

fees and costs, as well as such further and additional relief as this Honorable Court deems just, reasonable, necessary, and/or proper.

**COUNT III – BREACH OF RESTATED GUARANTY AGAINST ESTATE**

34. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) above as if set forth at length herein.

35. F. BLAZEVIK guaranteed the performance of the Defendant, JX PROPERTIES's, obligations under the Restated Note pursuant to the Restated Guaranty executed and entered by F. BLAZEVIK prior to his death, a true and correct copy of which is attached as part of Composite Exhibit "G".

36. Plaintiff owns and holds the Restated Note.

37. The Defendant, JX PROPERTIES, has breached and defaulted under the Restated Note by, among other things, failing to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

38. As a result of the Defendant, JX PROPERTIES's, breach and default under the Restated Note, the Defendant, ESTATE, is obligated to pay the principal and all accrued and unpaid interest due and owing the Plaintiff under the Restated Note.

39. The Plaintiff demanded that F. BLAZEVIK, prior to his death, and now the Defendant, ESTATE, pay to the Plaintiff the amounts due and owing the Plaintiff under the Restated Note, however, F. BLAZEVIK failed to pay the amounts due and owing prior to his death and to date, the Defendant, ESTATE, has failed to do same.

40. F. BLAZEVIK, prior to his death, and now the Defendant, ESTATE, have breached the Restated Guaranty executed and entered into by F. BLAZEVIK, attached hereto as

part of Composite Exhibit "G" by failing and refusing to pay to the Plaintiff the amounts due and owing the Plaintiff under the Restated Note.

41. Plaintiff has suffered damages as a result of F. BLAZEVIK's and now the Defendant, ESTATE's, breach of the Restated Guaranty executed and entered into by F. BLAZEVIK, attached hereto as part of Composite Exhibit "G".

WHEREFORE, the Plaintiff, BANKATLANTIC, hereby demands judgment for damages against the Defendant, ESTATE OF FRANK BLAZEVIK by and through its executor MICHAEL BLAZEVIK, together with prejudgment interest, attorneys' fees and costs, as well as such further and additional relief as this Honorable Court deems just, reasonable, necessary, and/or proper.

#### **COUNT IV – FORECLOSURE OF MORTGAGE**

42. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) above as if set forth at length herein.

43. The Plaintiff presently owns and holds the Restated Note, the Restated Guarantees, the Mortgage and the Modification Agreement.

44. The Mortgage and the Modification Agreement provide that the Defendants, JX PROPERTIES, shall be in default of the Mortgage upon, without necessarily any limitation, the Defendant, JX PROPERTIES's, failure to pay when due any installment of interest or principal owing under the Restated Note.

45. The Defendant, JX PROPERTIES, is in default of the Mortgage and the Modification Agreement as a result of, without necessarily any limitation, the Defendant, JX PROPERTIES's, failure to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

46. As a result of the Defendant, JX PROPERTIES's, default under the Restated Note, the Mortgage, and the Modification Agreement, Plaintiff is entitled to foreclosure of the Mortgage and the Modification Agreement.

47. The claims of any named Defendants, as well as the unknown spouses, heirs, devisees, grantees, assignees, creditors, trustees, successors in interest or other parties claiming an interest in the subject property, by, through, or against any of said Defendants, whether natural or corporate, who are not known to be alive or dead, dissolved or existing are joined as Defendants herein, are subject, subordinate, and inferior to the interest of Plaintiff.

WHEREFORE, the Plaintiff, BANKATLANTIC demands judgment against the Defendant, JX PROPERTIES, LLC, foreclosing the Mortgage and the Modification Agreement; finding the Plaintiff, BANKATLANTIC's, mortgage is superior to the interests held by the Defendants, and all other subsequent lien holders on the Mortgaged Property; ordering the Mortgaged Property to be sold, the proceeds from the sale to be paid toward the Note, the Mortgage and the Modification Agreement; for a deficiency judgment, if applicable; for attorneys' fees, interest, costs; and such further and additional relief as this Honorable Court may deem just, reasonable, necessary and/or proper.

**COUNT V – FORECLOSURE OF SECURITY INTEREST**

48. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20), as if set forth at length herein.

49. The Plaintiff owns and holds the Restated Note.

50. The Assignment of Rents provides the Plaintiff with a security interest in and to, without necessarily any limitation: (1) all leases, subleases, tenancies, and any other agreement affecting the use of the Mortgaged Property; (2) all rents, deposits, issues, profits, costs

reimbursements, and other payments of every kind due or payable to the Defendant, JX PROPERTIES, concerning the leases as described in the Assignment of Rents; (3) all right, title and interest the Defendant, JX PROPERTIES, has in and to all guarantees of the leases as described in the Assignment of Rents; and (4) any award made in any court proceeding involving any of the lessees of the Mortgaged Property.

50. The Assignment of Rents and the Modification Agreement provide that the Defendant, JX PROPERTIES, shall be in default of the Assignment of Rents upon the occurrence of any default as defined in the Mortgage and Modification Agreement.

51. The Defendant, JX PROPERTIES, is in default of the Mortgage, the Modification Agreement, and the Assignment of Rents as a result of, without necessarily any limitation, the Defendant, JX PROPERTIES's, failure to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

52. As a result of the Defendant, JX PROPERTIES's, default under the Renewal Note, the Mortgage, the Assignment of Rents, and the Modification Agreement, Plaintiff is entitled to a judgment foreclosing the Defendants of their rights, title and interests in and to the security interests provided for the Plaintiff in the Assignment of Rents.

52. WHEREFORE, the Plaintiff, BANKATLANTIC demands judgment against the Defendant, JX PROPERTIES, LLC, foreclosing the Defendant, JX PROPERTIES, LLC's rights, title and interests in and to the security interests provided for the Plaintiff in the Assignment of Rents; finding the Plaintiff, BANKATLANTIC's security interests provided in the Assignment of Rents superior to all other subsequent interests in and to such security; ordering all rents, deposits, issues, profits, costs reimbursements, and other payments of every kind due or payable to the Defendant, JX PROPERTIES, LLC, now and in the future concerning the leases as



described in the Assignment of Rents to be paid into the registry of this Honorable Court; for a deficiency judgment, if applicable; for attorneys' fees, interest, costs, and such further and additional relief as this Honorable Court may deem just, reasonable, necessary and/or proper.

**COUNT VI – FORECLOSURE OF SECURITY INTEREST**

53. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) above, as if set forth at length herein.

54. The Plaintiff owns and holds the Restated Note.

55. The Collateral Assignment provides that the Defendant, JX PROPERTIES, shall be in default of the Collateral Assignment upon the occurrence of any default under, without any limitation, the Mortgage.

56. The Defendant, JX PROPERTIES, is in default of the Mortgage and the Collateral Assignment as a result of, without necessarily any limitation, the Defendant, JX PROPERTIES's, failure to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

57. As a result of the Defendant, JX PROPERTIES's, default under the Renewal Note, the Mortgage, the Modification Agreement, and the Collateral Assignment, the Plaintiff is entitled to a judgment foreclosing the Defendants of their rights, title and interests in and to the security interests provided for the Plaintiff in the Collateral Assignment.

WHEREFORE, the Plaintiff, BANKATLANTIC, demands judgment against the Defendant, JX PROPERTIES, LLC, foreclosing the Defendant, JX PROPERTIES, LLC's, rights, title and interests in and to the security interests provided for the Plaintiff in the Collateral Assignment; finding the Plaintiff's, BANKATLANTIC, security interests provided in the Collateral Assignment superior to all other subsequent interests in and to such security; for a

deficiency judgment, if applicable; for attorneys' fees, interest and costs, and such further and additional relief as this Honorable Court may deem just, reasonable, necessary and/or proper.

**COUNT VII – FORECLOSURE OF SECURITY INTEREST**

58. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) above, as if set forth at length herein.

59. The Plaintiff owns and holds the Restated Note.

60. The Collateral Assignment of Purchase Contracts provides that the Defendant, JX PROPERTIES, shall be in default of the Collateral Assignment of Purchase Contracts upon the occurrence of any default under, without any limitation, the Restated Note, the Mortgage, and the Modification Agreement.

61. The Defendant, JX PROPERTIES, is in default of the Collateral Assignment of Purchase Contracts as a result of, without necessarily any limitation, the Defendant, JX PROPERTIES's, failure to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

62. As a result of the Defendant, JX PROPERTIES's, default under the Renewal Note, the Mortgage, the Modification Agreement, and the Collateral Assignment of Purchase Contracts, the Plaintiff is entitled to a judgment foreclosing the Defendants of their rights, title and interests in and to the security interests provided for the Plaintiff in the Collateral Assignment of Purchase Contracts.

WHEREFORE, the Plaintiff, BANKATLANTIC, demands judgment against the Defendant, JX PROPERTIES, LLC, foreclosing the Defendant, JX PROPERTIES, LLC's, rights, title and interests in and to the security interests provided for the Plaintiff in the Collateral Assignment of Purchase Contracts; finding the Plaintiff's, BANKATLANTIC, security interests

provided in the Collateral Assignment of Purchase Contracts superior to all other subsequent interests in and to such security; for a deficiency judgment, if applicable; for attorneys' fees, interest and costs, and such further and additional relief as this Honorable Court may deem just, reasonable, necessary and/or proper.

**COUNT VIII – FORECLOSURE OF SECURITY INTEREST**

63. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) above, as if set forth at length herein.

64. The Plaintiff owns and holds the Restated Note.

65. The Collateral Assignment of Rights of Developer provides that the Defendant, JX PROPERTIES, shall be in default of the Collateral Assignment of Rights of Developer upon the occurrence of any default under, without any limitation, the Restated Note, the Mortgage, and the Modification Agreement.

66. The Defendant, JX PROPERTIES, is in default of the Collateral Assignment of Rights of Developer as a result of, without necessarily any limitation, the Defendant, JX PROPERTIES's, failure to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

67. As a result of the Defendant, JX PROPERTIES's, default under the Renewal Note, the Mortgage, the Modification Agreement, and the Collateral Assignment of Rights of Developer, the Plaintiff is entitled to a judgment foreclosing the Defendants of their rights, title and interests in and to the security interests provided for the Plaintiff in the Collateral Assignment of Rights of Developer.

WHEREFORE, the Plaintiff, BANKATLANTIC, demands judgment against the Defendant, JX PROPERTIES, LLC, foreclosing the Defendant, JX PROPERTIES, LLC's, rights,

title and interests in and to the security interests provided for the Plaintiff in the Collateral Assignment of Rights of Developer; finding the Plaintiff's, BANKATLANTIC, security interests provided in the Collateral Assignment of Rights of Developer superior to all other subsequent interests in and to such security; for a deficiency judgment, if applicable; for attorneys' fees, interest and costs, and such further and additional relief as this Honorable Court may deem just, reasonable, necessary and/or proper.

**COUNT IX – FORECLOSURE OF SECURITY INTEREST**

68. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20), above, as if set forth at length herein.

69. The Plaintiff owns and holds the Restated Note.

70. The Defendant, JX PROPERTIES, has failed and refused to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

71. The Defendant, JX PROPERTIES, has breached the Restated Note by, among other things, failing and refusing to pay the Restated Note in full on or before the Maturity Date of April 1, 2010.

72. As a result of the Defendant, JX PROPERTIES's, default under the Restated Note, the Plaintiff is entitled to foreclose its security interest pursuant to the UCC-1 Financing Statements.

WHEREFORE, the Plaintiff, BANKATLANTIC demands judgment against the Defendant, JX PROPERTIES, LLC, foreclosing the Defendant, JX PROPERTIES, LLC's, rights, title and interests in and to the collateral identified in the UCC-1 Financing Statements; finding the Plaintiff, BANKATLANTIC's security interests in the collateral that is the subject of the UCC-1 Financing Statements is superior to all other subsequent interests in and to such

collateral; ordering the return or delivery of such collateral to the Plaintiff, BANKATLANTIC, that a deficiency judgment be entered, if applicable; for attorneys' fees, interest, costs; and such further and additional relief as this Honorable Court may deem just, reasonable, necessary and/or proper.

**COUNT X – REESTABLISHMENT OF PROMISSORY NOTES**

73. The Plaintiff hereby realleges, restates, reasserts and incorporates the allegations contained in paragraphs one (1) through twenty (20) as if set forth at length herein.

74. The Original Notes and the Restated Note (collectively, the "Notes") have been lost or destroyed and are not in the possession, custody, or control of the Plaintiff.

75. The Plaintiff is unaware of the time and manner of the loss or destruction of the Notes, and the Plaintiff cannot reasonably obtain possession of the Notes because the Notes were destroyed or their whereabouts cannot be determined.

76. The loss or destruction was not the result of a transfer or a lawful seizure.

77. Substantial copies of the Notes are attached hereto as Composite Exhibit "A" and Exhibit "F", respectively.

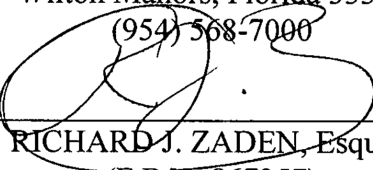
78. The Plaintiff was entitled to enforce the Notes when they were lost or destroyed and remains entitled to enforce the Notes.

79. The Plaintiff and the Defendants are the only persons known to Plaintiff who are interested for or against the reestablishment of the Notes.

WHEREFORE, the Plaintiff, BANKATLANTIC, respectfully demands that this Honorable Court enters a judgment reestablishing the Notes; finds the Plaintiff is entitled to enforce the Notes; awards the Plaintiff its attorneys' fees and costs; as well as such further and

additional relief as this Honorable Court deems just, reasonable, necessary, and/or proper.

LAW OFFICES OF  
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