

SUPERIOR

STATE OF INDIANA)
)SS:
COUNTY OF HOWARD)

IN THE HOWARD _____ COURT
CAUSE NO. 34D01- 1 8 0 4 -PL- 0 0 0 1 6

MYRENE NOJI,
Plaintiff,

vs.

HOME BANC CENTER, INC.,
501 N. BUCKEYE, LLC,
MJK68 ENTERPRISES, LLC,
HOWARD COUNTY TREASURER,
CITY OF KOKOMO,
SLH PROPERTY INVESTMENTS, LLC,
THE CANDY SHOPPE,
KOKOMO REDEVELOPMENT COMMISSION,
Unknown Homeowner's Association and
Unknown Tenants of 501 N. Buckeye St., Kokomo, IN,
Defendants.

FILED

APR 12 2018

KIM WILSON
Clerk Howard Superior Court
Division I

COMPLAINT TO FORECLOSE MORTGAGE

Comes now Myrene Noji ("Noji"), by counsel, and for her Complaint to Foreclose Mortgage, states and alleges as follows:

1. This is an attempt to collect a debt, and any information obtained will be used for that purpose.
2. On or about April 9, 2018, Defendant, Home Banc Center, Inc., was the owner of the following

described real estate situated in Howard County, Indiana, to-wit:

Part of Lot Number 13 in Mills and Richmond Addition to the City of Kokomo, Center Township, Howard County, Indiana, as show in Recorder's Plat Book 1, page 4, described as follows:

Commencing at the Southeast corner of said Lot Number 13, thence West 81 feet; thence North 22 feet; thence East 81 feet; thence South 22 feet to the place of beginning.

subject to all easements, variances, encroachments, and other interests of record, and more commonly known as 501 N. Buckeye Street, Kokomo, Indiana 46901.

3. On September 21, 2014, Defendant, Home Banc Center, Inc., executed and delivered to Noji a certain Promissory Note (the "Note"), in the principal amount of \$50,000.00, payable to Noji in a one-time payment of

interest and principal on or about December 21, 2014, all as set forth in the Note, a true and accurate copy of which is attached hereto, made a part hereof, and marked as **Exhibit 1**.

4. On or about March 25, 2014, and for the purpose of securing the payment of Note, Defendant, Home Banc Center, Inc., executed and delivered to Noji a certain Real Estate Mortgage, mortgaging, warranting and encumbering the above-described real estate in favor of Plaintiff, which mortgage was duly recorded in the Office of the Recorder of Howard County, Indiana, on March 26, 2014, as Instrument No. 1434006259, a true and accurate copy of the Real Estate Mortgage is attached hereto, made a part hereof, and marked as **Exhibit 2**.

5. The balance due under the Note, as of March 21, 2018, was Seventy Eight Thousand Seven Hundred Thirty Five and 36/100 Dollars (\$78,735.36), consisting of principal in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00), interest in the amount of Twenty Six Thousand One Hundred Sixty and 36/100 Dollars (\$26,160.36), and late fees of Two Thousand Five Hundred Seventy Five and 00/100 Dollars (\$2,575.00).

6. Defendant, Home Banc Center, Inc., is in default under the Note for failure to pay the one-time payment due under the Note when due. In addition, Noji reasonably deems herself insecure.

7. The entire amount of the Note is due and payable in full.

8. All conditions required for Noji's enforcement of the Note against Defendant, Home Banc Center, Inc., have been performed, have occurred, or have been excused.

9. All costs, expenses and attorney's fees incurred by Noji in this action are recoverable from Defendant, Home Banc Center, Inc., pursuant to the terms and conditions of the Note.

10. Defendant, 501 N. Buckeye LLC, is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana as a result of Second Mortgage on the property from 501 N. Buckeye, LLC to MJK68 Enterprises, LLC dated June 5, 2014, recorded June 6, 2014, as Instrument No. 1434010088, in the Office of the Recorder of Howard County, Indiana. Said mortgage references Noji's mortgage, but 501 N. Buckeye, LLC is not a vested title holder of the property located at 501 N. Buckeye St., Kokomo, IN 46901.

11. Defendant, MJK68 Enterprises, LLC, is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana as a result of Second Mortgage on the property from 501

N. Buckeye, LLC to MJK68 Enterprises, LLC dated June 5, 2014, recorded June 6, 2014, as Instrument No. 1434010088, in the Office of the Recorder of Howard County, Indiana. Said mortgage references Noji's mortgage, but 501 N. Buckeye, LLC is not a vested title holder of the property located at 501 N. Buckeye St., Kokomo, IN 46901.

12. The Howard County Treasurer is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St, Kokomo, Indiana as a result of delinquent real estate taxes and/or any Personal Tax Judgments, if any.

13. The City of Kokomo is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana as a result of delinquent sewage liens and/or any Personal Tax Judgment, if any.

14. Defendant, SLH Property Investments, LLC, is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana as a result of a an apparent Party Wall on the North side of the property.

15. Defendant, The Candy Shoppe, is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana as it is believed to be a tenant of the property.

16. Defendant, Kokomo Redevelopment Commission, is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana as a result of a Confirmatory Resolution Amending the Declaratory Resolution and Redevelopment Plan of the Wildcat Redevelopment Area, Resolution No. 2010-74, recorded June 8, 2010 as Instrument No. 1034009754, in the Office of the Recorder of Howard County, Indiana.

17. Defendant, Unknown Homeowners Association, is named herein to assert any interest it may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana, as a result of any delinquent fees assessed, if any.

18. Defendant, Unknown Tenants of 501 N. Buckeye St., Kokomo, IN, are named herein to assert any interest they may have in the Real Property located at 501 N. Buckeye St., Kokomo, Indiana, as a result of being tenants of the property.

WHEREFORE, Plaintiff, Myrene Noji, respectfully requests that

- A. Judgment against Defendant, Home Banc Center, Inc., in the amount of Seventy Eight Thousand Seven Hundred Thirty Five and 36/100 Dollars (\$78,735.36), consisting of principal in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00), interest in the amount of Twenty Six Thousand One Hundred Sixty and 36/100 Dollars (\$26,160.36), and late fees of Two Thousand Five Hundred Seventy Five and 00/100 Dollars (\$2,575.00), and interest from March 21, 2018 to the date of judgment at the rate of twelve percent (12%) per annum, plus costs and expenses of collection and reasonable attorney's' fees, all without relief from valuation and appraisal laws; and
- B. A judgment declaring Noji's mortgage to be a valid and enforceable lien against the mortgaged property;
- C. A judgment ruling that any interest which the Defendants may have in the property located at 501 N. Buckeye St., Kokomo, Indiana be extinguished in a manner consistent with their respective priority, and that the equity of redemption of said Defendants be foreclosed and barred, after the redemption period has expired, as is consistent with their respective priority;
- D. An Order directing the sale of the Real Estate by the Sheriff of Howard County, Indiana, with Noji permitted to bid in its judgment in this action, with the proceeds of such sale to be applied to the cost of sale, and then to each lienholder in a manner consistent with their respective priorities, with the surplus, if any, to be paid as ordered by the Court and with the deficiency, if any, to be paid by Defendant, Home Banc Center, Inc.
- E. An Order directing Defendant, Home Banc Center, Inc., The Candy Shoppe, Unknown Tenants of 501 N. Buckeye St., Kokomo, IN and all parties herein to surrender full and peaceful possession of the Real Estate to the holder of such deed, bill of sale, or a copy thereof as results from the Sheriff's sale and that if Defendant, Home Banc Center, Inc., The Candy Shoppe, Unknown Tenants of 501 N. Buckeye St., Kokomo, IN, do not surrender full and peaceful possession of the Real Estate, then an Order be issued directing the Sheriff of Howard County, Indiana to enter the Real Estate and eject and remove therefrom Home Banc Center, Inc., The Candy Shoppe, Unknown Tenants of 501 N.

Buckeye St., Kokomo, IN or any other persons who may be in possession of the Real Estate; and

F. Such other relief as may be just and proper in the premises.

Respectfully submitted,


Mark A. McCann, #15220-49
Attorney for Myrene Noji

McCANN | Legal
106 N. Washington St.
Kokomo, IN 46901
(765) 450-6601
(765) 450-6768 – Fax
mmccann@mccann-legal.com

PROMISSORY NOTE

This Promissory Note (the "Note") is made and effective the September 21, 2014,

BETWEEN: **Myrene Noji (the "Lender")**, an individual with her main address located at:

AND: **Home Banc Center, Inc. (the "Borrower")**, a corporation organized and existing under the laws of Nevada State, with its head office located at:

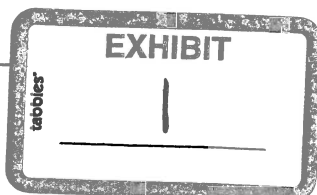
Rancho Santa Margarita, CA 92688

SECURITY INTEREST: 1st Lien Position on 501 N. Buckeye Street, Kokomo IN 46901

TERMS

1. FOR VALUE RECEIVED, the Borrower promises to pay to the order of Lender, at its principal office located at 3465 Condor Ridge Lane, Yorba Linda, CA 92886, or at such other place that is designated in writing by the holder hereof, the principal sum of \$50,000.00, together with all charges and interest herein provided, payable at the rate and in the manner hereinafter set forth:
2. Borrower shall make a one-time payment of interest at the rate of 12% per annum. If not sooner paid, all amounts due under this Note, including principal, interest and other charges shall be due and payable in full in 90 days after receipt of funds on or before 21st day of December, 2014 (the "Maturity Date"). Total Amount due on or before the Maturity Date is \$51,500.00 (Principal \$50,000 + Interest \$1,500.00)
3. This Note is and will be secured by a 1st Lien position on the following property valued by the Borrower at or above the principal sum of \$50,000:
501 N. Buckeye Street, Kokomo, IN 46901

Certain first priority security interest in the above listed properties of the Borrower, to be recorded in all applicable governmental offices. The parties shall execute a separate security agreement, in form and substance acceptable to the Lender in all respects. Borrower agrees to execute any such security agreements presented by the Lender or other documents required by the Lender in order to perfect its security interest in the above described property. Said Security Agreement and any other instruments and documents executed in connection with or given as security for this Note shall hereinafter be referred to collectively as the "Loan Documents." All of the terms, covenants, Conditions, representations and warranties contained in the Loan Documents are hereby made part of this Note to the same extent and with the same force and effect as if fully set forth herein.



4. If all or any portion of any payment due hereunder is not received by the Lender within 10 calendar days after the date when such payment is due, Borrower shall pay a late charge equal to 5% of such payment, such late charge to be immediately due and payable without demand by Lender.
5. Borrower shall have the right to prepay all (but not a portion) of the indebtedness evidenced by this Note at any time, by paying the Lender an amount equal to the sum of (i) the principal balance then outstanding, (ii) all interest accrued to the date of such prepayment, and (iii) any late charge or charges then due and owing.
6. If the entire amount due as represented by this Note is not paid in full on or before the Maturity Date, or should default be made in the performance or observation of any of the terms, covenants, or conditions contained in the Loan Documents, or if any representation or warranty contained in the Loan Documents is breached or is or becomes untrue, this Note shall be in default, and the entire principal amount outstanding hereunder, accrued interest thereon, all late charges, if any, and any and all other charges due hereunder, shall, at Lender's option, immediately become due and payable, without further notice, the giving of such notice being expressly waived by the Borrower. Lender may exercise this option to accelerate during any default by the Borrower, regardless of any prior forbearance. In the event of any such default, and if the same is referred to an attorney-at-law for collection, or if any action at law or in equity is brought with respect hereto, Borrower shall pay to Lender, in addition to all other charges required pursuant to the terms hereof or pursuant to the terms of the Loan Documents, all costs and expenses of the Lender. From and after the maturity date, or during default, if such default should occur prior to the Maturity Date, the outstanding principal amount hereunder and accrued interest and other charges shall bear interest at the highest rate allowed by law.
7. From time to time, without affecting the joint and several obligations of all makers, sureties, guarantors and endorsers hereof, and their respective successors and assigns, (i) to pay the outstanding principal balance herein and accrued interest thereon, (ii) to observe the covenants contained herein, (iii) to observe the terms, covenants and conditions of the Loan Documents or any instrument given to secure the performance hereof, and without giving notice to or obtaining the consent of any maker, surety, guarantor or endorser hereof, or their successors or assigns, and without liability on the part of the holder hereof, the holder hereof may, at its option, extend the time for payment or any part thereof, release anyone liable for payment herein, renew this note, modify the terms or times for payment herein, join in any extension of subordination hereof, release any security given hereof, take or release additional security, modify the rate of interest herein or agree in writing with the undersigned to modify the terms, covenants and conditions of any instrument given to secure performance hereof.
8. Borrower shall pay the costs of all documentary, revenue, tax or other stamps now or hereafter required by any law at any time to be affixed to or which are otherwise made necessary as a result of this Note or any of the Loan Documents, and if any taxes be imposed with respect to debts secured by mortgages and or deeds of trust with respect to notes evidencing debts so secured, Borrower agrees to pay to Lender the full amount of any such taxes, and hereby waives any contrary provisions if any laws or rules of court now or hereafter in effect.
9. Lender and Borrower intend that the relationship created and evidenced by this Note and the Loan Documents shall be solely that of debtor and creditor. Nothing in this Note shall be construed as creating a joint venture, partnership, tenancy in common, or joint tenancy between Lender and Borrower.
10. The remedies of this Note are cumulative and concurrent and may be pursued singularly or successively together, at the sole discretion of the holder, and may be exercised as often as occasion therefore shall occur. The waiver by Lender or failure to enforce any term, covenant or condition of this Note or to declare any default hereunder, shall not operate as a waiver of any subsequent default or affect the right of the holder to exercise any right or remedy not expressly waived in writing by the holder.

11. The unenforceability or invalidity of any one or more provisions of this Note shall not render any other provision herein contained unenforceable or invalid. This note and all of the Loan Documents shall be construed under the laws of the State of California.

IN WITNESS WHEREOF, the undersigned has caused this Promissory Note to be duly executed as of the date first written below.

LENDER



Authorized Signature
MYRENE NOJI
Individual Investor

BORROWER

Authorized Signature

JEFF BROUGHTON
President
HOME BANC CENTER, INC.

METROPOLITAN TITLE COMPANY
1324 EAST HOFFER ST
KOKOMO, IN 46902

1434006259
BROOK E. CLEAVER
HOWARD COUNTY IN RECORDER
ELECTRONICALLY RECORDED ON
03/26/2014 09:36:03AM
REC FEE: \$20.00 PAGES: 4

REAL ESTATE MORTGAGE

THIS INDENTURE WITNESSETH, That **Home Banc Center, Inc.**, (the "Mortgagor"), a corporation organized and existing under the laws of the State of South Dakota, MORTGAGES AND WARRANTS to **Myrene Noji**, (the "Mortgagee") of Orange County, California, the following described real estate in Howard County, Indiana:

Part of Lot Number Thirteen (13) in Mills and Richmond Addition to the City of Kokomo, Center Township, Howard County, Indiana, as shown in Recorder's Plat Book 3, page 4, described as follows:

Commencing at the Southeast corner of said Lot Number 13; thence West 81 feet; thence North 22 feet; thence East 81 feet; thence South 22 feet to the place of beginning.

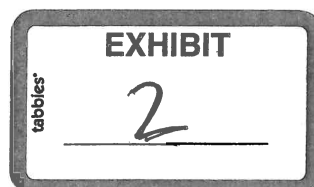
Property Address: 501 North Buckeye Street, Kokomo, IN 46901
Tax Parcel No.: 34-03-36-204-011.000-002

(hereinafter referred to as the "Mortgaged Premises") together with all rights, privileges, interests, easements, hereditaments, appurtenances, fixtures and improvements now or hereafter belonging, appertaining, attached to, or used in connection with, the Mortgaged Premises, and all the rents, issues, income and profits thereof.

This mortgage is given to secure the performance of the provisions hereof and the payment of a certain promissory note ("Note") dated effective March 21, 2014, in the principal amount of \$50,000.00, with interest as therein provided and with a final maturity date of September 20, 2014.

The Mortgagor covenants and agrees with the Mortgagee that:

1. **Payment of Indebtedness.** The Mortgagor shall pay when due all indebtedness secured by this mortgage, on the dates and in the amounts, respectively, as provided in the Note or in this mortgage, without relief from valuation and appraisal laws, and with attorneys' fees.



2. No Liens. The Mortgagor shall not permit any lien of mechanics or materialmen to attach to and remain on the Mortgaged Premises or any part thereof for more than 45 days after receiving notice thereof from the Mortgagee.

3. Repair of Mortgaged Premises; Insurance. The Mortgagor shall not commit waste on the property. The Mortgagor shall procure and maintain in effect at all times adequate liability and casualty insurance in insurance companies acceptable to the Mortgagee insuring the Mortgagee as well as Mortgagor. Casualty insurance shall be for the full replacement value of the improvements.

4. Taxes and Assessments. The Mortgagor shall pay all taxes or assessments levied or assessed against the Mortgaged Premises, or any part thereof, as and when the same become due and before penalties accrue.

5. Advancements to Protect Security. The Mortgagee may, at his option, advance and pay all sums necessary to protect and preserve the security intended to be given by this mortgage. All sums so advanced and paid by the Mortgagee shall become a part of the indebtedness secured hereby and shall bear interest from the date or dates of payment at the rate of twelve per centum (12%) per annum. Such sums may include, but are not limited to, insurance premiums, taxes, assessments and liens which may be or may become prior and senior to this mortgage as a lien on the Mortgaged Premises, or any part thereof, and all costs, expenses and attorneys' fees incurred by the Mortgagee in respect of any and all legal or equitable proceedings which relate to this mortgage or to the Mortgaged Premises.

6. Default by Mortgagor; Remedies of Mortgagee. Upon default by the Mortgagor in any payment provided for herein or in the Note, or in the performance of any covenant or agreement of the Mortgagor hereunder, or if the Mortgagor shall abandon the Mortgaged Premises, or if a trustee or receiver shall be appointed for the Mortgagor or for any part of the Mortgaged premises, except if said trustee or receiver is appointed in any bankruptcy action, then and in any such event, the entire indebtedness secured hereby shall become immediately due and payable at the option of the Mortgagee, without notice, and this mortgage may be foreclosed accordingly. Upon such foreclosure the Mortgagee may continue the title commitment to the Mortgaged Premises, or obtain other appropriate title evidence, and may add to the cost thereof to the principal balance due.

7. Non-Waiver; Remedies Cumulative. No delay by the Mortgagee in the exercise of any of his rights hereunder shall preclude the exercise thereof so long as the Mortgagor is in default hereunder and no failure of the Mortgagee to exercise any of his rights hereunder shall preclude the exercise thereof in the event of a subsequent default by the Mortgagor hereunder. The Mortgagee may enforce any one or more of his rights or remedies hereunder successively or concurrently.

8. Extensions; Reductions; Renewals; Continued Liability of Mortgagor. The Mortgagee at his option, may extend the time for the payment of the indebtedness, or reduce the payments thereon, or accept a renewal note or notes therefor, without consent of any junior lien holder, and without the consent of the Mortgagor if the Mortgagor has then parted with title to the Mortgaged Premises. No such extension, reduction or renewal shall affect the priority of this mortgage or impair the security hereof in any manner whatsoever, or release, discharge or affect in any manner the personal liability of the Mortgagor to the Mortgagee.

9. Due on Sale. Mortgagor shall not sell the real estate or any interest in the real estate, and this mortgage may not be assumed by any third party, without the prior written consent of Mortgagee. Any such sale, transfer or attempted assumption shall be considered a default and entitle Mortgagee to accelerate the entire unpaid balance to be due and payable immediately and to proceed with an immediate foreclosure.

10. General Agreement of Parties. All rights and obligations hereunder shall extend to and be binding upon the several heirs, personal representatives, successors and assigns of the parties to this mortgage. When applicable, use of the singular form of any word also shall mean or apply to the plural, and the masculine form shall mean and apply to the feminine or the neuter. The titles of the several paragraphs of this mortgage are for convenience only and do not define, limit or construe the contents of such paragraphs.

IN WITNESS WHEREOF, the Mortgagor has executed this mortgage this 25 day of March, 2014, to be effective the 21st day of March, 2014.

Home Banc Center, Inc.

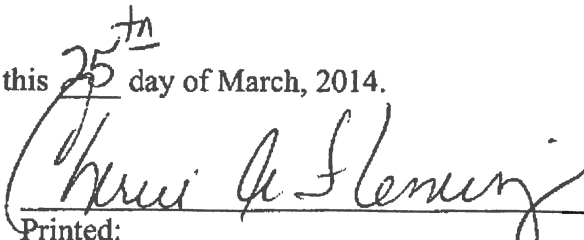
BY: 
Jeff Broughton, President

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

Before me, a Notary Public in and for said County and State, personally appeared **Jeff Broughton, President of Home Banc Center, Inc.**, who acknowledged the execution of the foregoing mortgage.

Witness my hand and Notarial Seal this 25th day of March, 2014.

My Commission expires:


Printed: _____
Resident of _____ County,

NOTARY PUBLIC

This instrument was prepared by J. Conrad Maugans, Attorney at Law. argp

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. J. Conrad Maugans.



Cherise A. Fleming, Notary Public
A Resident of Howard County, IN
My Commission Expires 9/16/15