

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

Case No.: \_\_\_\_\_

**THE BANCORP BANK**, a Delaware  
chartered banking corporation,

Plaintiff,

vs.

**550 SEABREEZE DEVELOPMENT LLC**,  
a Florida limited liability company, and  
**JAWOF 515 SEABREEZE, LLC**, a Florida  
limited liability company,

Defendants.

\_\_\_\_\_ /

**VERIFIED COMPLAINT**

The plaintiff, The Bancorp Bank, a Delaware chartered banking corporation (“Lender”) hereby sues defendants, 550 Seabreeze Development LLC, a Florida limited liability company (“Borrower”) and JAWOF 515 Seabreeze, LLC, a Florida limited liability company (“Pledgor”), and alleges as follows:

**Parties, Jurisdiction, and Venue**

1. This is an action (a) to foreclose on certain real and personal property located in Broward County, Florida, within the Southern District of Florida, Fort Lauderdale Division, and (b) for damages in excess of \$75,000.00, exclusive of interest, costs, and attorneys’ fees.
2. Lender is a Delaware state chartered bank corporation with its principal place of business in Wilmington, Delaware, and is a citizen of Delaware.

3. Borrower is a Florida limited liability company with its principal place of business located in Broward County, Florida, and is a citizen of Florida. Upon information and belief, Borrower's members are citizens and residents of Florida, with their principal place of business in Florida, and none have their principal place of business in or are citizens of Delaware.

4. Pledgor is a Florida limited liability company with its principal place of business in Palm Beach County, Florida, and is a citizen of Florida. Upon information and belief, Pledgor's members are incorporated in Florida and have their principal place of business in Florida, and none have their principal place of business in or are citizens of Delaware.

5. The Court has personal jurisdiction over Borrower based upon its ownership of real property interests, including but not limited to (a) the partially completed 12-story resort hotel to be known as the "Indigo Hotel/Las Olas Ocean Resort,"<sup>1</sup> located at 550 Seabreeze Blvd., Fort Lauderdale, Florida (the "550 Parcel"), and (b) because it otherwise conducts, engages in, or carries on a business or business venture in Florida related to the subject property.

6. The Court has personal jurisdiction over Pledgor based upon its ownership of real property interests, including but not limited to (a) a parcel of land which Pledgor owns across the street from the 550 Parcel, located at 515 Seabreeze Blvd., Fort Lauderdale, Florida (the "515 Parcel"), and (b) because it otherwise conducts, engages in, or carries on a business or business venture in Florida related to the subject property.

7. The Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1332 in that, without limitation, (a) the matter in controversy exceeds the

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<sup>1</sup> The Indigo Hotel/Las Olas Ocean Resort project consists of the new construction of a twelve (12) story resort hotel. The hotel will have 136 rooms and 268 parking spaces. There will be public areas including a VIP lounge and a 700-square foot salon, lobby desk, fitness room, meeting rooms, and a full back-of-the-house utility area for guest services and mechanical/electric rooms. The hotel will include a four (4) level parking garage.

sum of \$75,000.00 excluding interest, attorneys' fee and costs; and (b) the matter is between citizens of different States.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) in that, without limitation, (a) Borrower resides and/or has its principal place of business in this District; (b) the property that is the subject of this action is located in this District; and/or (c) significant events or omissions giving rise to or related to the claims herein occurred in this District.

### **General Allegations**

#### **Loan Agreements**

9. Effective November 1, 2013, Lender and Borrower executed a Loan Agreement (the "Original Loan Agreement") which, among other things, evidenced the terms of a loan to Borrower in the maximum amount of \$50,000,000.00 (the "Loan"). On September 2, 2015, Lender and Borrower and Pledgor executed an Amended and Restated Loan Agreement (the "Amended Loan Agreement") which, among other things, amended the Original Loan Agreement. Copies of the Original Loan Agreement and Amended Loan Agreement (collectively, the "Loan Agreement") are attached hereto as **Composite Exhibit 1**.

#### **Promissory Notes**

10. On November 1, 2013, Borrower executed and delivered to Lender a Promissory Note in the principal amount of \$50,000,000.00 (the "Note"). On September 2, 2015, Borrower executed and delivered to Lender an Amended Promissory Note the in principal amount of \$50,000,000.00 (the "Amended Note"). The Amended Note amended the Note. Copies of the Note and Amended Note are attached hereto as **Composite Exhibit 2**.

#### **Security Documents**

11. On November 1, 2013, Borrower and Pledgor executed and delivered to Lender that certain Mortgage and Security Agreement, recorded in Official Records Book 50318, Pages 88-112 of the public records of Broward County, Florida (the "Mortgage"). A copy of the Mortgage is attached hereto as **Exhibit 3**. The Mortgage, among other things, granted Lender a security interest in (a) those certain real property interests as described therein, including the 550 Parcel as to Borrower and the 515 Parcel as to Pledgor (collectively, the "Real Property"), and (b) certain personal property as described therein on pages 2-4 defined as the "Property (the "Personal Property").

12. On or about November 1, 2013, Borrower executed and delivered to Lender that certain Assignment of Rents and Leases, which was recorded in Official Records Book 50318, Pages 113-124, of the Public Records of Broward County, Florida (the "550 Assignment of Rents"). The 550 Assignment of Rents granted Lender a lien and security interest in the property described therein, including the leases and rents of the 550 Parcel (the "550 Assigned Rents Property"). A copy of the Assignment of Rents is attached hereto as **Exhibit 4**.

13. On or about November 1, 2013, Pledgor executed and delivered to Lender that certain Assignment of Rents and Leases, which was recorded in Official Records Book 50318, Pages 125-136, of the Public Records of Broward County, Florida (the "515 Assignment of Rents"). The Assignment of Rents granted Lender a lien and security interest in the property described therein, including the leases and rents of the 515 Parcel (the "515 Assigned Rents Property"). A copy of the 515 Assignment of Rents is attached hereto as **Exhibit 5**.

14. On or about November 1, 2013, Borrower executed and delivered to Lender that certain Collateral Assignment of Agreements Affecting Real Estate, which was recorded in Official Records Book 50318, Pages 137-147, of the Public Records of Broward County, Florida

(the “550 Collateral Assignment of Agreements”). The Collateral Assignment of Agreements granted Lender a lien and security interest in the property described therein, including certain contract and contract rights related to the 550 Parcel (the “550 Assigned Contracts”). A copy of the 550 Collateral Assignment of Agreements is attached hereto as **Exhibit 6**.

15. On or about November 1, 2013, Pledgor executed and delivered to Lender that certain Collateral Assignment of Agreements Affecting Real Estate, which was recorded in Official Records Book 50318, Pages 148-158, of the Public Records of Broward County, Florida (the “515 Collateral Assignment of Agreements”). The Collateral Assignment of Agreements granted Lender a lien and security interest in the property described therein, including certain contract and contract rights related to the 550 Parcel (the “515 Assigned Contracts”). A copy of the 515 Collateral Assignment of Agreements is attached hereto as **Exhibit 7**.

16. On or about November 1, 2013, Borrower executed and delivered to Lender that certain Collateral Assignment of Construction Agreements (the “Construction Agreements Assignment”), a copy of which is attached hereto as **Exhibit 8**. The Construction Agreements Assignment granted Lender a lien and security interest in the property described therein (the “Construction Rights Property”).

17. On or about November 1, 2013, Borrower executed and delivered to Lender that certain Collateral Assignment of Design Professional Agreements (the “Design Professional Assignment”), a copy of which is attached hereto as **Exhibit 9**. The Design Professional Assignment granted Lender a lien and security interest in the property described therein (the “Design Professional Rights Property”).

18. On November 7, 2013, a financing statement naming Borrower as the debtor and Lender as the secured party was recorded with the Public Records of Broward County, at Official

Records Book 50318, Pages 159-163, Instrument Number 111918798, and on November 8, 2013, a financing statement naming Borrower as the debtor and Lender as the secured party was filed with the Florida Secured Transaction Registry, File Number 20130018453X (the “550 Financing Statements”), copies of which are attached hereto as **Composite Exhibit 10**.

19. On November 7, 2013, a financing statement naming Pledgor as the debtor and Lender as the secured party was recorded with the Public Records of Broward County, at Official Records Book 50318, Pages 164-168, Instrument Number 111918799, and on November 8, 2013, a financing statement naming Pledgor as the debtor and Lender as the secured party was filed with the Florida Secured Transaction Registry, File Number 201300184548 (the “515 Financing Statements”), copies of which are attached hereto as **Composite Exhibit 11**.

#### **Defined Terms**

20. The Loan Agreement, Note, Amended Note, Mortgage, 550 Collateral Assignment of Agreements, 550 Assignment of Rents, 515 Collateral Assignment of Agreements, 515 Assignment of Rents, Construction Agreements Assignment, Design Professional Assignment, 550 Financing Statements, and 515 Financing Statements are collectively referred to as the “Loan Documents.”

21. Lender owns and holds the Loan Documents.

22. The Real Property, including the 550 Parcel and 515 Parcel, the Personal Property, Assigned Rights Property, Construction Rights Property, and Design Professional Rights Property are collectively referred to as the “Collateral.” A description of the Collateral is attached hereto as **Exhibit 12**.

#### **Defaults and Amounts Due**

23. Borrower caused or permitted Events of Default to occur under the Loan Agreement, Amended Note and/or Mortgage including but not limited to the following, each constituting an independent Event of Default (collectively, the “Defaults”):

a. Failing to pay the payment due under the Amended Note due on December 1, 2017, as required by Section 8.1 of the Loan Agreement (the “Payment Default”);

b. Failing to satisfy the Completion Date by the end of March 2017, as required by Sections 7.2 and failing to cure the same as required by Section 8.3 of the Loan Agreement.

c. Making unapproved changes to the Project Budget for Other Project Costs as prohibited by Section 3.12 of the Loan Agreement and failing to cure the same as required by Section 8.2 of the Loan Agreement;

d. Failing to maintain the Loan to become and remain “in balance,” as required by Section 3.7 and failing to cure the same as required by Section 8.2 of the Loan Agreement; and/or

e. Termination of the lease agreements within the Senior Frog Agreements, in breach of Section 6.16 of the Loan Agreement and failing to cure the same as required by Section 8.2 of the Loan Agreement; and/or

f. Aston Hotels and Resorts Florida LLC ceased to be the property manager of the Project and Borrower failed to be replace the same with a substitute property manager satisfactory to the Bank, in its sole but reasonable discretion, within fifteen (15) days following such event.

24. Although not required under the Loan Documents, on or about December 19, 2017, Lender, through counsel, sent Borrower, among others, written notice of the Payment Default and referencing the existence of other defaults (the “Default Notice”). A copy of the Default Notice is attached hereto as **Exhibit 13**.

25. Although not required under the Loan Documents, on or about January 3, 2018, Lender, through counsel, sent Borrower, among others, written notice of acceleration of the Loan (the “Acceleration Notice to Borrower”). Further, on or about January 17, 2018, Lender, through counsel, sent Pledgor written notice of the Payment Default and notice of the acceleration of the

Loan (the “Acceleration Notice to Pledgor”). A copy of the Acceleration Notice to Borrower and Acceleration Notice to Pledgor are attached hereto as **Composite Exhibit 14**.

26. All sums due and owing under the Loan Documents, including the Amended Note, after acceleration remain unpaid.

27. As of January 16, 2018, Lender is owed the following sums under the Loan Documents, including the Amended Note:

Principal Amount of Loan	\$36,943,639.69
Interest (\$9,749.01 per diem interest)	\$404,645.73
Late Payment Charges	\$20,757.90
<b>Amount Due</b>	<b>\$37,369,043.32</b>

plus per diem interest at non-default rate and incremental default rate, attorneys’ fees and costs, charges, expenses, and all other amounts recoverable under the Loan Documents and applicable law (the “Amounts Due”).

**Conditions Satisfied and Fee Entitlement**

28. All conditions precedent to the filing and maintenance of this action have been performed, waived, or excused.

29. Lender has engaged the firm of Foley & Lardner LLP to enforce its rights under the Loan Documents and maintain this action and has agreed to pay the firm its attorneys’ fees and expenses incurred in connection herewith.

**Count I**  
**Foreclosure**

30. This is an action authorized by agreements executed by Borrower and Pledgor and Chapter 702, Florida Statutes, to foreclose real property and personal property interests located in Broward County, Florida, which is within this District.



31. Lender re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 29 above as if fully set forth herein.

32. Borrower may claim some interest in the Collateral by virtue of its ownership and possession of all or a portion of the Collateral, including the 550 Parcel; however, such interest is inferior and subordinate to that of Lender, pursuant to the Loan Documents and Section 695.01, Florida Statutes.

33. Pledgor may claim some interest in the Collateral by virtue of its ownership and possession of all or a portion of the Collateral, including the 515 Parcel; however, such interest is inferior and subordinate to that of Lender, pursuant to the Loan Documents and Section 695.01, Florida Statutes.

WHEREFORE, Lender respectfully requests entry of an *in rem* judgment for the sums due under the Loan Documents, which Lender asserts is the Amounts Due, and foreclosing the Collateral against Borrower and Pledgor, as their interests appear, and all persons claiming by, through, or under Borrower and Pledgor and all persons claiming an interest in the Collateral since the filing of the Notice of Lis Pendens, ordering the Collateral sold at foreclosure sale if the sums found due are not paid when required, and for such other and further relief as the Court may deem just and proper, including, but not limited to, upon motion, relief under Section 697.07, *Florida Statutes*, sequestration of the revenues and accounts under Chapter 679, *Florida Statutes*, and Florida law, appointment of a receiver authorized under the Loan Documents, common law, and Rule 66, Federal Rules of Civil Procedure, and entry of show cause orders under Section 702.10, *Florida Statutes*.

**Count II**  
**Breach of Amended Note**

34. Lender re-alleges and incorporates by reference the allegations contained in paragraphs 1(b) through 3, paragraph 5, paragraphs 7 through 10, and paragraphs 23 through 29 above as if fully set forth herein.

35. Lender owns and holds the Amended Note.

36. By allowing or causing any of the Payment Default to occur, Borrower has materially breached the Amended Note.

37. As a direct and proximate cause of the Payment Default, Lender has suffered, and continues to suffer, damages, including, without limitation, the sums due under the Amended Note in excess of \$75,000.00, exclusive of interest, attorneys' fees and costs.

WHEREFORE, Lender respectfully requests that this Court enters its judgment in favor of Lender and against Borrower for (a) damages, interest, default interest, attorneys' fees, expenses and costs due under the Amended Note; and (b) such other and further relief as the Court deems proper.

January 25, 2018

/s/ Mark J. Wolfson

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VERIFICATION

[Handwritten Signature]  
(signature)

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF

BEFORE ME, the undersigned authority, personally appeared, Dan Sacho (“Verifier”) who swears, deposes, and says: (a) Verifier is over the age of 18 year and Verifier works for The Bancorp Bank, a Delaware banking corporation (“Lender”), as a Director; (b) Verifier has read the Verified Complaint and Exhibits thereto (the “Complaint”); (c) Verifier has personal knowledge of the facts and circumstances set forth in this by virtue of Verifier’s personal knowledge and his position and day-to-day responsibility for the “Loan” and review of the “Loan Documents” (as defined in the Complaint); (d) Verifier is personally aware when, if any, payments were made or not made by Borrower under the Loan Documents, and Verifier also has reviewed and confirmed the books and records created and maintained by Lender regarding the amounts funded, repaid, and unpaid under the Loan as reflected in Lender’s loan accounting system, which is something Verifier regularly relies upon in the performance of Verifier’s duties and he is familiar with how information is created, input and maintained by Lender’s employees responsible for the those records, which are created and maintained by those employees in the ordinary course of the Lender’s business; (e); the facts stated in the Complaint are true and correct to the best of Verifier’s information and knowledge; and (f) Verifier has executed the Complaint on behalf of Lender with its authority.

Sworn to and subscribed before me this 25<sup>th</sup> day of January, 2018, by \_\_\_\_\_, who:

- is personally known to me.
- produced a current 30-501011 driver’s license as identification.
- produced \_\_\_\_\_ as identification.

{Notary Seal must be affixed}

[Handwritten Signature: Nancy C Doucette]  
Signature of Notary

Nancy C Doucette  
Name of Notary (Typed, Printed or Stamped)

Commission Number (if not legible on seal): \_\_\_\_\_

My Commission Expires (if not legible on seal): \_\_\_\_\_

