

1989

Gate City Federal Savings and Loan Association v.
Edward A. Dalton, Jr., John C. Forrester, Jr., Michael
C. Johnsen, Daniel Marcum, et al. : Brief of
Respondent

Utah Court of Appeals

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Clark W. Sessions; Kevin E. Anderson; Campbell, Maack and Sessions; Attorneys for Appellant.
Earl Jay Peck; John K. Mangum; Jay R. Mohlman; Nielsen and Senior; Attorneys for Respondents.

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IN THE UTAH COURT OF APPEALS

GATE CITY FEDERAL SAVINGS AND)	
LOAN ASSOCIATION,)	ADDENDUM OF APPENDICES
	)	TO BRIEF OF
Plaintiff/Appellant,	)	RESPONDENTS
)	
vs.)	
	)	Docket No. 89-498-CA
EDWARD A. DALTON, JR., JOHN C.)	
FORRESTER, JR., MICHAEL C.)	
JOHNSEN and DANIEL MARCUM, et al.,	)	Priority No. 14(b)
)	
Defendants/Respondents.)	

APPEAL FROM SUMMARY JUDGMENT GRANTED BY THIRD JUDICIAL
DISTRICT COURT OF SUMMIT COUNTY, JUDGE J. DENNIS FREDERICK

Clark W. Sessions
Kevin E. Anderson
CAMPBELL, MAACK & SESSIONS
Attorneys for Plaintiff/
Appellant
400 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101

Earl Jay Peck
John K. Mangum
Jay R. Mohlman
NIELSEN & SENIOR
Attorneys for Defendants/
Respondents
1100 Eagle Gate Plaza
60 East South Temple
Salt Lake City, Utah 84111

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Attorneys for Plaintiff/
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400 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101

Earl Jay Peck
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Attorneys for Defendants/
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60 East South Temple
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APPENDICES

1. Third Affidavit of Vaughn R. Cook, dated March 13, 1989
2. First Affidavit of Vaughn R. Cook, dated February 2, 1989
3. Sample Promissory Note between Gate City and Respondents as copied from attachment to Complaint filed in Civil No. 8076
4. Sample Trust Deed between Gate City and Respondents as copied from attachment to Complaint filed in Civil No. 8076
5. Affidavit of James M. Clark, dated April 13, 1989, less all but one copy of Assumption Agreement in Exhibit "C" thereto
6. Excerpts of depositions of Stanley F. Jenkins
7. Excerpts of deposition of Stephen L. Blaser

APPENDIX NO. 1

Third Affidavit of Vaughn R. Cook
dated March 13, 1989.

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Vaughn R. Cook, being first duly sworn upon oath,
depose and state as follows:

1. In the summer of 1981, I, through one of the
companies I controlled, entered into a contract with Kilburn,
Inc. to build over 20 homes at Jeremy Ranch, Summit County,
Utah, which would be suitable for timesharing by Kilburn.

2. Pursuant to this agreement, I acquired lots at
Jeremy Ranch and I sought long-term financing for these homes
from the Orem, Utah office of Gate City Mortgage Company ("Gate
City"). At first I sought financing in the form of a single
long-term loan for all of the properties. Such a loan was not
offered, and a suggestion was made that I provide one or more
separate individuals who would qualify for each of several
loans, enabling Gate City to sell participation interests in
these loans on the secondary mortgage market.

3. In September of 1981, after negotiating the terms
of this financing, including the interest rate, I succeeded in
obtaining from Gate City a loan commitment in the amount of
\$2,200,000.00. This Commitment was sufficient to fund 11 loans
of \$200,000 each, all as evidenced by a copy of the Commitment

attached hereto as Exhibit "A." I worked closely with Gate City's loan officer, Stanley F. Jenkins, and his superiors.

4. I paid \$77,000.00 in commitment fees to Gate City for this Commitment.

5. According to my arrangement with Gate City, I requested third parties to purchase one of the Jeremy Ranch properties and, as part of that transaction, to take out a loan in their individual names, secured by that property. In the case of each of these 11 loans, I asked the borrowers to provide me financial information for loan application forms which I obtained from Gate City. When these application forms were substantially filled out, they were delivered to Gate City. I assured each applicant, including the defendants-borrowers, that there would be an assumption of all loan obligations to Gate City at or shortly after the closing of each loan.

6. During the last six weeks of 1981, with my assistance, Gate City closed and funded each of the 11 loans. These 11 loans fulfilled the Loan Commitment evidenced by Exhibit "A." Each of these 11 loans was secured by a lot and home at Jeremy Ranch. The repayment terms of each of these 11 loans were identical. As far as I recall, the same forms and documents were executed in connection with each loan closing.

7. I caused the lots at Jeremy Ranch that secured each of these 11 loans from Gate City to be conveyed by warranty deed to those who signed as borrowers on the Gate City loans, so that this property could be pledged by them to Gate City, as collateral for the loans. By uniform real estate contracts prepared under my direction, those who signed the loan documents with Gate City on these 11 transactions also conveyed the same property back to C.C. International, an entity I owned and controlled. These conveyances all took place at or about the time of the closings with Gate City Mortgage Company, in late 1981 or the first few days of 1982.

8. Copies of three of these uniform real estate contracts are attached hereto as Exhibits "B," "C," and "D". I signed Exhibit "D," the contract for Lot 82, as an officer and on behalf of C.C. International, as buyer. Similarly, as an officer and on behalf of C.C. International, as buyer, I signed uniform real estate contracts for each of the other remaining properties securing the 11 loans from Gate City.

9. All of these Uniform Real Estate contracts contained language identical in form to or to the same effect as the typewritten language in paragraph 3 of Exhibits "B," "C," and "D" indicating that C.C. International acknowledged the loan in favor of Gate City Mortgage Company, took the

property subject thereto, and agreed to assume full liability for that mortgage obligation and/or cause that mortgage obligation to later be assumed by another buyer. I understood Kilburn would assume all of these loans and discussed this with Gate City's loan officer, Mr. Jenkins.

10. I gave one of these uniform real estate contracts, wherein C.C. International expressly agreed to assume the Gate City loan or cause it to be assumed, to Stan Jenkins of Gate City. He agreed to hand-carry it to Price, Utah, where he was going to meet with and obtain the signature of John C. Forrester, Jr. on loan closing documents, and Mr. Jenkins agreed to get Mr. Forrester to sign this Uniform Real Estate contract for me.

11. A significant portion of the proceeds of each these 11 loans from Gate City went to pay the sub-contractors and suppliers of materials for the homes my company built at Jeremy Ranch which secured these loans. These homes were built during a relatively short period of time in the fall and early winter of 1981, and each of these 11 loans from Gate City was closed at or about the time that the construction was being completed on the property that secured each loan.

12. At the time each loan was closed, the sub-contractors and suppliers of materials for the home that

secured the loan remained unpaid. Also, the time had not yet run in which they could file mechanics liens, if they were not paid out of loan proceeds. At Gate City's request, I signed a document entitled "Indemnification Agreement" addressing this potential for mechanics liens for each of these 11 loans. Copies of 9 of those Indemnification Agreements were marked as Exhibit 30 to my deposition, as evidenced by Exhibit "E" attached hereto. These Indemnification Agreements were presented to me in the form in which they presently appear, lacking only signatures. I believe that these documents were all prepared by, or at the request or under the direction of, Gate City.

13. I do not know what happened to the Indemnification Agreements for Lots 108 and 122, which lots secured the loans from Gate City to Matthew R. White and R. John Eyre, respectively, but to the best of my knowledge and recollection, I executed Indemnification Agreements for those two properties and transactions identical in form to those for the other 9 properties and loans, as evidenced by Exhibit "E" attached hereto.

14. I did not deal with the loans from Gate City secured by Lots 108 and 122 at Jeremy Ranch in any manner significantly different from that in which I dealt with all of the other 9 loans that were part of this package of 11 loans.

15. I do not recall any discussion with a Gate City representative concerning the following language of the Indemnity Agreement which appears, added thereon in typewritten form:

The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part of [sic] assigns on the above premises.

At the time I signed these Indemnity Agreements, I did not know or think about what this quoted language meant. It is true that at the time I signed those Indemnity Agreements, I did not realize that those instruments, by themselves, manifested an agreement by C.C. International to assume the obligations of the mortgage loans which Gate City had just made which were secured by those properties. Nonetheless, such an agreement is consistent with my intent to limit the exposure of the defendants who signed loan closing documents with Gate City, as shown by the Uniform Real Estate contracts. In fact, if someone had pointed out to me that the Indemnity Agreements included an assumption of the mortgage loan obligations, I would have signed them for C.C. International anyway, as I did. It was my intent for C.C. International to assume those mortgage loan obligations, in accordance with the Uniform Real Estate contracts, if only for an interim period, as I explained

at page 301 of my deposition taken on December 6, 1988, a copy of which transcript excerpt is attached hereto as Exhibit "F", and as stated in paragraph 3 of the respective Uniform Real Estate contracts referred to above. Representative copies thereof are attached hereto as Exhibits "B," "C," and "D".

16. My affidavits dated February 2, 1989 and March 2, 1989 were prepared by personnel in the law office of Sessions & Moore, which I understand is representing Gate City in this litigation. At the time I signed those affidavits, I was not thinking about the uniform real estate contracts that pertained to these 11 properties and loan transactions, nor were they brought to my attention. Representative copies of those contracts appear as Exhibits "B," "C," and "D" hereto. By signing those affidavits, I intended only to convey that I had not understood that the language of the Indemnity Agreements included an assumption by C.C. International of the subject loans from Gate City. However, an assumption by C.C. International was indeed contemplated by me, as shown on the Uniform Real Estate contracts. Any language or implication which appears in any prior affidavit I signed, which is inconsistent with what I have set forth above in this Affidavit, is erroneous. I hereby repudiate all such language in those earlier affidavits which is inconsistent with this Affidavit.

17. I have personal knowledge of the statements made above, which I have carefully reviewed, and they are true and accurate.

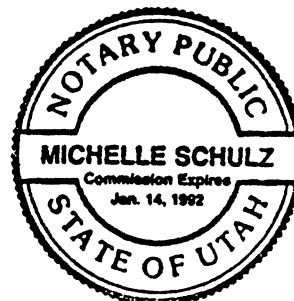
DATED this 13 day of March, 1989.

Vaughn R Cook
Vaughn R. Cook

Subscribed and sworn to before me by this 13 day of March, 1989.

Michelle Schulz
NOTARY PUBLIC
Residing at W. Jordan Utah

My Commission Expires:
1-14-92



04470

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and correct copy of the foregoing Third Affidavit of Vaughn R.

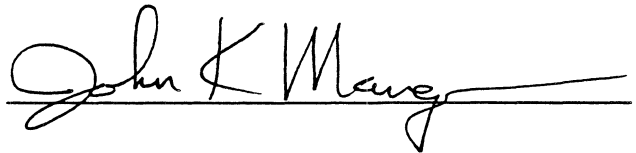
Cook, postage prepaid, this 13th day of March, 1989, to:

Clark W. Sessions
Roy B. Moore
Keven E. Anderson
Sessions & Moore
Attorneys for Plaintiffs
400 First Federal Plaza
505 East 200 South
Salt Lake City, Utah 84102

Jedd P. Jones
11756 Briarglen Drive
Sandy, Utah 84092

O. Jay Call
4755 Rainbow Drive
Murray, Utah 84107

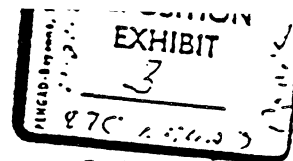
Kenneth P. Colledge
3276 North 10th East
Ogden, Utah 84404

A handwritten signature in cursive script, appearing to read "John K. Mang", is written over a horizontal line.



Gate City
Mortgage Co.

500 2nd Ave. North, Box 2847 Fargo, North Dakota 58106
(701) 293-2520



LOAN COMMITMENT AGREEMENT

Gate City Mortgage Co. herein agrees and commits under the following conditions to finance the individual unit long-term loans to be located at Jeremy Ranch, Utah. The developer is Vaughn Cook & Associates.

1. The individual long-term loans shall be a maximum amount of 80% of the sales price of each unit or the appraised value of each unit, whichever is less, with a maximum loan amount of \$200,000 per unit. Each individual borrower will be allowed one loan from Gate City Mortgage Co. in this commitment. The amount of this commitment will be \$2,200,000.
2. Prior to closing, each individual loan must be prior approved by Northwestern Savings and Loan Association of Chicago, Illinois, and Northwestern Savings & Loan must agree to purchase a minimum of 90% of each individual loan.
3. The security shall be in the form of a first mortgage loan evidenced by a promissory note and deed of trust.
4. The interest rate shall be 18.750% on each individual loan.
5. In addition to the interest and loan fees, the borrowers shall pay at closing all customary lender costs, including but not limited to such items as cost of credit reports, appraisal costs, recording costs, attorney's fees, advance escrow deposits and related costs and charges.
6. The individual loans will be written under The Mortgage Corporation's ARM Pilot Program with a 2% cap.
7. All loans in excess of 65% loan-to-value will carry 20% mortgage insurance coverage.
8. As to each unit, a hazard insurance policy, acceptable to Gate City Mortgage Co. with coverage of at least the amount of the loan, shall be required during the term of the loan.
9. All applications and closings will be handled through Gate City Mortgage Co. located at 1325 South 800 East, Temple View Terrace, Suite 210, Orem, Utah.

LOAN COMMITMENT AGREEMENT
Page Two

10. This commitment is not transferable to other projects or to any other developer.
11. In consideration of this commitment, the developers shall pay a 2½% non-refundable fee of \$55,000.00. In addition to this fee, a 1% insurance fee of \$22,000 shall be paid to Gate City Mortgage Co. This fee will be refunded to the developer upon total funding of this commitment. If this commitment is not totally funded, this fee in addition to the 2½% fee shall be held as liquidated damages.
12. This commitment will expire on December 30, 1981. This commitment must be accepted by September 30, 1981, or will become void.

Accepted:

Wendell R. Cook, Jr.
Vaughn Cook & Associates

Sept. 28, 1981
Date of Acceptance

I, John M. Aldrich, hereby acknowledge receipt of the \$55,000.00 non-refundable commitment fee, and receipt of the \$22,000.00 insurance fee, thereby validating this commitment.

GATE CITY MORTGAGE CO.

John M. Aldrich
Manager

9-28-81
Date

GUARANTEE:

Gate City Savings and Loan Association, parent company of Gate City Mortgage Co., does hereby guarantee this commitment as prescribed under the conditions listed.

John Gaustad
Secondary Marketing Manager

9-23-81
Date

UNIFORM REAL ESTATE CONTRACT

1 THIS AGREEMENT, made in duplicate this 28th day of November, A. D., 1981,
by and between Matthew R. White, a married man
hereinafter designated as the Seller, and CC International, a Utah Corporation

hereinafter designated as the Buyer, of c/o Vaughn Cook and Associates, Inc. 450 East
1000 North North Salt Lake City, Utah 84054

2. WITNESSETH That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer,
and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in
the county of Summit, State of Utah, to-wit: 3780 West Saddleback Road Park West

More particularly described as follows Lot 108, The Jeremy Ranch Plat No. 1,
according to the official plat thereof, recorded in the office of the
Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress
and egress over those roadways as designated on the official plat
of Jeremy Ranch Plat No.1, as recorded in the Summit County Recorder's
office, as Entry No. 157211.

Situated in Summit County, State of Utah

3 Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of see below
see below Dollars (\$ see below)
payable at the office of Seller, his assigns or order see below
strictly within the following times, to-wit: see below (\$ see below)
cash, the receipt of which is hereby acknowledged, and the balance of \$ see below shall be paid as follows:

Buyer agrees to take property subject to first mortgage to Gate City
Mortgage dated November 27, 1981, and to assume, or cause the same
to be assumed by any subsequent buyer.

Buyer further agrees to pay as additional consideration for this sale
the sum of two thousand six hundred seventy three and 96/100 dollars
(\$2,673.96) together with a return of equity traded as reflected on the
closing statement of the November 27, 1981 mortgage with Gate City
Mortgage mentioned above.

Possession of said premises shall be delivered to buyer on the 28th day of November, 1981

4 Said monthly payments are to be applied first to the payment of interest and second to the reduction of the
principal. Interest shall be charged from see above on all unpaid portions of the
purchase price at the rate of see above per cent (see above%) per annum. The Buyer, at his option at anytime,
may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage
or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future
installments at the election of the buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according
to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture
hereinafter stipulated, or as to any other remedies of the seller.

6 It is understood that there presently exists an obligation against said property in favor of Gate City
Mortgage (which buyer agrees to be responsible for) with an unpaid balance of
\$ 200,000.00, as of November 27, 1981

7 Seller represents that there are no unpaid special improvement district taxes covering improvements to said prem-
ises now in the process of being installed, or which have been completed and not paid for, outstanding against said prop-
erty, except the following none

8. The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the
then unpaid contract balance hereunder, bearing interest at the rate of not to exceed NA percent
(NA%) per annum and payable in regular monthly installments; provided that the aggregate monthly installment
payments required to be made by Seller on said loans shall not be greater than each installment payment required to be
made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such
loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property
subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obli-
gations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and
pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect
to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless
said obligations are assumed or approved by buyer.

10 The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such
amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon
the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in ob-
taining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and
interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11 The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed
and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees
that there are no assessments against said premises except the following:

It is agreed that any assessments that may be against the property which are not
known of this time shall be the responsibility of buyer and Alfa Title.

The Seller further covenants and agrees that he will not default in the payment of his obligations against said property.

November 27, 1981

12 The Buyer agrees to pay the general taxes after _____

13 The Buyer further agrees to keep all insurable buildings and improvements on said premises insured in a company acceptable to the Seller in the amount of not less than the unpaid balance on this contract, or \$ _____ and to assign said insurance to the Seller as his interests may appear and to deliver the insurance policy to him

14 In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either of them and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him together with interest thereon from date of payment of said sums at the rate of $\frac{1}{4}$ of one percent per month until paid

15 Buyer agrees that he will not commit or suffer to be committed any waste, spoil, or destruction in or upon said premises, and that he will maintain said premises in good condition

16 In the event of a failure to comply with the terms hereof by the Buyer, or upon failure of the Buyer to make any payment or payments when the same shall become due, or within fifteen days thereafter, the Seller, at his option shall have the following alternative remedies.

A Seller shall have the right, upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made theretofore on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal processes as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller, or

B The Seller may bring suit and recover judgment for all delinquent installments, including costs and attorneys fees (The use of this remedy on one or more occasions shall not prevent the Seller, at his option, from resorting to one of the other remedies hereunder in the event of a subsequent default) or

C The Seller shall have the right, at his option, and upon written notice to the Buyer, to declare the entire unpaid balance hereunder at once due and payable, and may elect to treat this contract as a note and mortgage, and pass title to the Buyer subject thereto, and proceed immediately to foreclose the same in accordance with the laws of the State of Utah, and have the property sold and the proceeds applied to the payment of the balance owing, including costs and attorney's fees, and the Seller may have a judgment for any deficiency which may remain. In the case of foreclosure, the Seller hereunder, upon the filing of a complaint, shall be immediately entitled to the appointment of a receiver to take possession of said mortgaged property and collect the rents, issues and profits therefrom and apply the same to the payment of the obligation hereunder, or hold the same pursuant to order of the court, and the Seller, upon entry of judgment of foreclosure, shall be entitled to the possession of the said premises during the period of redemption.

17 It is agreed that time is the essence of this agreement.

18 In the event there are any liens or encumbrances against said premises other than those herein provided for or referred to, or in the event any liens or encumbrances other than herein provided for shall hereafter accrue against the same by acts or neglect of the Seller, then the Buyer may, at his option, pay and discharge the same and receive credit on the amount then remaining due hereunder in the amount of any such payment or payments and thereafter the payments herein provided to be made, may, at the option of the Buyer, be suspended until such time as such suspended payments shall equal any sums advanced as aforesaid.

19 The Seller on receiving the payments herein reserved to be paid at the time and in the manner above mentioned agrees to execute and deliver to the Buyer or assigns, a good and sufficient warranty deed conveying the title to the above described premises free and clear of all encumbrances except as herein mentioned and except as may have accrued by or through the acts or neglect of the Buyer, and to furnish at his expense, a policy of title insurance in the amount of the purchase price or at the option of the Seller, an abstract brought to date at time of sale or at any time during the term of this agreement, or at time of delivery of deed, at the option of Buyer

20 It is hereby expressly understood and agreed by the parties hereto that the Buyer accepts the said property in its present condition and that there are no representations, covenants, or agreements between the parties hereto with reference to said property except as herein specifically set forth or attached hereto none

21 The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may accrue or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise

22 It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names, the day and year first above written

Signed in the presence of

It is understood that at such time as the underlying mortgage is assumed by buyer or its assigns, then this contract shall be deemed fully executed and paid.

Seller

Buyer

UNIFORM REAL ESTATE CONTRACT

1 THIS AGREEMENT, made in duplicate this 1st day of January, A. D., 1982
by and between Stephen L. Blaser, a married man
hereinafter designated as the Seller, and CC International, a Utah Corporation

hereinafter designated as the Buyer, of c/o Vaughn Cook and Associates, Inc. 450 East
1000 North North Salt Lake City, Utah 84054

2 WITNESSETH That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer,
and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in
the county of Summit, State of Utah, to-wit: 3780 West Saddleback Road Park West

More particularly described as follows: Lot 48, The Jeremy Ranch Plat No. 1,
according to the official plat thereof, recorded in the office of the
Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress
and egress over those roadways as designated on the official plat of
Jeremy Ranch Plat No. 1, as recorded in the Summit County Records Of-
fice, as Entry No. 157211.

Situated in Summit County, State of Utah.

3 Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of two
hundred ninety five thousand, four hundred seventy one & 48/100 Dollars (\$295,471.48)
payable at the office of Seller, his assigns or order see below
strictly within the following times, to-wit: ninety five thousand four hundred seventy one & 48/100 (95,471.48)
cash, the receipt of which is hereby acknowledged, and the balance of \$200,000 shall be paid as follows:

Buyer agrees to take property subject to first mortgage to Gate City
Mortgage dated December 30, 1981, and to assume, or cause the same
to be assumed by any subsequent buyer.

Possession of said premises shall be delivered to buyer on the 1st day of January, 19 82

4 Said monthly payments are to be applied first to the payment of interest and second to the reduction of the
principal. Interest shall be charged from see above on all unpaid portions of the
purchase price at the rate of see above per cent (see above%) per annum. The Buyer, at his option at anytime,
may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage
or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future
installments at the election of the buyer, which election must be made at the time the excess payment is made.

5 It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according
to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture
hereinafter stipulated, or as to any other remedies of the seller.

6 It is understood that there presently exists an obligation against said property in favor of Gate City
Mortgage (which buyer agrees to be responsible for) with an unpaid balance of
\$200,000.00, as of December 30, 1981

7 Seller represents that there are no unpaid special improvement district taxes covering improvements to said prem-
ises now in the process of being installed, or which have been completed and not paid for, outstanding against said prop-
erty, except the following none

8 The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the
then unpaid contract balance hereunder, bearing interest at the rate of not to exceed NA percent
(NA%) per annum and payable in regular monthly installments; provided that the aggregate monthly installment
payments required to be made by Seller on said loans shall not be greater than each installment payment required to be
made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such
loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property
subject to said loans and mortgages.

9 If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obli-
gations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and
pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect
to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless
said obligations are assumed or approved by buyer.

10 The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such
amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon
the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in ob-
taining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and
interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11 The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed
and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees
that there are no assessments against said premises except the following:

It is agreed that any assessments that may be against the property which are not
known of this time shall be the responsibility of buyer and Alta title.

The Seller further covenants and agrees that he will not default in the payment of his obligations against said property.

12. The Buyer agrees to pay the general taxes after December 30, 1981

13. The Buyer further agrees to keep all insurable buildings and improvements on said premises insured in a company acceptable to the Seller in the amount of not less than the unpaid balance on this contract, or \$_____ to assign said insurance to the Seller as his interests may appear and to deliver the insurance policy to him.

14. In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either them, and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him, together with interest thereon from date of payment of said sums at the rate of $\frac{1}{2}$ of one percent per month until paid.

15. Buyer agrees that he will not commit or suffer to be committed any waste, spoil, or destruction in or upon said premises, and that he will maintain said premises in good condition.

16. In the event of a failure to comply with the terms hereof by the Buyer, or upon failure of the Buyer to make any payment or payments when the same shall become due, or within fifteen days thereafter, the Seller, at his option shall have the following alternative remedies:

A. Seller shall have the right, upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made theretofore on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal processes as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller; or

B. The Seller may bring suit and recover judgment for all delinquent installments, including costs and attorneys fees. (The use of this remedy on one or more occasions shall not prevent the Seller, at his option, from resorting to one of the other remedies hereunder in the event of a subsequent default); or

C. The Seller shall have the right, at his option, and upon written notice to the Buyer, to declare the entire unpaid balance hereunder at once due and payable, and may elect to treat this contract as a note and mortgage, and pass title to the Buyer subject thereto, and proceed immediately to foreclose the same in accordance with the laws of the State of Utah, and have the property sold and the proceeds applied to the payment of the balance owing, including costs and attorney's fees; and the Seller may have a judgment for any deficiency which may remain. In the case of foreclosure, the Seller hereunder, upon the filing of a complaint, shall be immediately entitled to the appointment of a receiver to take possession of said mortgaged property and collect the rents, issues and profits therefrom and apply the same to the payment of the obligation hereunder, or hold the same pursuant to order of the court; and the Seller, upon entry of judgment of foreclosure, shall be entitled to the possession of the said premises during the period of redemption.

17. It is agreed that time is the essence of this agreement.

18. In the event there are any liens or encumbrances against said premises other than those herein provided for or referred to, or in the event any liens or encumbrances other than herein provided for shall hereafter accrue against the same by acts or neglect of the Seller, then the Buyer may, at his option, pay and discharge the same and receive credit for the amount then remaining due hereunder in the amount of any such payment or payments and thereafter the payments herein provided to be made, may, at the option of the Buyer, be suspended until such time as such suspended payments shall equal any sums advanced as aforesaid.

19. The Seller on receiving the payments herein reserved to be paid at the time and in the manner above mentioned agrees to execute and deliver to the Buyer or assigns, a good and sufficient warranty deed conveying the title to the above described premises free and clear of all encumbrances except as herein mentioned and except as may have accrued by or through the acts or neglect of the Buyer, and to furnish at his expense, a policy of title insurance in the amount of the purchase price or at the option of the Seller, an abstract brought to date at time of sale or at any time during the term of this agreement, or at time of delivery of deed, at the option of Buyer.

20. It is hereby expressly understood and agreed by the parties hereto that the Buyer accepts the said property in its present condition and that there are no representations, covenants, or agreements between the parties hereto with reference to said property except as herein specifically set forth or attached hereto

21. The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise.

22. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names, the day and year first above written, signed in the presence of

Will Cooke

It is understood that at such time as the underlying mortgage is assumed by buyer or its assigns, then this contract shall be deemed fully executed and paid.

Deborah B. ...
Seller

CC International, a Utah Corp.
by Vaughn Cooke, Sec/Treas
Vaughn Cooke, individually
Buyer

UNIFORM REAL ESTATE CONTRACT

1. THIS AGREEMENT, made in duplicate this 4th day of January, A. D., 19 82
by and between David E. Jones & Christian E. Hansen
hereinafter designated as the Seller and C. C. International
hereinafter designated as the Buyer, of 450 East 1000 North, North Salt Lake, Utah

2. WITNESSETH: That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer, and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in the county of Summit, State of Utah, to-wit: 3493 West Wrangler Way, Park City, Utah
More particularly described as follows:

All of Lot 82, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211

3. Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of see below Dollars (\$ see below)
payable at the office of Seller, his assigns or order see below
strictly within the following times, to-wit: see below (\$ see below)
cash, the receipt of which is hereby acknowledged, and the balance of \$ see below shall be paid as follows:

Buyer agrees to take property subject to present mortgage in favor of Gate City Mortgage (see attached) and buyer agrees to assume full liability thereunder and cause the same to be assumed by subsequent buyers. As additional consideration buyer hereby pays \$3,000.00 additional, the receipt of which is hereby acknowledged.

Possession of said premises shall be delivered to buyer on the 4 day of January, 19 82

4. Said monthly payments are to be applied first to the payment of interest and second to the reduction of the principal. Interest shall be charged from See above on all unpaid portions of the purchase price at the rate of see above per cent (see above%) per annum. The Buyer, at his option at anytime, may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future installments at the election of the buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture hereinafter stipulated, or as to any other remedies of the seller.

6. It is understood that there presently exists an obligation against said property in favor of Gate City Mortgage with an unpaid balance of \$ 200,000.00, as of January 4, 1982

7. Seller represents that there are no unpaid special improvement district taxes covering improvements to said premises now in the process of being installed, or which have been completed and not paid for, outstanding against said property, except the following none

8. The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the then unpaid contract balance hereunder, bearing interest at the rate of not to exceed see above percent (see above%) per annum and payable in regular monthly installments; provided that the aggregate monthly installment payments required to be made by Seller on said loans shall not be greater than each installment payment required to be made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obligations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless said obligations are assumed or approved by buyer.

10. The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in obtaining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees that there are no assessments against said premises except the following:

None
The Seller further covenants and agrees that he will not default in the payment of his obligations against said property.

12. The Buyer agrees to pay the general taxes after January 4, 1982

13. The Buyer further agrees to keep all insurable buildings and improvements on said premises insured in a company acceptable to the Seller in the amount of not less than the unpaid balance on this contract, or \$_____ and to assign said insurance to the Seller as his interests may appear and to deliver the insurance policy to him.

14. In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either of them, and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him, together with interest thereon from date of payment of said sums at the rate of $\frac{1}{2}$ of one percent per month until paid.

15. Buyer agrees that he will not commit or suffer to be committed any waste, spoil, or destruction in or upon said premises, and that he will maintain said premises in good condition.

16. In the event of a failure to comply with the terms hereof by the Buyer, or upon failure of the Buyer to make any payment or payments when the same shall become due, or within 15 days thereafter, the Seller, at his option shall have the following alternative remedies:

A. Seller shall have the right, upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made theretofore on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal processes as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller; or

B. The Seller may bring suit and recover judgment for all delinquent installments, including costs and attorneys fees. (The use of this remedy on one or more occasions shall not prevent the Seller, at his option, from resorting to one of the other remedies hereunder in the event of a subsequent default); or

C. The Seller shall have the right, at his option, and upon written notice to the Buyer, to declare the entire unpaid balance hereunder at once due and payable, and may elect to treat this contract as a note and mortgage, and pass title to the Buyer subject thereto, and proceed immediately to foreclose the same in accordance with the laws of the State of Utah, and have the property sold and the proceeds applied to the payment of the balance owing, including costs and attorney's fees; and the Seller may have a judgment for any deficiency which may remain. In the case of foreclosure, the Seller hereunder, upon the filing of a complaint, shall be immediately entitled to the appointment of a receiver to take possession of said mortgaged property and collect the rents, issues and profits therefrom and apply the same to the payment of the obligation hereunder, or hold the same pursuant to order of the court; and the Seller, upon entry of judgment of foreclosure, shall be entitled to the possession of the said premises during the period of redemption.

17. It is agreed that time is the essence of this agreement.

18. In the event there are any liens or encumbrances against said premises other than those herein provided for or referred to, or in the event any liens or encumbrances other than herein provided for shall hereafter accrue against the same by acts or neglect of the Seller, then the Buyer may, at his option, pay and discharge the same and receive credit on the amount then remaining due hereunder in the amount of any such payment or payments and thereafter the payments herein provided to be made, may, at the option of the Buyer, be suspended until such time as such suspended payments shall equal any sums advanced as aforesaid.

19. The Seller on receiving the payments herein reserved to be paid at the time and in the manner above mentioned agrees to execute and deliver to the Buyer or assigns, a good and sufficient warranty deed conveying the title to the above described premises free and clear of all encumbrances except as herein mentioned and except as may have accrued by or through the acts or neglect of the Buyer, and to furnish at his expense, a policy of title insurance in the amount of the purchase price or at the option of the Seller, an abstract brought to date at time of sale or at any time during the term of this agreement, or at time of delivery of deed, at the option of Buyer.

20. It is hereby expressly understood and agreed by the parties hereto that the Buyer accepts the said property in its present condition and that there are no representations, covenants, or agreements between the parties hereto with reference to said property except as herein specifically set forth or attached hereto see attached trust deed and trust deed note in favor of Gate City Mortgage

21. The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise.

22. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names, the day and year first above written.

Signed in the presence of

Seller

Buyer

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

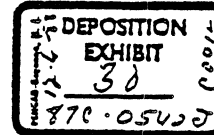
WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 48, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.



and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien(s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part or assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written:

Gate City Mortgage Company

By

Stanley F. Jenkins
Party of the Second Part

C. C. INTERNATIONAL
Vaughan Cook
Party of the First Part

Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 48, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one or more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien (s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part or assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By Stanley F. Jenkins
Party of the Second Part

C. C. INTERNATIONAL
Vaughn Cook
Party of the First Part

Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 21st day of December, 19 81 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 54, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one of more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien (s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part of assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By [Signature]
Party of the Second Part

C. C. International

[Signature] (rel.)
Party of the First Part Vaughn Cook

Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT made and entered into this 30th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 82 The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorders office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning or more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien(s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part of assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By _____
Party of the Second Part

C.C. International


Party of the First Part

Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 123, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

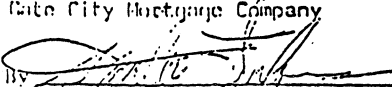
That if the Party of the Second Part shall omit from such mortgage an exception concerning one of more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

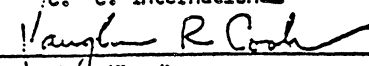
Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien (s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part or assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By 
Party of the Second Part

C. C. International


Party of the First Part Vaughn Cook

Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 124, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one or more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

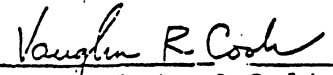
In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien(s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part of assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By 
Party of the Second Part


Party of the First Part C C International

Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$ 200 000.00 on the following described property:

All of Lots 125, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one or more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien(s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part or assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By

Party of the Second Part

Stanley F. Jenkins

C. C. International

Vaughn F. Cook
Party of the First Part Vaughn Cook

Party of the First Part

CC 200846

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 126, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holder: (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one or more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien (s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part or assigns on the above premises.

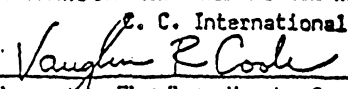
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By 

Party of the Second Part

Stanley F. Jenkins


Party of the First Part Vaughn Cook

Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of December, 1981 by and between C. C. International, referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$ 200,000.00 on the following described property:

All of Lot 129, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one of more of such liens, filed or unfilled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien (s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part or assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By [Signature]
Party of the Second Part

Party of the First Part C. C. International

Vaughn Cook Sec. Areas
Party of the First Part

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 21st day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH:

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 130, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorder's office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of the mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one or more of such liens, filed or unfilled; and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part, may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien (s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part or assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By [Signature]
Party of the Second Part

C.C. International
Vaughn Cook
Party of the First Part

Party of the First Part

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH
CENTRAL DIVISION

* * * * *

MORTGAGE GUARANTY INSURANCE)
CORPORATION,

Plaintiff,)

vs.) Civil No. 87-C0542J

GATE CITY FEDERAL SAVINGS)
BANK and GATE CITY MORTGAGE)
COMPANY,

Defendants.)

* * * * *

PLATTE VALLEY FEDERAL SAVINGS)
& LOAN ASSOCIATION,

Plaintiff,)

vs.) Civil No. 87-C-0091J

GATE CITY SAVINGS AND LOAN)
ASSOCIATION,

Defendant.)

* * * * *

IN THE DISTRICT COURT OF SUMMIT COUNTY, STATE OF UTAH

GATE CITY FEDERAL SAVINGS AND)
LOAN ASSOCIATION,

Plaintiff,)

vs.) Civil No. 8074

EDWARD A. DALTON, JR., JOHN C.)
FORRESTER, JR., MICHAEL C.)
JOHNSON and DANIEL W. MARCUM,
et al,

COPY

ALAN P. SMITH, CSR
385 BRAHMA DRIVE 84107 RES. 266-0320
COURTS-BLDG. 240 E 4 S (801) 535-7572
231 JUDGE BUILDING OFF 533-0800
SALT LAKE CITY, UTAH 84111



1	GRAHAM DODD, DWIGHT H. EGAN,)	
2	et al,	)	Civil No. 8075
3)	
4	CHRISTIAN E. HANSEN, DAVID E.)	
5	JONES, et al,	)	Civil No. 8076
6)	
7	MATTHEW R. WHITE, et al,)	
8		)	Civil No. 8077
9	R. JOHN EYRE, et al,)	
10		)	Civil No. 8078
11	KELVYN H. CULLIMORE, THOMAS G.)	
12	OSBORNE, W. TRUMAN RIGBY,	)	Civil No. 8079
13	et al,)	
14	DONALD L. SMITH, JEDD P. JONES,)	
15	et al,	)	Civil No. 8080
16	CLIVE E. PUSEY, DENNIS L.)	
17	CROCKETT, et al,	)	Civil No. 8081
18	STEPHEN BLASER, et al,)	
19		)	Civil No. 8082
20	C. JAY CALL, MARDEN SPENCER,)	
21	KENNETH P. COLLEDGE, J. RAY	)	Civil No. 8119
22	FISHER, et al,)	
23	JOHN C. FORRESTER, III,)	
24	MARVIN L. MILLS, et al,	)	Civil No. 8120

Defendants.

* * * * *

DEPOSITION OF VAUGHN R. COOK, a witness produced,
sworn and examined on Tuesday, the 6th day of December, in the
year of our Lord 1988, continued from the 21st day of November,
1988, between the hours of 9 a.m. and 2:40 p.m. of that
day, in the library conference room of the law office of

1 Craig G. Adamson and Eric P. Lee, Suite 1330, 310 South Main,
 2 in the City of Salt Lake, County of Salt Lake and State of
 3 Utah, before me, Alan P. Smith, Certified Shorthand Reporter,
 4 License No. 38, and Notary Public within and for said State
 5 of Utah, in certain causes now pending in the United States
 6 District Court, District of Utah, Central Division, wherein
 7 Mortgage Guaranty Insurance Corporation is the plaintiff and
 8 Gate City Federal Savings Bank and Gate City Mortgage Company
 9 are the defendants, and Platte Valley Federal Savings & Loan
 10 Association is the plaintiff and Gate City Savings and Loan
 11 Association is the defendant, and in the District Court of
 12 Summit County, State of Utah, wherein Gate City Federal
 13 Savings and Loan Association is the plaintiff and Edward A.
 14 Dalton, Jr., et al, are the defendants, on the part of
 15 plaintiff Mortgage Guaranty Insurance Corporation.

16 APPEARANCES:

17 For Plaintiff Mortgage Guaranty
 18 Insurance Corporation:

Eric P. Lee

Dart, Adamson & Kasting
 310 South Main, Suite 1330
 Salt Lake City, Utah 84101

19 For Defendants Gate City Federal
 20 Savings Bank and Gate City Mort-
 21 gage Company and Gate City Sav-
 22 ings and Loan Association and
 23 plaintiff Gate City Federal Sav-
 24 ings and Loan Association:

Roy B. Moore
 Kevin Egan Anderson
 Sessions & Moore
 400 First Federal Plaza
 505 East 200 South
 Salt Lake City, Utah 84102

25 For Plaintiff Platte Valley
 Federal Savings & Loan Associa-
 tion:

Fred R. Silvester
 Sutter, Axland, Armstrong
 & Hanson
 175 South West Temple
 Suite 700
 Salt Lake City, Utah 84101

For Summit County except O. Jay
 Call, Kenneth P. Colledge and
 Jedd Jones:

John K. Mangum
 Nielsen & Senior
 1100 Beneficial Life Tower
 36 South State Street
 Salt Lake City, Utah 84111

Also Present:

Richard Davis



1 A I don't recall that happening.

2 MR. SILVESTER: Is your recollection
3 good enough that you say can that never happened?

4 THE WITNESS: No.

5 MR. SILVESTER: I will just jump in,
6 John, so we don't have to go back.

7 MR. MANGUM: Fine. No, I don't mind.

8 MR. SILVESTER: Thank you.

9 MR. MANGUM: Let's mark this the next
10 one.

11 (Thereupon deposition
12 Exhibit No. 26 was marked for
13 identification.)

14 Q (By Mr. Mangum) Let me show you now what has been
15 marked as Exhibit 26. Can you describe for the record what
16 that is?

17 A It is a Uniform Real Estate Contract dated the
18 1st of January, 1982, between Stephen Blaser as the seller
19 and C. C. International as the buyer, of property located
20 at Lot 48, Jeremy Ranch, Plat No. 1.

21 Q I will represent to you that that property is the
22 same property that secured the loan from Gate City. Is that
23 your signature on the second page of this document?

24 A It is.

25 Q What was the purpose of this document?

1 A This was to effect the sale of the property back
2 from the investor into the Kilburn program.

3 Q Was this document one of those executed at the
4 closing of the loan with Gate City so far as you know?

5 A I would expect so.

6 Q Did you execute a similar document for each of
7 the other transactions where Gate City made loans secured
8 by properties at Jeremy Ranch?

9 A I believe so but I am not sure.

10 Q Now did the investors also execute warranty deeds
11 at the closings?

12 A They did.

13 MR. MANGUM: Excuse me a moment here.

14 Let's mark this as the next exhibit.

15 (Thereupon deposition
16 Exhibit No. 27 was marked for
17 identification.)

18 Q (By Mr. Mangum) Let me have you look now at what
19 has been marked as Exhibit 27, which I will represent to you
20 as a set of warranty deeds running from the investors to Alta
21 Title as trustee, each referencing the same property that
22 secured the loan from Gate City at Jeremy Ranch.

23 A All right.

24 Q And you can take a quick look at those to verify
25 that that is what they are.

1 Do you see your signature as a notary appearing
2 on any of these?

3 A I do.

4 Q Are those all your signatures where it appears
5 to be yours?

6 A It is.

7 Q Now were these executed at the time of the loan
8 closing?

9 A I would expect so.

10 Q You should note that there are some that are
11 dated April of '82. All the rest seem to correspond at
12 least generally with the time of the loan closing with Gate
13 City.

14 Do you know whether those that are dated April,
15 1982, whether those in fact were not signed until that date,
16 or is that just a date entered later to complete something
17 that had been done earlier?

18 A I am not sure.

19 Q Do you recall on any of those dated April of '82
20 whether one or more of the signers had signed at the time
21 of the closing and you just needed to follow up with maybe
22 one or two others to get their signature? Trying to find out
23 why they may have been dated that way if the general practice
24 was to have these executed at the time of closing.

25 A The only explanation that I would know is that

1 possibly the deeds were not prepared at the time of closing
2 and it wasn't realized until the 22nd of April or close
3 thereto. I don't recall one way or the other what the
4 reason would be.

5 Q Now apparently none of these warranty deeds were
6 ever recorded. Is that consistent with your knowledge?

7 A Yes.

8 Q Do you know why that was handled in that manner?

9 A These deeds were to be held in trust by Alta
10 Title and recorded at such time as the assumption was
11 completed.

12 Q What do you mean by that? When would the trans-
13 action be completed?

14 A When the second or the absolute assumption of the
15 underlying mortgage to Gate City or the Gate City mortgage
16 had taken place.

17 Q Now these documents named as the grantee, Alta
18 Title as trustee. Do you know for whom Alta Title was acting
19 as trustee?

20 A I assume for Kilburn.

21 Q And these were to supplement the Uniform Real
22 Estate Contracts that were also executed generally at or about
23 the time of the loan closing?

24 A Yes.

25 Q Now if I can refer you back to Exhibit 26, the



1 Uniform Real Estate Contract on the Blaser transaction.

2 A Thank you.

3 Q Who is identified as the buyer?

4 A The buyer is C. C. International.

5 Q And then in the paragraph numbered three is there
6 some typewritten language right after the phrase "the balance
7 of \$200,000 shall be paid as follows." Do you see that?

8 A I do.

9 Q Could you read that typewritten language for us?

10 A "Buyer agrees to take property subject to first
11 mortgage to Gate City Mortgage dated December 30, 1981, and
12 to assume, or cause the same to be assumed by any subsequent"
13 purchaser. Or buyer.

14 Q What did you understand the meaning of that
15 language to be?

16 A A reflection of the intent that this property
17 would be sold to Kilburn and that Kilburn would assume the
18 underlying Gate City mortgage.

19 Q Did this also reflect to your understanding the
20 fact that C. C. International was agreeing to assume that
21 mortgage with Gate City in the interim?

22 A That is the way I would read it.

23 Q To your knowledge did C. C. International ever
24 make any payments to Gate City on these mortgages?

25 A They did not.



APPENDIX NO. 2

First Affidavit of Vaughn R. Cook
dated February 2, 1989

NO.....
FILED

FEB 3 1989

Clerk of Summit County

BY.....
Deputy Clerk

CLARK W. SESSIONS (2914)
ROY B. MOORE (2308)
KEVIN EGAN ANDERSON (099)
SESSIONS & MOORE
Attorneys for Plaintiff
400 First Federal Plaza
505 East 200 South
Salt Lake City, Utah 84102
Telephone: (801) 359-4100

IN THE THIRD JUDICIAL DISTRICT COURT OF SUMMIT COUNTY
STATE OF UTAH

GATE CITY FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

EDWARD A. DALTON, JR., JOHN C.
FORRESTER, JR., MICHAEL C.
JOHNSEN, and DANIEL W. MARCUM,
et al.,

Defendants.

AFFIDAVIT OF VAUGHN COOK

Consolidated Case No. (8074)

EDWARD A. DALTON, JR., JOHN C.
FORRESTER, JR., MICHAEL C.
JOHNSEN, and DANIEL W. MARCUM,
et al.,

Counterclaimants,

v.

GATE CITY FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Counterclaim Defendant.

(8075)
(8076)
(8077)
(8078)
(8079)
(8080)
(8081)
(8082)
(8119)
(8120)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Vaughn Cook being first duly sworn upon his oath, deposes and states as follows:

1. At all times pertinent hereto I was the owner and Chief Executive Officer of C.C. International.

2. Gate City Mortgage never made a mortgage loan to me or to C.C. International.

3. Neither I nor C.C. International ever assumed a mortgage loan obligation made by Gate City Mortgage Company to any of the Defendants in the above-captioned matter.

4. Neither I nor C.C. International agreed with Gate City Mortgage Company to assume the mortgage loan obligations made by Gate City Mortgage Company to any of the Defendants in the above-captioned matter.

5. I never executed, either personally or on behalf of C.C. International, a document or other agreement whereby I agreed to assume the mortgage loan obligation of any of the Defendants in the above-captioned matter.

6. Neither I nor C.C. International ever applied to Gate City Mortgage Company to assume the mortgage loan obligations of any of the Defendants in the above-captioned matter, nor did we collectively or individually request permission or approval of Gate City Mortgage Company to assume those obligations.

7. C.C. International sold to the Defendants the subject properties immediately preceding the borrowers obtaining the loans from Gate City Mortgage Company. I executed on behalf of C.C. International the Indemnity Agreements between Gate City Mortgage Company and C.C. International, (a representative copy of which is attached hereto as Exhibit "A", and incorporated herein by this reference), for the sole purpose of indemnifying Gate City Mortgage Company from any liability arising from mechanics liens and/or materialmens liens on the subject 11 homes and lots in the Jeremy Ranch subdivision which were built under my direction and supervision.

8. I did not execute the Indemnity Agreements, a representative copy of which is attached, either personally, or on behalf of C.C. International, to reflect or establish that I had assumed the obligations on the subject mortgage loans made by Gate City Mortgage Company to the Defendants in the above-captioned matter, or to reflect or establish that Gate City Mortgage Company had made mortgage loans to me or C.C. International, because that was not the case.

9. I did not identify to Mr. Blaser the agreement attached hereto as Exhibit "A" as the assumption agreement which would relieve Mr. Blaser of all liability under the subject loan with Gate City Mortgage Company.

10. Any assumption would have been executed on the Gate City assumption form attached hereto as Exhibit "B".

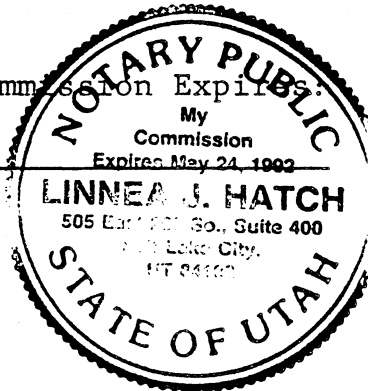
DATED this 2 day of February, 1989.

Vaughn R Cook
VAUGHN COOK

SUBSCRIBED AND SWORN to before me this 2nd day of February,
1989.

Linnea J. Hatch
NOTARY PUBLIC
Residing in Salt Lake County, UT

My Commission Expires



Gate City Mortgage Co.

ASSUMPTION AGREEMENT

THIS AGREEMENT made on the date hereinafter set forth opposite the signatures of Vendor and Purchaser, by and between: Donald Lewis Smith, a married man and Jedd P. Jones, a married man hereinafter called Vendors, and Kilburn Vacation Home Share Inc. hereinafter called Purchasers, of property located at 8825 West Silver Spur Road

WHEREAS Gate City Mortgage Co. is the owner and holder of a certain note dated 12-09-81 executed and delivered by Vendors or their predecessors in interest to Gate City Mortgage Co.

in the principal amount of \$ 200,000.00 secured by a mortgage executed and delivered by Vendors or their predecessors in interest and recorded in Book M209... of at Page 29-33 in the Summit... County Recorder's office, State of Utah....., as Document No. 187721

WHEREAS, Vendors represent that all regular required monthly installment payments heretofore due and owing under the note and mortgage have been paid and that all other obligations to be performed prior to the date hereof under the terms of the note and mortgage have been performed, and that the unpaid balance of the loan as of is \$ with interest paid to

WHEREAS, Purchasers have purchased or are now purchasing from Vendors the property covered by said Mortgage:

NOW, THEREFORE, the said parties, in consideration of the premises and of their mutual promises as herein set forth, do agree as follows:

Purchasers assume and agree to pay said note as therein provided, and further to assume all the obligations of said mortgage as therein provided, and to perform in accordance with the covenants and conditions thereof.

It is understood that Mortgagee does not release Vendor or Vendors from further liability under or on account of the said note and mortgage.

Vendors hereby transfer to Purchasers, subject to the conditions of the mortgage pertaining to same, all their right, title and interest in the policy of hazard insurance and in the funds on deposit in escrow as payment for taxes and hazard insurance premium, and mortgage insurance premium, in connection with said mortgage.

The word "note" as used herein shall be construed to mean note, bond or other instrument evidencing the indebtedness herein referred to. The word "mortgage" as used herein shall be construed to mean mortgage, deed of trust, or other instrument securing the indebtedness herein referred to. The word "Mortgagor" shall include Trustor, and word "Mortgagee" shall include Beneficiary under a deed of trust.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto on the dates set forth opposite their names.

Dated

Donald Lewis Smith Vendor

Jedd P. Jones Vendor

Dated

Purchaser

Purchaser

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of December, 1981 by and between C. C. International, hereinafter referred to as Party of the First Part and Gate City Mortgage Company, hereinafter referred to as Party of the Second Part.

WITNESSETH

WHEREAS, Party of the First Part has obtained from the Party of the Second Part a first mortgage loan for the principal balance of \$200,000.00 on the following described property:

All of Lot 48, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorders office, as Entry No. 157211.

Situate in Summit County, State of Utah.

and such property is now subject to mechanics' and/or materialmen's liens insofar as the time for filing the same is concerned and it is the desire of the Party of the First Part that such mortgage shall be executed without showing therein an exception for such possible liens, and the Party of the Second Part is not agreeable thereto unless the Party of the First Part shall guarantee the discharge of such liens.

NOW, THEREFORE, in consideration of the premises and the additional liability Party of the Second Part will sustain by reason of omitting to state, as an exception in such mortgage the interest of mechanics' and/or materialmen's lien holders (or possible lien holders), and in consideration of the benefit of the Party of the First Part in the conduct of its business by reason thereof, Party of the First Part guarantees and agrees as follows:

That if the Party of the Second Part shall omit from such mortgage an exception concerning one more of such liens, filed or unfiled, and one or more such mechanics' and/or materialmen's liens, is, has been or may thereafter be filed or secured on the insured premises effective or relating back to a date prior to the date of the policy, then, upon written demand of the Party of the Second Part, the Party of the First Part agrees to promptly secure the discharge of all such liens.

In the event Party of the First Part fails to promptly discharge all such liens, then Party of the Second Part may pay, compromise, settle or discharge such liens and recover from the Party of the First Part such amounts so paid.

Party of the First Part agrees upon demand to indemnify Party of the Second Part for any loss (including but not limited to amounts paid in discharge of the lien, expenses of investigation, preparation for litigation, judgment, court costs, and attorney's fees) it may sustain by reason of omitting to set out such lien (s) as an exception in the mortgage executed hereunder or by reason of enforcement of this agreement. The obligation of the Party of the First Part in this agreement shall extend to the mortgage executed by, through, or for the Party of the First Part of assigns on the above premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Gate City Mortgage Company

By

Party of the Second Part

Stanley J. Jenkins

C. C. INTERNATIONAL

Party of the First Part

Party of the First Part

APPENDIX NO. 3

Sample Promissory Note Between Gate City and Respondents
Copied from Attachment to Complaint Filed
in Civil No. 8076

ADJUSTABLE RATE NOTE

NOTICE TO BORROWER: THIS NOTE CONTAINS A PROVISION ALLOWING FOR CHANGES IN THE INTEREST RATE. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

..... December 30, 1981

..... Drem., Utah

City State

..... 3493 West Saddleback Road, Park City, Utah 84060

Property Address City State Zip Code

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$200,000.00 (this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is Gate City Mortgage Company.....

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder".

2. INTEREST

Interest will be charged on that part of outstanding principal which has not been paid. Interest will be charged beginning on the date I receive principal and continuing until the full amount of principal I receive has been paid.

Beginning on the date of this Note, I will pay interest at a yearly rate of 18.75% (the "Initial Interest Rate"). The interest rate that I will pay will change in accordance with Section 4 of this Note until my loan is paid. Interest rate changes may occur on the 1st day of the month beginning on March 19, 1985 and on that day of the month every Twelve (12) months thereafter. Each date on which the rate of interest may change will be called a "Change Date".

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments on the 1st day of each month beginning on February 19, 1982. I will make these payments until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. I will pay all sums that I owe under this Note no later than January 01, 2012. (the "final payment date").

I will make my monthly payments at 1325 South 800 East, Suite 210, Drem., Utah 84057. or at a different place if required by the Note Holder.

(B) Borrower's Payments Before They Are Due

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates of my monthly payments unless the Note Holder agrees in writing to those delays. My partial prepayment will reduce the amount of my monthly payments after the first Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

(C) Amount of Monthly Payments

My initial monthly payments will be in the amount of U.S. \$3,136.82. If the interest rate that I pay changes, the amount of my monthly payments will change. Increases in the interest rate will result in higher payments (unless my prepayments since the last Change Date offset the increases in my monthly payments). Decreases in the interest rate will result in lower payments. The amount of my monthly payments will always be sufficient to repay my loan in full in substantially equal payments by the final payment date. In setting the monthly payment amount on each Change Date, the Note Holder will assume that the Note interest rate will not change again prior to the final payment date.

4. INTEREST RATE CHANGES

(A) The Index

Any changes in the interest rate will be based on changes in an interest rate index which will be called the "Index". The Index is the: *[Check one box to indicate Index.]*

(1) ☒ "Contract Interest Rate, Purchase of Previously Occupied Homes, National Average for all Major Types of Lenders" published by the Federal Home Loan Bank Board.

(2) ☐ *

If the Index ceases to be made available by the publisher, or by any successor to the publisher, the Note Holder will set the Note interest rate by using a comparable index.

(B) Setting the New Interest Rate

To set the new interest rate, the Note Holder will determine the change between the Base Index figure and the Current Index figure. The Base Index figure is 14.77 The Current Index figure is the most recent Index figure available 45 . days prior to each Change Date. If the amount of the change is less than one-eighth of one percentage point, the change will be rounded to zero. If the amount of the change is one-eighth of one percentage point or more, the Note Holder will round the amount of the change to the nearest one-eighth of one percentage point.

If the Current Index figure is larger than the Base Index figure, the Note Holder will add the rounded amount of the change to the Initial Interest Rate. If the Current Index figure is smaller than the Base Index figure, the Note Holder will subtract the rounded amount of the change from the Initial Interest Rate. The result of this addition or subtraction will be the preliminary rate. If there is no change between the Base Index figure and the Current Index figure after rounding, the Initial Interest Rate will be the preliminary rate.

[Check one box to indicate whether there is any maximum limit on interest rate changes; if no box is checked, there will be no maximum limit on changes.]

(1) ☐ If this box is checked, there will be no maximum limit on changes in the interest rate up or down. The preliminary rate will be the new interest rate.

(2) ☒ If this box is checked, the interest rate will not be changed by more than 2.00 . . . percentage points on any Change Date. The Note Holder will adjust the preliminary rate so that the change in the interest rate will not be more than that limit. The new interest rate will equal the figure that results from this adjustment of the preliminary rate.

(C) Effective Date of Changes

Each new interest rate will become effective on the next Change Date. If my monthly payment changes as a result of a change in the interest rate, my monthly payment will change as of the first monthly payment date after the Change Date.

(D) Notice to Borrower

The Note Holder will mail me a notice by first class mail at least thirty and no more than forty-five days before each Change Date if the interest rate is to change. The notice will advise me of:

- (i) the new interest rate on my loan;
- (ii) the amount of my new monthly payment; and
- (iii) any additional matters which the Note Holder is required to disclose.

5. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any of my monthly payments by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be % of my overdue payment of principal and interest. I will pay this late charge only once on any late payment.

(B) Notice from Note Holder

If I do not pay the full amount of each monthly payment on time, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me.

(C) Default

If I do not pay the overdue amount by the date stated in the notice described in (B) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

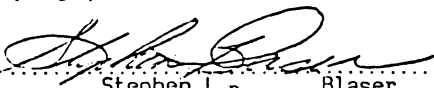
* If more than one box is checked or if no box is checked, and Lender and Borrower do not otherwise agree in writing, the first Index named will apply.

An Adjustable Rate Loan Rider supplements the Deed of Trust and provides:

If there is a transfer of the Property subject to paragraph 17 of the Security Instrument, Lender may require (1) an increase in the current Note interest rate, or (2) an increase in (or removal of) the limit on the amount of any one interest rate change (if there is a limit), or (3) a change in the Base Index figure, or all of these, as a condition of Lender's waiving the option to accelerate provided in paragraph 17.

222 00076

.....
Loan Number


.....
Stephen L. *Borrower* Blaser

..... (Seal)

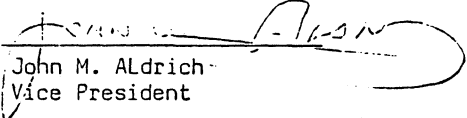
..... (Seal)
Borrower

..... (Seal)
Borrower
(Sign Original Only)

PAY TO THE ORDER OF GATE CITY SAVINGS AND LOAN ASSOCIATION
OF FARGO, NORTH DAKOTA, WITHOUT RECOURSE.

DATED THIS 30th DAY OF December, 19 81

GATE CITY MORTGAGE CO.


John M. Aldrich
Vice President

APPENDIX NO. 4

Sample Trust Deed Between Gate City and Respondents
as Copied from Attachment to Complaint
Filed in Civil No. 8076

WHEN RECORDED MAIL TO

Gate City Mortgage Co.
1325 South 800 East #210
Orem, Utah 84057
222 00076

Entry No. <u>110</u>	Book <u>1207</u>
RECORDED <u>12-31-81</u>	Page <u>310-14</u>
REQUESTED BY <u>Alta Title</u>	
FEE <u>\$ 8.00</u>	By <u>Barbara B. Kelson</u>
INDEXED	ABSTRACT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST

THIS DEED OF TRUST is made this 30th day of December, 1981, among the Trustor, Stephen L. Blaser, A Married Man (herein "Borrower"), Alta Title Company (herein "Trustee"), and the Beneficiary, Gate City Mortgage Company, a corporation organized and existing under the laws of North Dakota, whose address is 1325 South 800 East Suite 210, Orem, Utah 84057 (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Summit, State of Utah:

All of Lot 48, The Jeremy Ranch Plat No. 1, according to the official plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and egress over those roadways as designated on the official plat of Jeremy Ranch Plat No. 1, as recorded in the Summit County Recorders office, as Entry No. 157211.

Situate in Summit County, State of Utah.

INDEXED: _____
GRANTOR: mm _____
GRANTEE: m _____
RELEASED: _____
ABSTRACTED: 1 A _____
INDEXED: _____

which has the address of 3493 West Saddleback Road, Park City, Utah 84060
(Street) (City)
..... (herein "Property Address");
(State and Zip Code)

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

To SECURE to Lender (a) the repayment of the indebtedness evidenced by Borrower's note dated December 30, 1981 (herein "Note"), in the principal sum of Two Hundred Thousand and No/100 Dollars, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on January 01, 2012; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained; and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances").

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

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UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note, and the principal of and interest on any Future Advances secured by this Deed of Trust.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 18 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, then to the principal of the Note, and then to interest and principal on any Future Advances.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. If under paragraph 18 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Borrower shall pay the amount of all mortgage insurance premiums in the manner provided under paragraph 2 hereof.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

10. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest.

11. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

12. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

14. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. Uniform Deed of Trust; Governing Law; Severability. This form of deed of trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

17. Transfer of the Property; Assumption. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Deed of Trust shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 17, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Except as provided in paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and those remedies permitted by applicable law may be invoked. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorney's fees.

If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an event of default and of the election to cause the Property to be sold and shall record such notice in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto or to the county clerk of the county in which the sale took place.

19. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust and in enforcing Lender's and Trustee's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require

to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

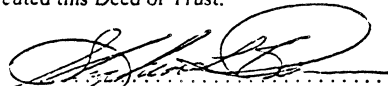
21. **Future Advances.** Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

22. **Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

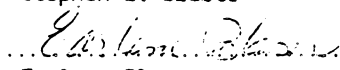
23. **Substitute Trustee.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. **Request for Notices.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.


Stephen L. Blaser

—Borrower

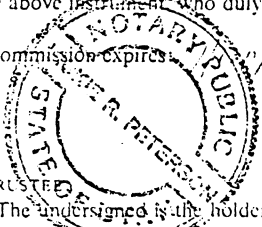

Earlene Blaser

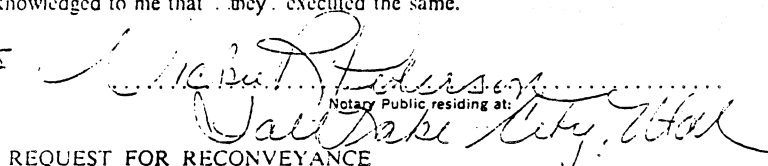
—Borrower

STATE OF UTAH, Wasatch County ss:

On this 30th day of December, 19 81, personally appeared before me Stephen L. & Earlene Blaser, the signer(s) of the above instrument, who duly acknowledged to me that they executed the same.

My Commission expires




Notary Public residing at: Wasatch City, Utah

REQUEST FOR RECONVEYANCE

To TRUSTEE

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Date:

(Space Below This Line Reserved For Lender and Recorder)

n Recorded Mail to:

Gate City Mortgage Company
1325 South 800 East #210
Orem, Utah 84057

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned GATE CITY MORTGAGE CO. hereby grants, assigns and transfers to
Gate City Savings & Loan Association

Beneficial interest in, to and under that certain Deed of Trust dated December 30, 1981,
executed by Stephen L. Blaser, A Married Man
Alta Title Company, Trustee, and recorded DEC 31 1981
Book 4207, Page 210, of 1571901 in the Office of the County Recorder of
Summit County, Utah, covering the following described lands and premises situated in
Summit County, Utah, to-wit:

All of Lot 48, The Jeremy Ranch Plat No. 1, according to the official
plat thereof, recorded in the office of the Summit County Recorder.

Subject to and together with a right of way for the purpose of ingress and
egress over those roadways as designated on the official plat of Jeremy
Ranch Plat No. 1, as recorded in the Summit County Recorders office,
as Entry No. 157211.

Situate in Summit County, State of Utah.

Entry No. 157191	Book 4207
RECORDED 12-31-81	at 3:53 PM Page 315
REQUEST OF Alta Title	
FEE 4.00	WANDA Y. CARROLL, CLERK OF COUNTY RECORDER
INDEXED	By [Signature]
	ABSTRACT

Together with the note therein described and secured thereby, the money due and to become due thereon with interest, and all rights accrued or to
accrue under said Deed of Trust, including the right to have reconveyed, in whole or in part, the real property described therein

Dated this 30th day of December, 1981

GATE CITY MORTGAGE CO.

By [Signature] John M. Aldrich, Vice President Title

STATE OF Utah }
COUNTY OF Utah } ss.

On the 30th day of December, 1981, personally appeared before me John M. Aldrich
Vice President
Gate City Mortgage Co., that the above and foregoing instrument was signed in behalf of said corporation by authority of a resolution
of its Board of Directors, and said John M. Aldrich, acknowledged to me that said corporation executed the
same.

Notary Public
Residing at

Provo, Utah

commission expires:

4/11/82

For Recorder's Use

INDEXED: _____
RECORDED: [initials]
FILED: [initials]
RECEIVED: _____
ABSTRACTED: [initials]
STAMPED: _____

BOOK 4207 PAGE 315

APPENDIX NO. 5

Affidavit of James M. Clark
Dated April 13, 1989,
Less All But One Copy of
Assumption Agreement in Exhibit "C" Thereto

Earl Jay Peck (A2562)
John K. Mangum (2072)
Douglas K. Pehrson (3848)
Jay R. Mohlman (5113)
NIELSEN & SENIOR
Attorneys for Principal Defendants
1100 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 4111
Telephone: (801) 532-1900

NO.....
FILED

APR 17 1989

Clerk of Summit County

BY.....
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SUMMIT COUNTY
STATE OF UTAH

GATE CITY FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

v.

EDWARD A. DALTON, JR., JOHN C.
FORRESTER, JR., MICHAEL C.
JOHNSEN, and DANIEL W. MARCUM,
et al.,

Defendants.

EDWARD A. DALTON, JR., JOHN C.
FORRESTER, JR., MICHAEL C.
JOHNSEN and DANIEL W. MARCUM,

Counterclaimants,

v.

GATE CITY FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Counterclaim
Defendant.

AFFIDAVIT OF JAMES M. CLARK

Consolidated Case No. 8074

(8075)

(8076)

(8077)

(8078)

(8079)

(8080)

(8081)

(8082)

(8119)

(8120)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, James M. Clark, being first duly sworn upon oath,
hereby depose and state as follows:

1. I was the moving force in forming Kilburn Vacation Homeshare, Inc. ("Kilburn"), which was done in 1980. Kilburn was in the business of developing units and selling them as timeshares.

2. From the formation of Kilburn, I have been a director of that entity; I was the principal shareholder until 1985. Since February of 1981, I have been an authorized agent of Kilburn in the continental United States by virtue of a general power of attorney to act for Kilburn.

3. In 1981, Kilburn decided it needed more product or properties to sell. Accordingly, it contracted with Vaughn Cook & Associates for the building and acquisition of a number of homes at Jeremy Ranch, near Park City, Summit County, Utah. In late September of 1981, I caused a document entitled "Declaration of Covenants, Conditions, and Restrictions for Kilburn Vacation Homeshares," evidenced by Exhibit "A" hereto, to be recorded with the office of the Summit County Recorder.

3. I was aware that Mr. Vaughn R. Cook was negotiating with Gate City Mortgage Company for permanent

long-term financing for these Jeremy Ranch properties. I was interested in the terms he was negotiating for those loans because I wanted to make sure those terms were such that Kilburn would be able to make payments to Gate City on that financing. On behalf of Kilburn, I had agreed with Vaughn Cook that Kilburn would attempt to formally assume the long-term loans he was negotiating with Gate City, to be secured by the Jeremy Ranch properties.

4. Kilburn contracted with Vaughn Cook and Associates in the fall of 1981 to acquire these Jeremy Ranch properties from Vaughn Cook, or entities he controlled, as evidenced by the documents in Exhibit 9 to the deposition of Vaughn Cook dated November 21, 1988. I am not aware of any efforts by anyone to conceal this plan from anyone.

5. After the long-term financing from Gate City secured by these Jeremy Ranch properties was completed in late 1981, Kilburn undertook to start making the monthly payments due to Gate City, out of proceeds of sales of timeshare intervals in these properties.

6. Attached hereto as Exhibit "B" is a copy of a letter dated January 13, 1982 from Gate City Mortgage Company to Kilburn concerning insurance policies on the Jeremy Ranch properties and which Kilburn was then beginning to make

payments. I instructed my secretary to respond to Gate City's request concerning insurance policies, and to the best of my knowledge, she provided to Gate City copies of the insurance policies on the Jeremy Ranch properties which had been requested, which policies had been procured by Kilburn.

7. Attached hereto as Exhibit "C" is a collection of documents entitled "Gate City Mortgage Co. Assumption Agreement" which relate to these Jeremy Ranch properties that Kilburn had timeshared. Although these bear my signature for Kilburn, I did not sign these documents until many months after the loans from Gate City were made. These assumption agreements were accompanied by loan application forms which were never signed or completed. I never had my signature on these assumption agreements acknowledged, as apparently required by these forms. I never told the defendants whose names appear on those assumption agreements as vendors that I had completed these assumption agreements or submitted them to Gate City. In fact, these documents never were delivered to Gate City.

8. To the best of my knowledge, all of the payments that were made to Gate City on the mortgage loans secured by the Jeremy Ranch properties from the time the loans were closed until the spring of 1984 were made by Kilburn or out of funds

owed to Kilburn from the sale of timeshare intervals in those Jeremy Ranch properties. Kilburn or its agents received notices from Gate City concerning these payments due on the mortgage loans. An example of such a notice is attached hereto as Exhibit "D".

9. I have personal knowledge of the information set forth in this Affidavit and the same is true and correct.

DATED this 13th day of April, 1989.

James M. Clark

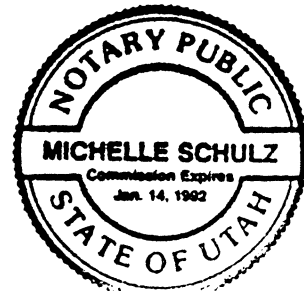
James M. Clark

Subscribed and sworn to before me this 13 day of April, 1989.

Michelle Schulz
NOTARY PUBLIC
Residing at Salt Lake, Utah

My Commission Expires:

1-14-92



CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and correct copy of the foregoing Affidavit of James M. Clark, postage prepaid, this 13th day of April, 1989, to:

Jedd P. Jones
11756 Briarglen Drive
Sandy, Utah 84092

O. Jay Call
4755 Rainbow Drive
Murray, Utah 84107

Kenneth P. Colledge
3276 North 10th East
Ogden, Utah 84404

A COPY OF THE FOREGOING AFFIDAVIT was hand-delivered this 13th day of April, 1989, to the following:

Clark W. Sessions
Roy B. Moore
Kevin E. Anderson
Sessions & Moore
400 First Federal Plaza
505 East 200 South
Salt Lake City, Utah 84102

John K. Mang

PL. ORDER _____ 1951
PL. _____
AMOUNT: _____
ENTRY NO.: 134060
BOOK-PAGE: 4129 - 520

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
KILBURN VACATION-HOMESHARES

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made by the undersigned declarant corporation, which is hereinafter referred to as the "Company."

RECITALS:

1. The Company is the owner of that certain parcel of land with improvements thereon, the subject of this Declaration, located in Summit County, Utah and more particularly described as:

See Attached Exhibit

2. The Company desires and intends by recording this Declaration and the Bylaws to impose upon the real property subject of this Declaration mutually beneficial restrictions under a general plan of improvement and operation for the benefit of the Subject Properties and the Owners thereof.

3. The Company contemplates the sale and conveyance of undivided interests in the Subject Properties and desires to subject all of the Subject Properties to certain covenants, conditions, restrictions, servitudes and easements for the protection and benefit of any future owners of undivided interests in the Subject Properties.

DECLARATIONS:

The Company hereby certifies, declares and establishes the following general plan for the Subject Properties and hereby fixes the following covenants, conditions, restrictions, servitudes and easements, which shall run with the land as set forth herein, upon each and every undivided ownership interest in the Subject Properties under which restrictions, covenants, servitudes and easements each and every undivided interest in the Subject Properties shall be hereafter held, used, occupied, sold and/or conveyed. Each and all such restrictions, covenants, conditions, servitudes and easements shall inure to the benefit of, apply to and bind the Company and all future owners and their respective successors in title and interest.

Such restrictions, covenants, conditions, servitudes and easements are:

1. Definitions. As herein defined, both hereafter and heretofore:

(a) "Association" shall mean and refer to Homeshare Owners Association, a Utah non-profit corporation which has been or will be created by filing Articles of Incorporation therefor with the Utah Secretary of State. The said Association shall henceforth be the governing body of the Subject properties and shall operate in accordance with the "Bylaws of Homeshare Owners Association;

(b) "Bylaws" or "Bylaws of the Association" shall mean the Bylaws of Homeshare Owners Association;

(c) "Common Expenses" shall mean all sums expended on behalf of the Owners of the Subject Properties authorized by this Declaration and by the Trustees and the Bylaws of the Association in performance of the rights, powers and duties of the Association;

(d) "Member" shall mean members of the Association which membership is governed by this Declaration and by the Articles of Incorporation.

tion and Bylaws of the Association;

(e) "Mortgage" shall be any mortgage, deed of trust, contract of sale or for deed, or other security instrument by which any portion of the Subject Properties or the interest of any Owner is encumbered;

(f) "Mortgagee" shall mean (i) any person named as the mortgagee, beneficiary or vendor under any Mortgage by which the Subject Properties or the interest of any Owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage;

(g) "Owner" shall mean each person acquiring any interest in fee or by contract for purchase of the fee in the Subject Properties;

(h) "Subject Properties" shall mean that real property, and all improvements, fixtures, furniture, appointments and other personal property situated on the property described as Lot 72, Prospector Park, Phase II, in Summit County, Utah and commonly known as "Kilburn Vacation-Homeshare Number 7 and such other real and personal property as may from time to time be included or excluded by amendment to this Declaration.

(i) "Total votes of the Association" shall mean the vote of that portion of the total memberships present, personally or by proxy, at a meeting of the Members constituting a quorum as provided for in the Bylaws of the Association; and,

(j) "Trustees" shall mean the Board of Trustees of the Association.

2. Homeshare Owner's Association. The Company will form or has formed a corporation known as "Homeshare Owners Association," a non-profit corporation which has the powers, rights and duties hereinafter set forth. There shall be numbered memberships in the Association; each of such memberships shall be appurtenant to and shall not be separated from each undivided interest in the Subject Properties. Each such membership shall be entitled to one (1) vote. If a membership should be owned jointly by two (2) or more persons, said persons must vote unanimously. If the owners thereof cannot reach unanimity, said membership shall not be entitled to vote. All such memberships shall automatically pass to the respective purchasers of such undivided interests at the time of execution of the instruments of conveyance, whether by contract for purchase or deed or otherwise, for each respective undivided interest. Each Member shall be obligated to promptly, fully, and faithfully comply with this Declaration and with the Articles of Incorporation, Bylaws, and the rules and regulations of the Association, and shall promptly pay all dues, fees or assessments levied by the Association.

3. Powers of the Association. The Association, in its sole and absolute discretion, as is more fully set forth in its Articles of Incorporation and Bylaws, shall have the following powers:

(a) Shall have the sole and exclusive right and duty to make, operate, control, repair, replace or restore all of the improvements, furnishings and other personal property, which shall include but is not limited to the building, furnishings, trees, shrubbery, plants and grass on or in the Subject Properties;

(b) Shall fix, levy and collect assessments from its Class A Members for their pro-rata portion of the Common Expenses or from Members for damages outlined in paragraph 7(r) hereof, without deduction of any off-sets or claims which the Member may have against the Association; assessments for Common Expenses shall be allocated so that each Class A membership shall be required to pay the same amount as every other Class A membership;

(c) May establish and maintain a reserve fund for these and other purposes;

(d) Shall pay the taxes and assessments, if any, which may be levied by a governmental authority upon the Subject Properties or the Association;

(e) Shall enforce the terms of this Declaration, the Bylaws and the decisions and rulings of the Association which have been set forth for the mutual benefit of the Subject Properties and the Owners thereof, and shall pay all expenses incidental thereto;

(f) May expend the monies collected by the Association from assessments, or otherwise, for the payment and discharge of all proper costs, expenses, and obligations incurred by the Association in carrying out any or all of the purposes for which the Association is formed, including but not limited to the cost and expenses of insurance, maintenance, gardening, snow removal, utilities, materials, taxes, supplies, or services for the benefit of the Subject Properties;

(g) May without limitation of its general powers, contract with others for the maintenance, operation, repair, or restoration of the Subject Properties; provided, however, that the Association shall not enter into any such contract which binds the Association or its Members for a period in excess of one (1) year;

(h) May do any and all lawful things which may be advisable or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts which may be either necessary for or incidental to any of the foregoing powers, or for the peace, health, comfort, safety, or general welfare of its Members;

(i) Shall be entitled to receive all notices, claims and demands relative to taxes and assessments affecting the Subject Properties and by accepting title to an undivided interest in the Subject Properties, the purchaser thereof thereby waives his right to receive such notices, and designates the Association as his exclusive agent for receipt of such notices, claims or demands;

(j) To acquire by purchase or lease any and all furnishings, appointments and other personal property determined by the Association to be desirable to acquire. The cost of loan payments, interest or lease payments shall be paid for from the Common Expense fund; and,

(k) To allocate use of the Subject Properties by its Members in accordance with paragraph 6 hereof.

4. Liability and Liens. In each instance wherein an Owner of an undivided interest in the Subject Properties is made liable to the Association pursuant to these restrictions and the implementation thereof, such liability shall be a personal liability of such Owner or Owners, except in the case of assessments made to satisfy unpaid obligations to Mortgagees of the Owner. In the event such liability is not satisfied when due, it shall be and become delinquent and interest at the rate of one and a half percent (1.5%) per month and all costs of collection, including a reasonable attorney's fee, shall be added thereto. If such delinquency is not cured within ten (10) days after it becomes delinquent, the Association to which sum is owing:

(a) May file for record in the Office of the Summit County Recorder and mail to the record Owner at his registered address notice of intention to lien as to such undivided interest, which notice shall state all amounts which have become delinquent with respect to which the delinquent payment is owed, the dates for which owner is delinquent and the name of the record or reputed Owner of such interest. Such notice shall be signed in the name of the Association. In the event the delinquency is cured by full payment of all amounts due prior to the completion of sale held to foreclose the lien created thereby, the Association shall record a further notice, similarly executed, stating the satisfaction and releasing the lien;

(b) May collect all rents, issues, royalties and profits from the undivided interest to the extent of the delinquent amount, and shall hold harmless the payor from any claim of the Owner therefor;

(c) Immediately upon recordation of a notice of lien, the amounts delinquent, as set forth in such notice, shall be and become a lien upon the undivided interest with respect to which such notice was recorded, which lien shall also secure all future liabilities of the Owner therefor, which shall become due and payable with respect to such undivided interest following such recording. The lien shall continue until all amounts secured thereby are fully paid or satisfied. The lien shall be subordinate to the lien or charge of any bona fide Mortgage made in good faith and for value on the Subject Properties. Such lien shall be prior to all other liens recorded subsequent to said notice of assessment;

(d) Each lien established pursuant to the foregoing may be foreclosed as and in the same manner as the foreclosure of a mortgage upon real property.

(e) No breach of the covenants, conditions or restrictions herein contained nor the enforcement of any lien of any deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure, trustee's sale, or otherwise.

5. Common Expenses. All costs for insurance, taxes, maintenance, gardening, utilities, materials, supplies, and services, and other assessments and expenses on the Subject Properties shall be paid by and through the Association in accordance with the provisions hereof, and no individual Owner shall separately pay these expenses except by virtue of the assessments as provided herein. Nothing herein shall be construed to limit the liability and responsibility of each owner to pay all costs and expenses not common to the Subject Properties and incurred by that Owner or its designates.

6. Occupancy of the Subject Properties. Each membership in the Association shall carry with it the right to exclusive occupancy one of the Subject Properties for one day each year.

The Bylaws of the Association shall designate the usage assigned to each numbered membership. No Owner shall use or occupy the Subject Properties at any other time or times than assigned to the Owner in accordance with the Bylaws of the Association and the Owner's membership number.

7. Condition of Occupancy. The use of the Subject Properties shall be made upon the following covenants, conditions and restrictions:

(a) The Association is empowered to prepare rules for the checking in and out of the occupancy of the Subject Properties in accordance with the terms hereof; and payment of cleaning and other expenses;

(b) Without the prior written consent of the Association, no Owner shall occupy or use any portion of the Subject Properties or permit the same or any part thereof to be occupied or used for any purpose other than residential purposes;

(c) Except for portions of the Subject Properties expressly designated by the Association, no portion of the Subject Properties shall be used for storage of any personal property or items not otherwise a part of the Subject Properties;

(d) No building, fence, wall, doorway, or other structure shall be commenced, erected, altered or placed on any portion of the Subject Properties without the prior written approval of the Association;

(e) No animals, birds, fish, dogs, cats, reptiles, livestock or poultry of any kind shall be permitted in or on the Subject Properties;

(f) No noxious or offensive activity shall be carried on in the Subject Properties; nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners or to neighboring properties;

(g) Without the prior written consent of the Association or its designate, no sign of any kind may be displayed on or in the Subject Properties;

(h) The Association or its designate is authorized to adopt rules for the use of the Subject Properties not in conflict with the terms hereof, which rules shall be in writing and furnished to the owners;

(i) Except in areas designated by the Association, no portion of the Subject Properties shall be used or maintained as a dumping ground for rubbish, trash, garbage or waste, nor shall any rubbish, trash, papers, junk or debris be burned on the Subject Properties. No person shall allow any unsightly, unsafe or dangerous condition to exist on or in the Subject Properties. Nothing herein shall be construed to limit the ability of any occupant of the Subject Properties from properly burning wood in the fireplaces;

(j) No excavation for stone, gravel or earth shall be made on the Subject Properties without the prior written consent of the Association;

(k) No radio or television aerial shall be installed by any owner or occupant unless he shall have the prior written consent of the Association;

(l) No Owner or occupant shall install, or cause to be installed, any machinery, refrigerating or heating device or air conditioning apparatus, or use any illumination other than electric light or use or permit to be brought into the Subject Properties any inflammable oil or fluid or other explosive articles which are hazardous to life, limb or property without the prior written consent of the Association given in each specific instance;

(m) No draperies, shades, awnings or window guards shall be used except as shall be put up or approved in writing by the Association;

(n) No Owner or occupant shall interfere in any manner with any portion of either the heating or lighting apparatus located in the Subject Properties;

(o) Nothing shall be thrown or emptied out of the windows or doors or down the stairways and the balconies, nor shall anything be hung from the balconies or from the outside of the windows or placed on the outside windowsills or elsewhere without the prior written consent of the Association in each specific instance;

(p) No skis shall be brought into the house and all skis shall be stored only in the garage area of the Subject Properties;

(q) The Association or designate shall retain a pass key to the Subject Properties. No Owner or occupant shall alter any lock or install a new lock on any door in the Subject Properties without the prior written consent of the Association. The person adding or changing such lock shall immediately deliver to the Association or its designate the keys to such lock; and,

(r) The Owner having right to occupy the Subject Properties shall be responsible for the actions and damages, other than normal wear and tear, made by himself, his family, guests and/or tenants. Any damage

in or to the Subject Properties shall be repaired by the Association and the costs thereof charged to the responsible Owner by the assessment provisions herein.

8. Breach. The result of every act or omission whereby any of the covenants herein are violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy in addition to those provided herein, allowed by law or equity against a nuisance, either public or private, shall be applicable against such result and may be exercised by any Owner, the Company or its successors in interest or by the Trustees.

9. Violation of Rules. The Association may provide in its rules and regulations for suspension of rights or privileges or for charges or assessments for violation of such rules including, without limitation, the cost of correcting any violation hereof.

10. Insurance. The Association shall, at the expense of the Owners, obtain and keep in full force and effect fire and casualty insurance and liability and property damage insurance to protect the interests of the Owners and Mortgagees in the Subject Properties:

(a) By accepting instruments of conveyance for interest in the Subject Properties, the purchaser thereof, for himself and his successors in interest, hereby makes, constitutes and appoints the Association his true and lawful attorney-in-fact for and in his name, place and stead, and for his use and benefit, to effect any sale of all or any portion of the Subject Properties, and to do all acts and execute and deliver any certificate, deed, contract, document or instrument necessary, appropriate or convenient to effect the transfer of title to all or any portion of the Subject Properties, or otherwise to carry out the purposes and intent of this paragraph 10 for the purposes of dealing with the Subject Properties upon their damage or destruction as hereinafter provided;

(b) Repair and reconstruction of the improvements as used herein means restoring a Subject Property to substantially the same condition in which it existed prior to the damage or destruction, with each portion of the Subject Properties having substantially the same vertical and horizontal boundaries as before;

(c) In the event any part of the Subject Property is damaged or destroyed, the Association shall proceed as follows:

(i) As soon as practicable, after an event causing damage to or destruction of any part of the Subject Properties, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct that part of the Subject Properties damaged or destroyed;

(ii) If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Subject Properties, such repair and reconstruction shall be carried out;

(iii) If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed portion of the Subject Properties and if less than seventy-five percent (75%) of the building is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy an assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction; and,

(iv) If the proceeds of the insurance maintained by the

Association are less than the estimated costs to repair and reconstruct the damaged or destroyed portion of the Subject Properties and if seventy-five percent (75%) or more of the building is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in this paragraph if, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the total votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the total votes of the Association to carry out such repair and reconstruction, the Association shall record in the Official Records of Summit County, Utah, a certificate stating that the terms hereof have been complied with and that it is authorized and directed to execute and deliver any and all deeds, contracts, documents and instruments necessary, appropriate or convenient to effect the sale of all or a portion of the Subject Properties. Recordation of such certificate shall constitute conclusive evidence that the Association is empowered to do the same. Upon the recording of such notice, the Subject Properties shall be sold by the Association and the net proceeds of any sale, together with the net proceeds of the insurance on the Subject Properties, if any, shall be considered as one fund and shall be divided among all owners in a percentage of undivided interest owned by each respective Owner in the Subject Property destroyed, after first paying out of the respective share of each Owner, to the extent sufficient for the purpose, all liens on the undivided interest in the Subject Property destroyed by such Owner;

(d) If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of Ownership in the Subject Properties.

11. Obsolescence. The Subject Properties shall be considered obsolete upon a vote of seventy-five percent (75%) or more of the total votes of the Association and a written plan for the renewal and reconstruction of the Subject Properties shall be adopted. Written notice of adoption of such a plan, together with a copy of the plan, shall be given to all Owners. The expense of renewal and reconstruction shall be payable by all of the Owners as assessments.

12. Condemnation. If at any time or times, all or any part of the Subject Properties shall be taken or condemned by any public authority under power of eminent domain, the provisions of this paragraph shall apply. A voluntary sale or conveyance of all or any part of the Subject Properties in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

(a) All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Association as herein provided.

(b) The condemnation award shall be allocated among and distributed to the Owners in proportion to their respective ownership in the condemned Subject Properties. Such distribution shall be made by check payable jointly to each Owner and the respective Mortgagees, as appropriate.

13. Power of Sale. The Association shall, upon the vote of seventy-five percent (75%) of the total votes of the Association, have the right and

power to sell and convey all or any portion of the Subject Properties. Upon such a vote, the Association shall execute and record in the Official Records of Summit County, Utah, a certificate stating that the terms hereof have been complied with and that it is authorized and directed to execute and deliver any and all deeds, contracts, documents and instruments necessary, appropriate or convenient to effect the sale of all or a portion of the Subject Properties. Recordation of such certificate shall constitute conclusive evidence that the Association is empowered to do the same.

By accepting instruments of conveyance for interest in the Subject Properties, the purchaser thereof, for himself and his successors in interest, hereby makes, constitutes and appoints the Association his true and lawful attorney in fact for and in his name, place and stead, and for his use and benefit, to effect any sale of all or any portion of the Subject Properties, and to do all acts and execute and deliver any certificate, deed, contract, document or instrument necessary, appropriate or convenient to effect the transfer of title to all or any portion of the Subject Properties, or otherwise to carry out the purposes and intent hereof.

14. Right of Entry. The Association shall have the right to enter upon any portion of the Subject Properties to the extent such entry is necessary or convenient to carry out the duties of the Association. Such right of entry shall be exercised in such manner as to interfere as little as is reasonably possible with the possession and the enjoyment of the Owners.

15. Registration of Mailing Address. Each Owner shall register from time to time with the Association or its designate his current mailing address. All notices or demands intended to be served upon any Owner may be sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Subject Properties.

All notices or demands intended to be served upon the Association may be sent by first class U.S. mail, postage prepaid, addressed to the Association at its registered office or to such other address as the Association may hereafter furnish to the Owners in writing.

All notices or demands mailed in the foregoing manner shall be deemed to have been served two (2) days after such mailing.

16. Agreement To Be Bound. Each grantee of an undivided interest, purchaser of an undivided interest under a contract or agreement of sale, or Mortgagee, by accepting a deed, contract of sale or agreement of purchase, or Mortgage, accepts the same subject to all of the covenants, restrictions, easements, and agreements set forth in this Declaration, and agrees to be bound by the same.

17. Waiver of Right of Partition. There shall be no right of partition in the Subject Properties. By accepting title to an undivided interest in the Subject Properties, the purchaser thereof, for himself and his successors in interest, waives his right to any partition provisions in law or in equity in the State of Utah.

18. Protection of Owners. The various restrictive measures and provisions of this Declaration are declared to constitute mutual equitable covenants and servitudes for the protection and benefit of the Subject Properties and the Owners thereof, and failure by the Company or Association or any other person or persons entitled to do so to enforce any measure or provision, upon violation thereof, shall not stop or prevent enforcement thereafter or be deemed a waiver of the right so to do by any other Owners.

19. No Waiver. A waiver of a breach of any of the foregoing conditions or restrictions shall not be construed as a waiver of any succeeding breach or violation, and no such waiver shall result in or impose any liability on the Company or the Association or their successors in interest.

20. Delay or Omission in Enforcing This Declaration. No delay or

ommission on the part of the Company or the Association or their successors in interest or on the part of the Owner or Owners in exercising any right, power or remedy herein provided, in the event of any breach of said conditions herein contained, shall be considered as a waiver thereof, or acquiescence herein.

21. Amendments. Subject to compliance with the real estate laws of the State of Utah, these restrictions and covenants may be amended at any time and from time to time by an instrument in writing signed by the Trustees and approved by a majority of the total Class A votes together with a majority of the total Class B votes of the Association, which instrument shall become effective upon recordation thereof in the Official Records of Summit County, Utah.

22. Severability. Should any covenant, restriction, condition, paragraph, sentence or word contained herein be void or become unenforceable in law or equity, the remaining portions hereof shall remain in full force and effect.

23. Term. These covenants, restrictions, conditions and agreements shall run with the land and shall continue in full force and effect until January 1, 2000, at which time the same shall be automatically extended for successive periods of ten (10) years, unless by a duly executed and recorded statement, the then Owners of a majority or more of the undivided interests in the Subject Property elect to terminate said restrictions in whole or in part. In addition, if one hundred percent (100%) of the fee title to the Subject Properties shall be owned by one person, said person shall be entitled to elect to terminate the Declaration in whole or in part and may do so by duly executing and recording a statement setting forth that the conditions hereof have been met and that the election herein is being taken.

24. Default. If any person defaults in any of the restrictions, covenants, conditions or agreements herein contained, the defaulting persons shall pay all costs and expenses, including reasonable attorney's fees, incurred by other persons in enforcing their right arising under this Declaration, whether incurred through legal action or otherwise.

25. Superseding Instruments. Notwithstanding any provision herein to the contrary, all Mortgages now of record and all future mortgages and Restrictive Covenants of record senior to this Declaration shall supersede any of the provisions of this Declaration, if any such conflicts are in existence. In the event that any Mortgage of record now, or in the future is foreclosed either judicially or by power of private sale, this Declaration shall be considered subordinate to such Mortgage or Mortgages, and the restrictions, covenants, conditions, and/or agreements shall be considered extinguished.

26. Paragraph Numbers and Headings. Headings and paragraph numbers have been inserted solely for convenience and reference and shall not be construed to affect the meanings, construction or effect of this Declaration.

EXECUTED this 28th day of SEPTEMBER 1991.

COMPANY/DECLARANT:

KILBURN VACATION-HOMESHARE, INC.

By: James M. Clark
Agent

State of Utah)
 : ss.
County of Salt Lake)

On the 28th day of SEPTEMBER, 1981, before me, a
Notary Public in and for said State, personally appeared, JAMES
M. CLARK, known to me to be the Agent of the Declarant
corporation, who represented to me that such execution was
authorized by the Bylaws of said corporation and who executed the
instrument on behalf of said corporation pursuant to a resolution
of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal on the date hereinabove written.

James S. Sander
NOTARY PUBLIC
Residing at: Andy, Utah

My Commission Expires:

11/30/85

EXHIBIT

All of Lots 122, 123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 108, 65, 48, 54, 83 Jeremy Ranch #1; 1027, 1030, 1024, 1023, 1022, 1036, 1035, 1033, 1032, 1031 Jeremy Ranch Plat B; 77, 87, 95, 147 Prospector Park Subdivision, Phase ii, according to the official plats thereof.



**Gate City
Mortgage Co.**

1325 South 800 East, Suite 210 - Temple View Terrace
Orem, Utah 84057

January 13, 1982

Kilburn's Vacation Homes
202 West 400 South #2-C
Salt Lake, Utah 84101

ATTN: Lori

Gentlemen:

As of today, we have not yet received any policies for the Jeremy Ranch single family homes in Park City, Utah. Please find enclosed a list of the proposed insured, the addresses to be insured and the minimum coverage amount required by our company. The mortgagee clause is to read: Gate City Mortgage Company, It's Successors and/or Assigns, 1325 South 800 East, Suite 210, Orem, Utah 84057.

We would appreciate your prompt attention to this matter. We need those policies as soon as possible. If you have any problems or questions, please call me at 226-7500.

Thank you for your assistance.

Sincerely,

Kathy Cox
Office Manager

Enclosure

JE 200005

<u>NAME</u>	<u>ADDRESS</u>	<u>COVERAGE</u>
R. John Eyre	8845 West Silver Spur Road Park City, Utah 84060	\$200,000
Christian E. Hansen David E. Jones	3493 West Wrangler Way Park City, Utah 84060	\$200,000
Kelvyn H. Cullimore Thomas G. Osborne W. Truman Rigby	8775 West Silver Spur Road Park City, Utah 84060	\$200,000
Marden Spencer Kenneth Paul Colledge J. Ray Fisher O. Jay Call	8805 West Silver Spur Road Park City, Utah 84060	\$200,000
Stephen L. Blaser	3493 West Saddleback Road Park City, Utah 84060	\$200,000
Donald Lewis Smith Jedd P. Jones	8825 West Silver Spur Road Park City, Utah 84060	\$200,000
Marvin L. Mills John C. Forrester III	8815 West Silver Spur Road Park City, Utah 84060	\$200,000
Daniel W. Marcum John C. Forrester Jr. Edward A. Dalton Jr. Michael C. Johnsen	8835 West Silver Spur Road Park City, Utah 84060	\$200,000
Dennis Lee Crockett Clive A. Pusey	3397 West Saddleback Road Park City, Utah 84060	\$200,000
Graham Dodd Dwight Howard Egan	8765 West Silver Spur Road Park City, Utah 84060	\$200,000
Matthew R. White	3780 West Saddleback Road Park City, Utah 84060	\$200,000

Gate City Mortgage Co.

ASSUMPTION AGREEMENT

THIS AGREEMENT made on the date hereinafter set forth opposite the signatures of Vendor and Purchaser, by and between: Dennis Lee Crockett, a married man & Clive A.

Pusey, a married man hereinafter called Vendors.

and Kilburn Vacation Home Share Inc. hereinafter called

Purchasers, of property located at 3397 West Saddleback Road

WHEREAS Gate City Mortgage Co. is the owner and holder of a certain note dated 12-21-81 executed and delivered by Vendors or their predecessors in interest to Gate City Mortgage Co.

in the principal amount of \$ 200,000.00 secured by a mortgage executed and delivered by Vendors or their predecessors in interest and recorded in Book M. 206.. of at Page 689-94 in the Summit..... County Recorder's office, State of Utah as Document No. 189635

WHEREAS, Vendors represent that all regular required monthly installment payments heretofore due and owing under the note and mortgage have been paid and that all other obligations to be performed prior to the date hereof under the terms of the note and mortgage have been performed, and that the unpaid balance of the loan as of is \$ with interest paid to

WHEREAS, Purchasers have purchased or are now purchasing from Vendors the property covered by said Mortgage:

NOW, THEREFORE, the said parties, in consideration of the premises and of their mutual promises as herein set forth, do agree as follows:

Purchasers assume and agree to pay said note as therein provided, and further to assume all the obligations of said mortgage as therein provided, and to perform in accordance with the covenants and conditions thereof.

It is understood that Mortgagee does not release Vendor or Vendors from further liability under or on account of the said note and mortgage.

Vendors hereby transfer to Purchasers, subject to the conditions of the mortgage pertaining to same, all their right, title and interest in the policy of hazard insurance and in the funds on deposit in escrow as payment for taxes and hazard insurance premium, and mortgage insurance premium, in connection with said mortgage.

The word "note" as used herein shall be construed to mean note, bond or other instrument evidencing the indebtedness herein referred to. The word "mortgage" as used herein shall be construed to mean mortgage, deed of trust, or other instrument securing the indebtedness herein referred to. The word "Mortgagor" shall include Trustor, and word "Mortgagee" shall include Beneficiary under a deed of trust.

IN WITNESS WHEREOF, this instrument has been executed by the parties hereto on the dates set forth opposite their names.

Dated

Dennis Lee Crockett Vendor

Clive A. Pusey Vendor

Dated

Kilburn Vacation-Homeshare

by James M. Clark Purchaser

Agent

Purchaser

INDIVIDUAL ACKNOWLEDGMENT

STATE of }
COUNTY OF } ss.

On the day of, 19....., personally appeared before me

the signer of the above instrument, who duly acknowledged to me that he executed the same.

.....
Notary Public
Residing at

My commission expires:

INDIVIDUAL ACKNOWLEDGMENT

STATE of }
COUNTY OF } ss.

On the day of, 19....., personally appeared before me

the signer of the above instrument, who duly acknowledged to me that he executed the same.

.....
Notary Public
Residing at

My commission expires:

New address of Vendor:

Purchaser: Place of employment:

Telephone:

Social Security Number:

JC 300052

PAYMENT ADJUSTMENT NOTICE

117-5-02-02200066

1/16/84

GATE CITY MORTGAGE COMPANY
SUITE 210 TEMPLE VIEW TERRACE
OREM MT 84057

ATTENTION: STEVE BROOKS (K CULLIMORE)
A REED REYNOLDS P C
P O BOX 17790
SALT LAKE UT 84117

YOUR LOAN SECURED BY A MORTGAGE OR DEED OF TRUST ON PROPERTY LOCATED AT:
8775 W SILVER SPUR RD
PARK CITY UT 84101

IS SCHEDULED FOR A PAYMENT ADJUSTMENT CHANGE ON 4/84. YOUR FORECASTED
LOAN BALANCE AS OF THE ADJUSTMENT DATE WILL BE \$ 187,070.30.
THE NET CHANGE IN YOUR FORECASTED PRINCIPAL LOAN BALANCE SINCE YOUR LAST
PAYMENT ANALYSIS IS \$ 554.50 .

AS OF THE ADJUSTMENT DATE YOUR INTEREST RATE WILL BE 16.375%. THIS RATE IS
BASED UPON THE CURRENT INDEX OF 11.940% AND THE INTEREST RATE WILL REMAIN IN
EFFECT FOR 12 MONTHS. THE NEXT DATE TO ANALYZE YOUR MONTHLY PAYMENT WILL
BE 1/16/85. YOUR MONTHLY PAYMENT FOR PRINCIPAL AND INTEREST AS OF 4/84
WILL BE \$ 2,581.01. YOUR ESCROW PAYMENT OF \$ 40.00 WILL MAKE YOUR
TOTAL PAYMENT DUE \$ 2,621.01.

SINCE YOUR LAST PAYMENT ANALYSIS ON 01/82 WE HAVE ANALYZED YOUR INTEREST
RATE WITH THE PREVIOUSLY OCCUPIED HOMES INDEX, FOLLOWING ARE THE DATES
AND RATES OF THAT ANALYSIS:

DATE	INDEX RATE	LOAN RATE	PRINCIPAL BALANCE
CJRR	11.940	18.375	DECREASING

IF YOU HAVE ANY QUESTIONS CONCERNING YOUR LOAN OR THIS ANALYSIS YOU MAY
CALL MR CARL COOPER AT 801 226-7500.

APPENDIX NO. 6

Excerpts of Depositions of Stanley F. Jenkins

CERTIFIED COPY

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SUMMIT COUNTY STATE OF UTAH

* * *

GATE CITY FEDERAL SAVINGS AND	:	Civil No. 8119
LOAN ASSOCIATION,	:	
	:	Deposition of:
Plaintiff,	:	
	:	STANLEY JENKINS
-vs-	:	
	:	
O. JAY CALL, et al.,	:	
	:	
Defendants.	:	

* * *

Be it remembered that on the 18th day of February, 1986,
the deposition of STANLEY JENKINS, produced as a witness
herein at the instance of the Defendants herein, in the
above-entitled action now pending in the above-named court,
was taken before Brad J. Young, a Certified Shorthand Reporter
and Notary Public in and for the State of Utah, commencing at
the hour of 1:10 p.m. of said day at the offices of HANSEN &
ANDERSON, 50 West Broadway, Salt Lake City, Utah.

That said deposition was taken pursuant to notice.

* * *

A P P E A R A N C E S

For the Plaintiff:	Roy B. Moore, Esq. SESSIONS & MOORE 400 First Federal Plaza 505 East 200 South Salt Lake City, Utah 84102
For the Defendants Time Share Owners:	Raymond N. Erlach, Esq. ERLACH & ERLACH One Market Plaza Spear Street Tower, Suite 2210 San Francisco, California 94105
For the Defendant Call, Spencer, Colledge and Fisher:	John K. Mangum, Esq. NIELSEN & SENIOR 1100 Beneficial Life Tower Salt Lake City, Utah 84111
For the Defendant Noland & Sons:	Richard S. Nemelka Attorney at Law Executive Building, #302 Salt Lake City, Utah 84111
Also Present:	Verden Bettilyon Richard Higgins

* * *

I N D E X

WITNESS	PAGE
STANLEY JENKINS	
Examination by Mr. Erlach	3
Examination by Mr. Mangum	89
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* * *

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S	67
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U	69
V, W and X	70
Y, Z and AA	74
BB	77

* * *

1 gentlemen. I can't recall which one it was we talked to.

2 Q Was there questions and answers?

3 A Yes.

4 Q Did Mr. Cook participate in the explanations?

5 A I don't recall.

6 Q What was your understanding of Mr. Cook's role in
7 the meeting that you had requested with Mr. Clark?

8 A He was the builder of the homes that were being
9 financed by Gate City for the borrowers. And they were
10 subsequently being deeded to Kilburn. So that was his
11 relationship, as far as I knew.

12 Q Was that your understanding prior to any of these
13 loans being made?

14 A That the loans would be assumed, yes.

15 Q Who had first informed you that this was the
16 intended transaction?

17 A Mr. Cook.

18 Q When you were approached by Bruce McMullen, did he
19 describe this series of transactions?

20 A No. His first inquiry to me was concerning second
21 home money. And, no, he didn't.

22 Q Let's go back to that McMullen inquiry for a
23 minute. Did that inquiry lead to conversations with some
24 other persons?

25 A Yes.

1 Q Who would the other persons be?

2 A Vaughn Cook.

3 Q Then did you have conversations with Mr. Cook?

4 A Yes.

5 Q What did Mr. Cook propose to you in terms of
6 obtaining credit?

7 A His initial inquiry was wanting to know if we had
8 money available for second homes to qualified buyers at Jeremy
9 Ranch.

10 Q Did he make that inquiry over the telephone?

11 A Yes.

12 Q What did you tell Mr. Cook in response?

13 A At that time the only way we could put a
14 commitment -- put those loans together, if we had a specific
15 commitment from an investor in the secondary market.

16 Q Did you explain to him what it would take to get an
17 investor commitment?

18 A Yes.

19 Q What was that?

20 A That there would be some fees associated for the
21 commitment, and that we would have to have our secondary
22 market people find an investor, and that the property would
23 have to be suitable, and that the buyers would have to qualify
24 under Fannie Mae guidelines.

25 Q Why would the buyers have to qualify under Fannie

1 Mae guidelines?

2 A Generally speaking, that's the underwriting criteria
3 that is used by the secondary market investors.

4 Q What fees did you propose would be necessary before
5 the transaction could be investigated?

6 A There were no fees for investigation.

7 Q What fees were associated?

8 A At the time of the commitment, there would be a
9 commitment fee and what was called an insurance fee.

10 Q Was Mr. Cook willing to pursue obtaining financing
11 for these purposes?

12 A Yes. He instructed us to see what we could find.

13 Q Did he indicate to you who the buyers of the
14 property would be?

15 A Not at that time, no.

16 Q How much later did he indicate who the buyers were
17 proposed to be?

18 A After we got the commitments and the fees were paid,
19 then he started supplying us with applications.

20 Q Was one of the applicants Kilburn Vacation Home
21 Share, Inc.

22 A No.

23 Q Who were the applicants? Let me ask that question a
24 different way. I will withdraw the question. Were the
25 applicants various individuals?

1 A Yes.

2 Q As related to any single property, was there usually
3 more than one applicant per property?

4 A Well, some had several applicants, some had one.

5 Q After you saw some of these applicants, did you have
6 some conversations with Mr. Cook in which he indicated that
7 these applicants would be deeding the property over to
8 Kilburn?

9 A Subsequently, we found that out, yes.

10 Q How did you find that out?

11 A Through Mr. Cook explaining to me the process of
12 Kilburn assuming the loans and obtaining deed.

13 Q You went a little fast for me. Mr. Cook explained
14 the process of what?

15 A Assuming the loans. Kilburn assumed the loans.

16 Q Kilburn would also take a deed to the properties?

17 A That's what I understood, yes.

18 Q How was it -- would you explain how this
19 conversation came about.

20 A Yes. There was a clause in the trust deed.

21 Q That's Exhibit B?

22 A It is paragraph 17 of the trust deed, entitled
23 "Transfer of the Property, Assumption." It concerned -- the
24 common terminology in the business is due on sale clause. So
25 he was concerned about that clause of the trust deed.

1 Q Was this prior to closing?

2 A Yes.

3 Q So his concern was based on his explanation of the
4 process of Kilburn assuming the loans and taking the-trust
5 deed?

6 A Correct.

7 Q What was Gate City's response to his concern?

8 A The typical response that we told people what we
9 were concerned with that clause was that if the property was
10 assumed under Gate City's approval, then the due on sale would
11 not be invoked.

12 Q What was Mr. Cook's response to that?

13 A He wanted to know what the procedures were for
14 assumption.

15 Q What did you explain?

16 A There are two types of assumptions. One was called
17 a simple assumption, wherein the assuming party took over the
18 payments, assigned an assumption agreement, and -- but the
19 original party was not released from liability. The other
20 type of assumption is what we called a complete assumption,
21 wherein the assuming party would need to pay a fee, would have
22 to apply and requalify under their own credit worthiness, and
23 then the original borrowers would be released from liability.

24 Q Was there a conversation over what type of
25 assumption Gate City would require in connection with the

1 Jeremy Ranch loans?

2 A Either would be okay.

3 Q Did Mr. Cook have any trepidation that Gate City

4 could withhold its approval?

5 A I guess I don't know -- what do you mean by

6 trepidation?

7 Q Did he express any reservations about obtaining Gate

8 City's approval to a proposed assumption?

9 A Yes, he was concerned.

10 Q How was that handled?

11 A We just told him that he would have to make the

12 application, and that they would have to be approved.

13 Q Was an application made?

14 A As I recall, there were.

15 Q Were those applications made prior to the approval

16 of the credit applications?

17 A No.

18 Q Were the applications made after the loans were

19 funded?

20 A Yes.

21 Q Was Kilburn Vacation Home Share the entity that was

22 to assume the loans?

23 A Yes.

24 Q Was that understood by you prior to the loans being

25 funded?

1 A Yes.

2 Q Maybe I asked that question in a very awkward
3 fashion. Let me rephrase it.

4 (The pending question was read back by the court
5 reporter.)

6 A I am saying yes if you mean was this procedure
7 understood.

8 Q (BY MR. ERLACH) By procedure we mean that Kilburn
9 Vacation Home Share would be applying for Gate City's approval
10 to assume the loans?

11 A Yes.

12 Q That was understood by you at the time of your
13 conversations with Mr. Cook?

14 A Yes.

15 Q That was understood by you prior to receipt of the
16 loan applications from Mr. Cook's individuals?

17 A Prior to some, but subsequent to some. So it was in
18 the middle of the processing of the loans.

19 Q You understood that Kilburn would apply for
20 assumption of the loans, all of them, prior to any particular
21 loan being funded, didn't you?

22 A No. The assumption was done after the loans were
23 funded. So there was no application made for assumption until
24 after the loans were funded.

25 Q However, you understood that the business plan was

1 that Kilburn would make such an application after the funding
2 of the loans?

3 A Yes.

4 Q And that understanding, even though Kilburn would
5 make the application after the loans were funded, you had that
6 understanding prior to the loans being funded, that this was
7 the business plan?

8 A Yes.

9 Q This was explained to you by Mr. Cook?

10 A Yes.

11 Q Can you give me the Gate City terminology, if there
12 was an internal terminology, nomenclature for a write-up or a
13 memo on a loan application? Does the word write-up mean
14 anything to you?

15 A No.

16 Q Does the word memo mean anything to you?

17 A No.

18 Q At some financial institutions the lending officer,
19 when he received an application, will prepare an internal
20 document, reviewing the business transaction and describing
21 the intent of the credit and the business purpose behind
22 it. Very often this document is a confidential, internal use
23 only document. Did Gate City have, as a matter of course
24 prepare that type of document in considering applications?

25 A Yes.

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IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH
CENTRAL DIVISION

MORTGAGE GUARANTY INSURANCE)
CORPORATION,

Plaintiff,)

vs. Civil No. 87C-0542J

GATE CITY FEDERAL SAVINGS)
BANK and GATE CITY MORTGAGE
COMPANY,)

Defendants.

PLATTE VALLEY FEDERAL SAVINGS)
& LOAN ASSOCIATION,

Plaintiff,)

vs. Civil No. 86C-0091J

GATE CITY SAVINGS AND LOAN)
ASSOCIATION,

Defendant.)

IN THE DISTRICT COURT OF SUMMIT COUNTY, STATE OF UTAH

GATE CITY FEDERAL SAVINGS AND)
LOAN ASSOCIATION,

Plaintiff,)

vs. Civil No. 8074

EDWARD A. DALTON, JR., JOHN C.)
FORRESTER, JR., MICHAEL C.
JOHNSEN, and DANIEL W. MARCUM,)
et al,

COPY

ALAN P SMITH, CSR
385 BRAHMA DRIVE 84107 RES 266-0320
COURTS BLDG 240 E 4 S (801) 535-7372
231 JUDGE BUILDING OFF 533-0800
SALT LAKE CITY, UTAH 84111



1	GRAHAM DODD, DWIGHT H. EGAN,)	
2	et al,	)	Civil No. 8075
3)	
4	CHRISTIAN E. HANSEN, DAVID E.)	
5	JONES, et al,	)	Civil No. 8076
6)	
7	MATTHEW R. WHITE, et al,)	
8		)	Civil No. 8077
9	R. JOHN EYRE, et al,)	
10		)	Civil No. 8078
11	KELVYN H. CULLIMORE, THOMAS G.)	
12	OSBORNE, W. TRUMAN RIGBY,)	
13	et al,	)	Civil No. 8079
14)	
15	DONALD L. SMITH, JEDD P. JONES,)	
16	et al,	)	Civil No. 8080
17	CLIVE E. PUSEY, DENNIS L.)	
18	CROCKETT, et al,	)	Civil No. 8081
19)	
20	STEPHEN BLASER, et al,	)	Civil No. 8082
21)	
22	O. JAY CALL, MARDEN SPENCER,)	
23	KENNETH P. COLLEDGE, J. RAY)	
24	FISHER, et al,	)	Civil No. 8119
25)	
	JOHN C. FORRESTER, III,)	
	MARVIN L. MILLS, et al,	)	Civil No. 8120

Defendants.

DEPOSITION OF STANLEY F. JENKINS, a witness produced, sworn and examined on Tuesday, the 15th day of November, in the year of our Lord 1988, between the hours of 9:00 a.m. and 1:07 p.m. of that day, in the library conference room of the law office of Craig G. Adamson and Eric P. Lee, Suite 1330, 310 South Main, in the City of Salt Lake, County of Salt Lake and State of Utah, before me, Alan P. Smith, Certified Shorthand Reporter, License No. 38, and



1 Notary Public within and for said State of Utah, in certain
 2 causes now pending in the United States District Court, District
 3 of Utah, Central Division, wherein Mortgage Guaranty Insurance
 4 Corporation is the plaintiff and Gate City Federal Savings
 5 Bank and Gate City Mortgage Company are the defendants, and
 6 Platte Valley Federal Savings & Loan Association is the
 7 plaintiff and Gate City Savings and Loan Association is the
 8 defendant, and in the District Court of Summit County, State
 9 of Utah, wherein Gate City Federal Savings and Loan Associa-
 10 tion is the plaintiff and Edward A. Calton, Jr., et al, are the
 11 defendants, on the part of plaintiff Mortgage Guaranty Insurance
 12 Corporation.

13 APPEARANCES:

14 For Plaintiff Mortgage Guaranty
 15 Insurance Corporation:

Craig G. Adamson
 Eric P. Lee
 Will Ormond, Law Clerk
 Dart, Adamson & Kasting
 310 South Main, Suite 1330
 Salt Lake City, Utah 84101

16 For Defendants Gate City Federal
 17 Savings Bank and Gate City Mort-
 18 gage Company and Gate City Sav-
 19 ings and Loan Association and
 20 plaintiff Gate City Federal Sav-
 21 ings and Loan Association:

Roy B. Moore
 Kevin Egan Anderson
 Sessions & Moore
 400 First Federal Plaza
 505 East 200 South
 Salt Lake City, Utah 84102

22 For Plaintiff Platte Valley
 23 Federal Savings & Loan Associa-
 24 tion:

Fred R. Silvester
 Switter, Axland, Armstrong
 & Hanson
 175 South West Temple
 Suite 700
 Salt Lake City, Utah 84101

25 For Summit County except O. Jay
 Call, Kenneth P. Colledge and
 Jedd Jones:

Earl Jay Peck
 John K. Mangum
 Nielsen & Senior
 1100 Beneficial Life Tower
 36 South State Street
 Salt Lake City, Utah 84111



1 Q In talking to--do you remember having talked
2 to Jill Cooper about producing some persons who might borrow
3 money under this program?

4 A We had discussions about applicants.

5 Q All right.

6 A Sure.

7 Q Did she talk to you about having some friend or
8 neighbor or relative of hers become an applicant?

9 A I don't recall that.

10 Q Do you remember having her ask you specifically
11 whether if she secured someone like this, whether that person
12 would become personally liable on the loan?

13 A I don't recall the conversation.

14 Q Okay. Do you recall having her talk to you about
15 these people would be paid for their participation in this
16 process?

17 A I don't recall that either.

18 Q Do you recall having had a meeting with Mr. Cook
19 in which the time share program was discussed and then a new
20 program was instituted having the individual borrowers be a
21 portion of the program, after the time share program was
22 rejected?

23 A I guess I don't understand.

24 Q That was kind of a poor question. I admit that.

25 What was the first program that you and Mr. Cook

1 discussed when he contacted you?

2 A His initial contact was can you lend money to
3 a corporation, or to a business for these properties.

4 Q And was that corporation or business to be a
5 time share program?

6 A That wasn't discussed at that point in time.

7 Q All right. What was your response to that?

8 A No.

9 Q All right. What was the next contact you had?

10 A Well, then it was, the succession was, well, then,
11 we can only make loans to individuals, so that is where--

12 Q Was there, between that was there a successive
13 question can you make loans to a time share?

14 A I don't recall that question, but if it would have
15 been made it would have been no, because that is not an
16 individual.

17 Q All right. When did you become aware that Mr.
18 Cook intended for all these borrowers to assign to Kilburn
19 and have the time share program pay back the loans?

20 A Sometime between September and November.

21 Q So there was an ongoing process of discussion
22 between you, was there?

23 A Correct.

24 Q Were you involved in numerous other transactions
25 for Gate City during this period of time?

IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH
CENTRAL DIVISION

MORTGAGE GUARANTY INSURANCE)
CORPORATION,

Plaintiff,)

vs.)

Civil No. 87C-0542J

GATE CITY FEDERAL SAVINGS)
BANK and GATE CITY MORTGAGE)
COMPANY,

Defendants.

PLATTE VALLEY FEDERAL SAVINGS)
& LOAN ASSOCIATION,

Plaintiff,)

vs.)

Civil No. 86C-0091J

GATE CITY SAVINGS AND LOAN)
ASSOCIATION,

Defendant.)

IN THE DISTRICT COURT OF SUMMIT COUNTY, STATE OF UTAH

GATE CITY FEDERAL SAVINGS AND)
LOAN ASSOCIATION,

Plaintiff,)

vs.)

Civil No. 8074

EDWARD A. DALTON, JR., JOHN C.)
FORRESTER, JR., MICHAEL C.)
JOHNSON and DANIEL W. MARCUM,)
et al,

Stan Jenkins

12/19/88

COPY



1 GRAHAM DODD, DWIGHT H. EGAN,)
 2 et al,) Civil No. 8075
 3)
 4 CHRISTIAN E. HANSEN, DAVID E.)
 5 JONES, et al,) Civil No. 8076
 6)
 7 MATTHEW R. WHITE, et al,)
 8) Civil No. 8077
 9)
 10 R. JOHN EYRE, et al,)
 11) Civil No. 8078
 12)
 13 KELVYN H. CULLIMORE, THOMAS G.)
 14 OSBORNE, W. TRUMAN RIGBY,)
 15 et al,) Civil No. 8079
 16)
 17 DONALD L. SMITH, JEDD P. JONES,))
 18 et al,) Civil No. 8080
 19)
 20 CLIVE E. PUSEY, DENNIS L.)
 21 CROCKETT, et al,) Civil No. 8081
 22)
 23 STEPHEN BLASER, et al,) Civil No. 8082
 24)
 25 O. JAY CALL, MARDEN SPENCER,)
 KENNETH P. COLLEDGE, J. RAY) Civil No. 8119
 FISHER, et al,)
 JOHN C. FORRESTER, III,)
 MARVIN L. MILLS, ET AL,) Civil No. 8120

Defendants.

CONTINUATION DEPOSITION OF STANLEY F. JENKINS, a
 witness produced, sworn and examined on Monday, the 19th day
 of December, in the year of our Lord 1988, between the hours
 of 8:00 a.m. and 11:55 a.m. of that day, in the library



1 conference room of the law office of Craig G. Adamson and
 2 Eric P. Lee, Suite 1330, 310 South Main, in the City of Salt
 3 Lake, County of Salt Lake and State of Utah, before me, Alan
 4 P. Smith, Certified Shorthand Reporter, License No. 38, and
 5 Notary Public within and for said State of Utah, in certain
 6 causes now pending in the United States District Court, District
 7 of Utah, Central Division, wherein Mortgage Guaranty Insurance
 8 Corporation is the plaintiff and Gate City Federal Savings
 9 Bank and Gate City Mortgage Company are the defendants, and
 10 Platte Valley Federal Savings & Loan Association is the
 11 plaintiff and Gate City Savings and Loan Association is the
 12 defendant, and in the District Court of Summit County, State
 13 of Utah wherein Gate City Federal Savings and Loan Associa-
 14 tion is the plaintiff and Edward A. Dalton, Jr., et al, are the
 15 defendants, on the part of plaintiff Mortgage Guaranty Insurance
 16 Corporation.

17 APPEARANCES:

18 For Plaintiff Mortgage Guaranty Insurance Corporation:	Eric P. Lee Dart, Adamson & Kasting 310 South Main, Suite 1330 Salt Lake City, Utah 84101
19 For Defendants Gate City Federal Savings Bank and Gate City Mortgage Company and Gate City Savings and Loan Association and plaintiff Gate City Federal Savings and Loan Association:	Roy B. Moore Sessions & Moore 400 First Federal Plaza 505 East 200 South Salt Lake City, Utah 84102
20 For Plaintiff Platte Valley Federal Savings & Loan Association:	Fred R. Silvester Sutte, Axland, Armstrong & Hanson 175 South West Temple Suite 700 Salt Lake City, Utah 84101
21 For Summit County except O. Jay Call, Kenneth P. Colledge and Jedd Jones:	Earl J. Peck John K. Mangum Nielsen & Senior 1100 Beneficial Life Tower 36 South State Street Salt Lake City, Utah 84111



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STANLEY F. JENKINS

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1 Q Were you required to know, understand the manual
2 at that time?

3 A I think that, you know, when you say required, I
4 suspect, yeah, we were supposed to read through it and
5 understand it. But, you know, I don't know if it was strictly
6 enforced by management.

7 Q And you didn't read through it?

8 A Oh, I suppose I did, yeah.

9 Q Did you know whether or not the private mortgage
10 insurance industry had any kind of policy concerning loans,
11 insuring loans on time share units?

12 A I didn't. I don't know.

13 MR. LEE: That is all I have for now.

14 MR. MANGUM: One moment.

15 RECROSS EXAMINATION

16 BY MR. PECK:

17 Q Mr. Jenkins, this conversation that took place with
18 Mr. Gaustad that you have made reference to, I am talking
19 about the one where Mr. Gaustad wanted to ask Clark and Cook
20 more about the transactions, are you familiar with the conversa-
21 tion I am talking about?

22 A Is this the, it is a conversation he and I had
23 prior to the meeting at Clark's office, is that what you are
24 making reference to?

25 Q Yes. Okay.

1 A Okay.

2 Q He told you that he wanted to know more about the
3 conversations, is that right?

4 A You mean--

5 Q I mean more about the transactions?

6 A Yes.

7 Q Okay. When was that conversation?

8 A Either November or December of '81.

9 Q And how are you able to identify this being November
10 or December 1981?

11 A Because that is about the time we were closing these
12 loans.

13 Q Okay. And then subsequently there was a meeting
14 at Clark's office, is that right?

15 A Yes.

16 Q And that was also Kilburn's offices, is that
17 correct?

18 A As I believe, that is correct, yes.

19 Q And who attended that meeting?

20 A Myself, Vaughn Cook, Jim Clark and, I don't know
21 if it was Gaustad or Stockert that was on the other end of the
22 phone, but it was one of those two from North Dakota.

23 Q And the purpose of the meeting was to get more
24 information to Mr. Gaustad either directly or through Stockert,
25 is that correct?



1 A Yes.

2 Q Now can you tell me how that conversation went?
3 Now the person, either Mr. Stockert or Mr. Gaustad, was on
4 the telephone, and was there a speaker phone there available
5 so everybody in the room could hear what was going on?

6 A Yes.

7 Q Okay. And Mr. Gaustad or Mr. Stockert, they were
8 in South Dakota at the time, is that right?

9 A North Dakota.

10 Q North Dakota. Okay.

11 And at this time was it stated, I am going to say
12 Mr. Gaustad, I will pick Mr. Stockert if you think it was
13 more right, do you have an idea, impression you think it more
14 likely was?

15 A Stockert left the company about this time, too.
16 So he was involved initially. I would suspect, if I were to
17 take my best shot at it, probably Gaustad.

18 Q All right. Recognizing that it might have been
19 Mr. Stockert, I am going to use Mr. Gaustad's name as I ask
20 these questions to prevent, to avoid some confusion.

21 Was Mr. Gaustad told then either by Mr. Cook or
22 Mr. Clark or yourself that the investor-borrowers would
23 immediately transfer to Kilburn?

24 A As far as assumption?

25 Q As far as transferring title?



1 A Oh, well, I think that was part of the assumption,
2 so that was explained, yes.

3 Q Okay. What was said about the assumption part?

4 A That Kilburn would make application to Gate City
5 to assume the loans from the borrowers.

6 Q Immediately upon closing?

7 A Shortly thereafter.

8 Q Okay. And was Mr. Gaustad told that Kilburn would
9 be making the monthly payments?

10 A Well, if they had assumed the loan then yes, that
11 would be a natural assumption, I would suspect.

12 Q And was it stated in the course of this telephone
13 and office conference that the loans would be assumable?

14 I recognize they were making application from
15 the loans. From that I assume that they must have been
16 assumable. Was anything said about that?

17 A I don't know if it was represented in that conversa-
18 tion, but it was represented that they would be assumable. Yes.

19 Q So Mr. Gaustad or Mr. Stockert knew that these
20 were assumable loans?

21 A Right.

22 Q And that they were being represented as such, is
23 that correct?

24 A Right.

25 Q And was the loan commitment discussed in this

1 meeting? In this meeting, I am talking about the one in
2 November or December, or down in Kilburn's offices and we
3 are talking to Mr. Gaustad or Mr. Stockert on the telephone.
4 Was the loan commitment discussed?

5 A You mean the original commitment from the investor?

6 Q I am talking about the loan commitment fee made,
7 paid by, and then there were, as I understand there were maybe
8 more than one--

9 A Right.

10 Q --paid by Mr. Cook or Mr. Cook's companies, was that
11 discussed?

12 A I don't recall if it was or not.

13 Q Okay. Was there any discussion about, with Mr.
14 Gaustad in this meeting as to whether the investor-borrowers
15 would remain obligated on the loans after Kilburn started
16 making payments or after Kilburn applied for an assumption?

17 A Huh-um. I don't recall that topic.

18 Q Okay.

19 A It may have been. I don't recall if it was.

20 Q Uh-hum. Was there ever a discussion with Mr.
21 Gaustad as to what kind of assumption this would or would not be?

22 A I, I don't recall a specific discussion about that
23 thing, but it wouldn't surprise me that it wasn't, I mean that
24 we did discuss it. I am sure we did.

25 Q Might have been discussed?



1 A You are talking about the initial loans, not the
2 assumptions, but the initial loans?

3 Q Initial, yes.

4 A Okay. The investor wanted, would only buy loans
5 that were to individuals and we would only make loans to
6 individuals, not to companies, corporations.

7 Q Okay. So when you say the investor, you are
8 talking about when the loan would be taken on the secondary
9 market and placed with a borrower of mortgages, buyer of
10 mortgages such as Platte Valley, they wouldn't purchase these
11 unless they were to an individual, is that right?

12 A That is correct.

13 Q Okay. And you told that to Mr. Cook, is that true?

14 A Yes.

15 Q Okay. But despite that particular fact there
16 wasn't any policy that would forbid these loans from being
17 assumed by a company as opposed to an individual, is that right?

18 A That is correct.

19 Q Did you ever mention to any of the, to the borrowers
20 that they were earning a commission on, that you were earning
21 a commission on the loans?

22 A I don't recall.

23 Q One way or the other?

24 A Yeah, I may have. I may not have.

25 Q As far as payments were concerned that wasn't any-



1 thing that really, after the loans were closed that wasn't
2 anything that actually passed through your hands or across
3 your desk, did it?

4 A That is correct.

5 Q And notices and payment books and that type of
6 thing wouldn't be anything that you would make a decision
7 on, is that correct?

8 A That is correct.

9 Q And so if the payment books were not sent out to
10 the investor-borrowers, and were in fact sent to the closing
11 agency, Alta Title, who would have made that decision?

12 A Servicing department. Carl Cooper and his people.

13 Q Okay. And on such matters as that would they
14 receive their instructions as to what to do and how to handle
15 that from yourself or from your supervisor or out of North
16 Dakota?

17 A I don't know. Not from me. I can just say it
18 wasn't from me.

19 Q Okay. So would it be a fair statement to say that
20 you understood that the investor-borrowers were qualifying
21 for the loan and that Kilburn would take over the loan upon
22 closing and make all of the payments?

23 A Correct.

24 Q And the reason for that is that they were individuals
25 and could qualify for the loan, Kilburn as a company could not



1 qualify for the loan, but it could qualify to assume the
2 loan?

3 A Correct.

4 Q One other area was that you were asked about by
5 Mr. Sullivan--

6 MR. MANGUM: You mean Silvester.

7 MR. PECK: Alan Silvester?

8 MR. MANGUM: Fred.

9 MR. PECK: Oh, Fred. I have been
10 spending a week with Alan Sullivan.

11 MR. MOORE: I only got your first name
12 wrong.

13 MR. LEE: Off the record on this.

14 (Off the record.)

15 Q (By Mr. Peck) You made the statement that you
16 more or less divorced yourself, I remember using that phrase,
17 when you attended the closings, as I understood, kind of
18 divorced yourself somewhat from the proceedings. And I didn't
19 understand what you meant by that.

20 Could you explain to me what you did and what you
21 meant by that statement?

22 A After I closed my loan--

23 Q Uh-hum.

24 A --and if anything else subsequent went on between
25 Cook and the borrower, why I just divorced myself from that.



APPENDIX NO. 7

Excerpts of deposition of Stephen L. Blaser

CERTIFIED COPY

IN THE THIRD JUDICIAL DISTRICT COURT FOR SUMMIT COUNTY

STATE OF UTAH

* * *

GATE CITY FEDERAL SAVINGS AND :
LOAN ASSOCIATION, :

Plaintiff, :

vs. :

STEPHEN L. BLASER, et al., :

Defendants. :

Civil No. 8082

Deposition of:

STEPHEN L. BLASER

STEPHEN L. BLASER, :

Counterclaimant, :

vs. :

GATE CITY FEDERAL SAVINGS AND :
LOAN ASSOCIATION, :

Counterclaim :
Defendant. :

* * *

Deposition of STEPHEN L. BLASER, taken at the instance and request of Plaintiff at the offices of Sessions & Moore, 505 East 200 South, Suite 400, Salt Lake City, Utah, on the 26th day of April 1988 at the hour of 1:30 p.m., before SUSETTE M. SNIDER, a Certified Shorthand Reporter, Utah License No. 196, and Notary Public in and for the State of Utah.

* * *

FOR FILING RETURN TO



A P P E A R A N C E S

For Gate City Federal
Savings and Loan
Association, Gate City
Federal Savings Bank and
Gate City Mortgage Company:

Roy B. Moore, Esq.
Kevin E. Anderson, Esq.
SESSIONS & MOORE
505 East 200 South
Suite 400
Salt Lake City, Utah 84102
Telephone: 359-4100

For Stephen L. Blaser:

Jay R. Mohlman, Esq.
NIELSEN & SENIOR
36 South State Street
1100 Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: 532-1900

For Platte Valley Savings
& Loan Association:

Stewart M. Hanson, Esq.
SUITTER AXLAND ARMSTRONG & HANSON
175 South West Temple
Suite 700
Salt Lake City, Utah 84101
Telephone: 532-7300

For Mortgage Guaranty
Insurance Corporation:

Eric P. Lee, Esq.
DART & ADAMSON
310 South Main Street
Suite 1330
Salt Lake City, Utah 84101
Telephone: 521-6383

* * *

I N D E X

WitnessPage

STEPHEN L. BLASER

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Examination by Mr. Lee 171

* * *

1 a transcript, the left-hand margin will be cut off even more.

2 MR. MOORE: Yes. There are numbers, so let's go
3 try that again.

4 (Whereupon, a discussion was held off the record.)

5 (Deposition Exhibit 3

6 was remarked

7 for identification.)

8 Q (By Mr. Moore) I hand you what has been remarked
9 as Exhibit 3, Mr. Blaser. Would you read what has been
10 designated by you as Item 1?

11 A It says, Told them I had never seen home and was
12 not going to live in home but was just going to transfer it
13 to Vaughn Cook who was going to transfer it to Kilburn.
14 Stan said this was all okay. Stan said mortgage company
15 knew all about the deal and buyer of loan knew all about the
16 deal. We had to do it this way because Gate City could not
17 make a direct loan to Kilburn.

18 Q Okay. At the top you said "person from Gate
19 City." Do you know who that person was?

20 A It says -- it says Stan.

21 Q Is there a particular reason why you would have
22 said "person" at the top and not Stan at the top?

23 A No.

24 Q At the time that you wrote that you knew it was
25 somebody by the name of Stan?

1 A In my -- you know, you have a hard time after an
2 accident asking what the guy looked like with this killing
3 out there.

4 Q Sure. If you know.

5 A I don't really remember.

6 Q Okay. Did he have any characteristics that stuck
7 out in your mind?

8 A I remember that he reminded me of a banker.

9 Q Do you remember what he was wearing?

10 A He had a suit on.

11 Q And he handed you a card?

12 A Yes, he had a card.

13 Q Did you retain that card?

14 A No. I said I didn't retain the card. I usually
15 do but I looked through my -- when this came all up, I
16 looked through my stuff, and I didn't have his card. It
17 slipped out of the folder or something.

18 Q Okay. Would you read what you have marked as
19 Item 2.

20 MR. HANSON: Did he finish 1?

21 MR. MOHLMAN: Yes, he did.

22 THE WITNESS: I told him Vaughn Cook was giving me
23 \$5,000 to do the deal.

24 Q (By Mr. Moore) Okay. Would you read Item 3.

25 A Was told by Gate City that I didn't have any

1 liability on the home because it would be transferred to
2 Kilburn and home was worth much more than the loan amount.
3 Also Vaughn Cook had signed an indemnity agreement.

4 Q Now, does that mean that he told you Vaughn Cook
5 had signed an indemnity agreement or did you know that
6 Vaughn Cook had signed an indemnity agreement?

7 A At the closing Vaughn Cook signed the indemnity
8 agreement right there in front of Stan Jenkins and myself.

9 Q Did you read that indemnity agreement?

10 A Yes.

11 Q Do you recall what it said?

12 A Yes. It said that Vaughn Cook and his company --
13 Vaughn not only -- again, as my recollection serves me back
14 in 1981, it said that Vaughn Cook both personally and Vaughn
15 Cook & Associates were liable for the house. I think it was
16 both a personal and a corporate guarantee.

17 Q Would you read paragraph --

18 A 4?

19 Q -- 4, Yes.

20 A Told Gate City I never put \$92,000 as down
21 payment. He said he knew, that this was no problem.

22 Q Would you read paragraph 5.

23 A 5. All papers and copies of checks are in the
24 tax return folder for 1981.

25 Q And will you read paragraph 6.

1 A \$92,000 check and deposit -- \$92,000 check
2 deposited in Carefree Homes' checkbook 12-30-81. Okay.
3 Check and deposit in Carefree Homes' checkbook 12-30-81.
4 There's a check to Vaughn Cook -- well, never mind. You
5 didn't ask that question.

6 MR. MOHLMAN: That's right.

7 MR. LEE: He will.

8 THE WITNESS: He's got to earn his money somehow.

9 Q (By Mr. Moore) Do your notes cause your memory to
10 remember in more detail the conversations that were held
11 during that day?

12 A Yes.

13 Q Could you tell us, to the best of your knowledge,
14 what that conversation was and how it took place.

15 A Okay. Vaughn Cook and Stan came into my office
16 in the afternoon. It was after lunch. Came in, Stan --
17 Vaughn introduced Stan as the person from Gate City Mortgage
18 who was here to do the closing. We then walked into the
19 reception office, we went into my conference room, closed
20 the door. Vaughn sat there, I sat there and Stan Jenkins
21 sat at the bottom of the table. (Indicating.)

22 I stated, Before we do anything in the transaction,
23 I want to make sure of a few personal things, what's
24 happening, what's taking place, that all parties understand
25 what's going on in this transaction. They said fine.

1 I then stated, It is my understanding of the
2 transaction, and I want to know what your understanding of the
3 transaction is, I says, My understanding is that I am going
4 into this contract, that I am going to be buying this piece of
5 property, I am going to be transferring this piece of property
6 to Mr. Vaughn Cook who, in turn, is going to give it to
7 Kilburn & Associates and a Mr. Clark -- can't think of what
8 Clark's first name is. The man that owned -- at this present
9 time, the man that owned Kilburn.

10 The reason for -- you know, I'm being given \$5,000
11 to do this transaction, and that raises a big flag in my mind.
12 Why am I given \$5,000 to do the transaction? I want to make
13 sure, Mr. Banker, that you understand what's taking place
14 here. I'm being given \$5,000 for this transaction because you
15 cannot make a direct loan to a corporation. You have to use
16 me as a conduit through which to make that loan. Okay?

17 The banker, Stan Jenkins, says, Yes, that's true.
18 Gate City Mortgage does not have the capacity or the loaning
19 authority to make that type of a loan.

20 This seemed very logical to mean because my loaning
21 sources don't have that opportunity to make those kind of
22 loans either. They have to make them through an individual.

23 I said, Okay. I have no intention of living in the
24 home, I have no intention of paying for the home and I have
25 never even seen this house. And do you understand what's

1 taking place?

2 He says, Yes.

3 I says, Okay. Do you also understand that I'm not
4 going to be the end buyer of this home?

5 And he says, Yes.

6 I says, Okay. You understand that. Does also the
7 person who has the end loan understand that?

8 He says, Yes. There's two entities. There's Gate
9 City Mortgage and there's Gate City Finance or Gate City
10 Holding Company or something like that. Gate City Holding
11 Company is going to be the end holder of that loan here, and
12 they are aware of what's happening in this transaction.

13 I said, Okay. Based on those assumptions, I'll go
14 ahead and enter this transaction.

15 And he says, Okay. That's right. You're going to
16 enter into this transaction, you're going to be paid \$5,000
17 for it. We're going to go through.

18 I then started reading through the documents. I
19 came across the section in the documents that talks about
20 liability. I says, Okay. What does this section mean because
21 what it means, you said to me, is that I'm liable for this
22 house.

23 He says, Yes, you are liable for this house, but as
24 soon as the assumption takes place, you're not liable for the
25 house.

1 I said, Okay. That's what I wanted you to tell me,
2 when the assumption takes place. When will that assumption
3 take place?

4 He says, All the documents are in order right now.
5 We have all the documents in our office. Within the next few
6 days, that transfer will take place. Your liability will end.

7 And I says, Mr. Jenkins, if there's any problems on
8 that, you're going to let us know, aren't you?

9 He said, Yes. There will be no problems. It's all
10 been a done deal. There's nothing to worry about.

11 So I'm going down through the documents, and the
12 next thing pricked my mind was this \$92,000 down payment
13 because there's a document in there that states that I gave a
14 \$92,000 down payment. When that document came out, I looked
15 at that document, and I says, Mr. Jenkins, I did not give a
16 \$92,000 down payment. This document is incorrect.

17 He says, We know that. Mr. Cook will give you
18 \$92,000. You put it in your bank, you write a check for
19 \$92,000, give it back to them. That satisfies the part of the
20 mortgage that we need to worry about.

21 I says, That's okay with me. You understand what's
22 taking place?

23 He says, Yes, we understand what is taking place.
24 That's what is happening.

25 I said, Fine, went ahead and signed the documents.

1 We closed them. My wife still needed to have her signature on
2 it. Vaughn said he'd run that document up to my house and get
3 my wife to sign it.

4 Then after that closing he gave me a check for
5 around \$1500 --

6 Q Who is "he"?

7 A Stan Jenkins from Gate City Mortgage. I asked
8 him what was this money for.

9 He says, Well, it's part of your closing costs, and
10 it will come off of the fifteen -- \$5,000 that Vaughn is going
11 to give you. Vaughn will not give you \$5,000, He'll give you
12 thirty-five some odd hundred dollars. This \$1500 will make up
13 the \$5,000 you're supposed to have.

14 I then asked him another question because I thought
15 in a real estate transaction you had three days in which to
16 rescind a real estate contract, that no moneys could transpire
17 or change place or something for that three days.

18 He says, No, that is not true in this type of
19 transaction. We can close all the money right now and put it
20 together. You don't have to worry about that in this
21 transaction.

22 I says, Okay. I didn't know that. He then gave me
23 the check, we shook hands and said, Take care. Vaughn was
24 going to have my wife sign it. That's the last I saw of the
25 guy from Gate City.

1 We then left my office, went over to First Security
2 Bank. My office was on 39th. I believe First Security Bank
3 is 33rd, 35th? Anyway, the State Street Branch of First
4 Security Bank. Went inside, Vaughn gave me his check for
5 \$92,000 from Vaughn Cook & Associates, I believe. I deposited
6 that in my bank. I then wrote him a check out on Carefree
7 Homes' checkbook for \$92,000. He then gave me a check that
8 was dated 1-1-82 for thirty-five hundred and some odd dollars.
9 I says Vaughn, This is a post-dated check.

10 He says, Never mind. My bank's already okayed it.
11 You just put it in your bank and it will clear and go through.

12 We shook hands. I says, Okay. Vaughn, if there's
13 any trouble, you're going to get back with me?

14 He says, Yeah, no problem whatsoever, and that was
15 the last time I talked to Vaughn Cook in 1981. Came back to
16 my office, sat down, put all the notes in my book of what took
17 place during the conversation, put the documents in there,
18 closed it up and put it in my file cabinet.

19 Q Did you have any further conversation with Stan
20 Jenkins?

21 A No.

22 (Deposition Exhibit 4

23 was marked,

24 for identification.)

25 Q (By Mr. Moore) I hand you, Mr. Blaser, what has

1 exactly what took place.

2 Q I hand you what has been marked Exhibit 18, and
3 at the top it's entitled "Indemnity Agreement." You
4 referred before to an indemnity agreement.

5 A Yes.

6 Q Is this the indemnity agreement to which you
7 referred?

8 A Without going to my books and pulling out the
9 copy, I can't tell you if this is or not.

10 Q Do you know whether there was any other indemnity
11 agreement? Now, this is a document that you have furnished
12 us. You'll notice there is a control number at the bottom,
13 C 010003, which is a control document --

14 A If this is the document that I gave to my attorney
15 which he furnished to you, then it came out of my file, and
16 this would have been the document that I took photocopies of
17 on December 30, 1981, which is the Indemnity Agreement which
18 Vaughn Cook signed.

19 Q So this was the document that you perceived to
20 release you of the liability that you had with respect to the
21 Gate City obligation; is that correct?

22 A No. This was the thing that indemnified me in
23 case there was any obligation to Gate City Mortgage, that
24 first of all it was Vaughn Cook. But that liability ended
25 when the transfer took place to Kilburn.

1 Q So this was the document that, if any of them,
2 you would have read very carefully? Is that what you're
3 saying?

4 A No, I didn't say that.

5 Q Well, you said you read most of the documents
6 very carefully in most transactions.

7 A I didn't say I read this document very carefully.

8 Q But this was a document you testified about
9 earlier was very important to you; isn't that correct?

10 A I don't believe I testified -- it is very
11 important to me, and I'll testify to that now. But I don't
12 believe I testified to that prior.

13 Q Did you read this document at that time?

14 A I can't tell you for sure if I did or not read
15 this document.

16 Q In all probability in your normal course would you
17 have read that document?

18 A In my normal course I would have gone through the
19 document and read it.

20 Q Let's read it now.

21 A Okay.

22 Q Will you read it into the record.

23 A Indemnity Agreement.

24 This agreement made and entered into on the
25 30th day of December, 1981, by and between C. C.

1 International, hereinafter referred to as the Party of the
2 First Part, and Gate City Mortgage Company, hereinafter
3 referred to as the Party of the Second Part.

4 Whereas, Party of the First Part has obtained from
5 the Party of the Second Part a first mortgage loan for the
6 principal balance of \$200,000.00 on the following described
7 property:

8 All of Lot 48, Jeremy Plat No. 1, according to the
9 office plat thereof recorded in the office of the Summit
10 County Recorder.

11 Subject to and together with the right-of-way for
12 the purpose of ingress and egress over those roadways as
13 designated on the official plat of Jeremy Ranch Plat No. 1 as
14 recorded in the Summit County Recorder's office as Entry
15 No. 157211.

16 Situating in Summit County, State of Utah.

17 Deposition Exhibit 18 4-26-88 Blaser.

18 and such property is now subject to mechanics' and/or
19 merchantileman's liens insofar as the time of filing the same
20 is concerned and it is desired by the first part that such
21 mortgage shall be executed without showing therein any
22 exception for such possible liens, and the Party of the Second
23 Part is not agreeable thereto unless the Party of the First
24 Part shall guarantee to discharge such liens.

25 Q Do you understand who the Party of the First Part

1 and Party of the Second Part are in this document?

2 A No, I don't.

3 Q Let's go back up again. At the very top it says,
4 between C.C. International hereinafter the Party of the
5 first part.

6 A Okay. So this is between C.C. International and
7 Gate City Mortgage.

8 Q Right.

9 A Okay.

10 Q There's nothing so far that you've read that
11 names you as a part of this at all, right?

12 A No.

13 Continuing, Now, therefore, in consideration of the
14 premise and additional liability Party of the Second Part will
15 sustain by reason of omitting to state, as an exception in
16 such mortgage, the interest of the merchant's --

17 Q I think that's mechanics'.

18 A -- mechanics' and/or merchantileman's lien
19 holders (or possible lien holders), and in consideration of
20 the benefit of the part of the first part and the conduct of
21 the business by reason thereof, Party of the First Part
22 guarantees and agrees as follows:

23 Q Now, who was Party of the First Part?

24 A You said Party of the First Part was C.C.
25 International.

1 Q So they're guarateeing --

2 A That if Party of the Second Part shall omit from
3 such mortgage an exception concerning one more or -- one more
4 of such liens, filed or unfiled, and one or more such
5 mechanics' and/or merchantile liens, is, has been or may
6 thereafter be filed or secured on the insured premises
7 effective or relating back to a date prior to the date of the
8 policy, then, upon written demand of the Party of the Second
9 Part, the Party of the First Part agrees to promptly secure
10 and discharge of all such liens.

11 Q Let's stop there. Do you understand what that's
12 saying?

13 A No.

14 Q Do you have any idea? I mean, I know it's hard to
15 think and read out loud at the same time.

16 A That's right.

17 Q Do you want to study that again and see if you
18 understand what that means?

19 MR. MOHLMAN: Let me throw an objection in here. I
20 object to this whole line of questioning as irrelevant. I
21 don't think it's really relevant at all what he understands
22 this document means now.

23 THE WITNESS: This is saying --

24 MR. HANSON: Before you start that, let the record
25 show that he had to study that for 30 seconds before he was

1 able to start answering.

2 MR. MOORE: I'm not asking him to answer yet. I'm
3 just asking him to take as much time to read that and try to
4 understand it.

5 THE WITNESS: It says that if the Party of the
6 Second Part --

7 MR. HANSON: Let the record show that now
8 45 seconds has transpired since he started to study the
9 document.

10 Q (By Mr. Moore) And if you still don't understand
11 it, take as much as time as you want to until you do.

12 A Well, I don't know if I'll ever understand it,
13 but let's kind of go through it.

14 It says that if the Party of the Second Part shall
15 omit such mortgage and exception concerning one -- one more of
16 such liens filed or unfiled and one or more such mechanics' or
17 merchantilemen's liens, is, has been or may thereafter be
18 filed or secured on the insured premises effective and
19 relating back to date, prior to date of the policy -- you guys
20 really get paid for writing these kind of things, don't
21 you? -- then upon written demand of Party of the Second Part,
22 the Party of the First Part agrees to promptly secure and
23 discharge all such liens.

24 I still don't understand it.

25 Q Do you know what a mechanic's lien is?

1 A Mechanic's lien is like if you take your car into
2 the garage and the guy fixes it, he can keep your car until
3 you pay for it.

4 Q Do you know what a materialman's lien is?

5 A Materialman's lien is like if you supply lumber
6 to a builder and the guy builds the property and doesn't pay
7 you for the lumber, you can slap a lien upon that building
8 which then has to be paid for if you have superiority or
9 something in that lien over other liens.

10 Q Now, taking that understanding that you just gave
11 me, does that give you anymore meaning as to what that
12 paragraph says?

13 A It was talking about mechanics' and materialmen's
14 liens -- I guess you take the house in the project and keep
15 it. Order lumber from somebody, if he doesn't pay it,
16 they'll put a lien on the property.

17 Q Does it have anything to do with anybody buying
18 their property from them?

19 A Doesn't sound like it to me.

20 Q Let's read the next paragraph.

21 A In the event Party of the First Part fails to
22 promptly discharge all such liens, then Party of the Second
23 Part may pay, compromise, settle or discharge such liens and
24 recover from the Party of the First Part such amounts to be
25 paid.

1 Q What does that mean to you?

2 A That means the Party of the Second Part has to
3 pay the liens and come back to Party of the First Part.

4 Q As to what?

5 A Any amount of money that he has to pay.

6 Q Well, it talks about liens, doesn't it --

7 A Discharge all such liens, okay.

8 Q So it's referring to such liens -- would you
9 understand that that means that the liens are talking about
10 the paragraph just above there?

11 A The way you explained it, yeah.

12 Q Does it have anything to do with releasing a
13 buyer or a seller?

14 A It doesn't appear to.

15 Q Why don't you read the next paragraph.

16 A Party of the First Part agrees upon demand to
17 indemnify Party of the Second Part for any loss (including
18 but not limited to the amounts paid in discharge of the
19 lien, expenses of investigation, preparation for litigation,
20 judgment, court costs, attorney's fees) it may sustain by
21 reason of omitting to set out such liens as an exception in
22 the mortgage executed hereunder or by reason of enforcement
23 of this agreement. The obligation of the Party of the First
24 Part in this agreement shall extend to the mortgage executed
25 by, through or for -- for the Party of the First Part or

1 assigns on the above premises.

2 Q In your understanding what does that pertain to?

3 MR. MOHLMAN: Let me just throw in my continued
4 objection on the relevancy of his understanding now as to
5 the terms of the document.

6 THE WITNESS: The Party of the First Part agrees
7 to indemnify Party of the Second Part if anybody doesn't pay
8 on the mortgage.

9 Q (By Mr. Moore) Does it say anything about the
10 mortgage?

11 A Yes, as an exception in the mortgage executed
12 hereunder by reason of enforcement of this agreement.

13 Q It's talking about the lien, isn't it?

14 A No. Party of the First Part agrees upon demand
15 to indemnify Party of the Second Part for any loss including
16 but not limited to amounts paid in discharge of lien. So
17 it's limited to -- it's including but not limited to.

18 Q Okay.

19 A Okay? It may sustain by reason of omitting to
20 set out such liens as an exception in the mortgage executed
21 hereunder by reason of enforcement of this agreement.
22 The obligation of the Party of the First Part in this
23 agreement shall extend to the mortgage executed by, through,
24 for the Party of the First Part of assigns above premises.
25 So that's where he's saying if it doesn't pay, he's

1 obligated underneath the mortgage.

2 Q That's what that means to you?

3 A I'm not an attorney. That's what it means to me.
4 I think --

5 Q You didn't consult your attorney?

6 A I -- no.

7 Q And that's a pretty complicated document to you.
8 Is that what you're saying?

9 A Yes. That's why before the closing I went in and
10 had everything explained to me in layman's language by
11 Vaughn --

12 Q Who explained it to you in layman's language?

13 A Stan Jenkins.

14 Q You just said Vaughn.

15 A Vaughn Cook and Stan Jenkins. I have just
16 testified to that. We sat down, we went into this that -- you
17 guys were there -- and talked in whiteman's language back and
18 forth what was going to happen between our parties so we had a
19 meeting of the minds what was going to take place and what the
20 documents were going to substantiate.

21 Q And those are the discussions as you have related
22 it here?

23 A Yes.

24 Q Nothing else that you can recall?

25 A At this present time, no.

1 Q Okay. Did anyone represent to you that this
2 particular document indemnified you?

3 A Yes.

4 Q Who said that?

5 A Stan.

6 Q He said, This indemnity agreement indemnifies you
7 from your liability to pay on the obligation?

8 A What he said is that -- in my understanding of --
9 no, I can't say he said thus and thus. My understanding of
10 what he said on December 30, 1981, was that, Mr. Blaser, you
11 enter into the agreement. You transfer the property to
12 Mr. Vaughn Cook. Vaughn Cook then through Gate City Mortgage
13 took a full assumption to Kilburn. This is protecting you in
14 the interim period of time between when you sign the document
15 and when Kilburn takes it over which is going to be just in
16 the next few days. This is your guarantee that there is no
17 problem with liability on that project because Vaughn Cook
18 says he is going to take all that responsibility.

19 Q He picked up this particular paper and said that
20 in that regard?

21 A That was at the time of closing when we went
22 through these documents and we talked about the one section
23 of document you haven't showed me, at least I can't remember
24 seeing it. It's a document on both sides that went down and
25 explained your liability and so forth. And when we came to

1 the liability section, at that time I raised that question
2 of what was going to take place, and at that time we
3 mentioned this particular document of the indemnity
4 agreement and Stans says, Yes, you've got the indemnity
5 agreement from
6 Mr. Vaughn Cook that protects you in this situation, and
7 there's a full assumption taking place on Kilburn that's as if
8 you never existed.

9 Q Do you understand the difference between an
10 indemnity and an assumption?

11 A An assumption -- there's a full assumption and a
12 partial assumption. A full assumption is when you're taken
13 off and relieved of any obligation under the contract.

14 Q Have you ever seen an assumption agreement?

15 A In a real estate transaction?

16 Q Yes.

17 A No, I haven't.

18 Q Have you seen one in any other type of
19 transaction?

20 A In a personal property transaction I have.

21 Q Now, they said that they were going to assume
22 this obligation. Did you anticipate that there would be an
23 assumption agreement?

24 A Yes, there's --

25 Q Is it different than the indemnity agreement?

1 A Oh, yes.

2 Q Did you ever see one of those?

3 A No.

4 Q Now, wasn't it important for you that Kilburn
5 assume this obligation?

6 A Yes, very important to me.

7 Q And you knew the difference between assumption
8 with recourse and assumption without resource?

9 A Yes.

10 Q What does that mean?

11 A A full assumption is when I'm relieved of all
12 obligations whatsoever. A partial assumption is another
13 person takes over the property but you're still held in
14 recourse on that property. If they fail to pay, then it
15 comes back upon you. And we talked about this at the time
16 of the closing.

17 Q Did you ever see a document that said that?

18 A No.

19 Q Any kind of assumption agreement?

20 A No. That was all in their office down there that
21 was going to be done between Kilburn and them. I had
22 nothing to do with that assumption agreement because I
23 transferred my rights to Vaughn Cook. So I would not even
24 be involved with the assumption agreement; therefore, I had
25 no need to even see the assumption agreement.