

1989

# Gate City Federal Savings and Loan Association v. Edward A. Dalton, Jr., et al. : Unknown

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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UTAH COURT OF APPEALS  
BRIEF

UTAH  
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DOCKET NO. 89-498 CA

REPLACEMENT APPENDIX NO. 3

SAMPLE PROMISSORY NOTE

BETWEEN GATE CITY AND RESPONDENTS

FROM CIVIL NO. 8076

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IN THE UTAH COURT OF APPEALS

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GATE CITY FEDERAL SAVINGS  
AND LOAN ASSOCIATION,

vs.

EDWARD A. DALTON, JR., et al.

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Docket No. 89-498-CA

Priority No. 14(b)

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Earl Jay Peck  
John K. Mangum  
NIELSEN & SENIOR  
Attorneys for Respondents

FILED

AUG 17 1990

Mary T. Noonan  
Clerk of the Court  
Utah Court of Appeals

# 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 Orem, Utah  
City State  
3493 West Wrangler Way, 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 1, 1983, and on that day of the month every 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 1, 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, Orem, 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 .....<sup>14.77</sup>..... 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 .4.00% 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.

**(D) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all its reasonable costs and expenses to the extent not prohibited by applicable law. Those expenses may include, for example, reasonable attorneys' fees.

**6. WAIVERS**

Anyone who signs this Note to transfer it to someone else (known as an "endorser") waives certain rights. Those rights are (A) the right to require the Note Holder to demand payment of amounts due (known as "presentment") and (B) the right to require the Note Holder to give notice that amounts due have not been paid (known as "notice of dishonor").

**7. GIVING OF NOTICES**

Except for the notice provided in Section 4(D), any notice that must be given to me under this Note will be given by mailing it by certified mail. All notices will be addressed to me at the Property Address above. Notices will be mailed to me at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by certified mail to the Note Holder at the address stated in Section 3(A) above. Notices will be mailed to the Note Holder at a different address if I am given a notice of that different address.

**8. RESPONSIBILITY OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note is also obligated to keep all of the promises made in this Note.

**9. LOAN CHARGES**

It could be that this loan is subject to a law which sets maximum loan charges and that law is interpreted so that the interest or other loan charges collected or to be collected in connection with this loan would exceed permitted limits. If this is the case, then: (A) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (B) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**10. THIS NOTE SECURED BY A DEED OF TRUST**

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated ..... December 30, 1981, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Deed of Trust describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note. One of those conditions relates to any transfer of the property covered by the Deed of Trust. In that regard, the Deed of Trust provides in paragraph 17:

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.

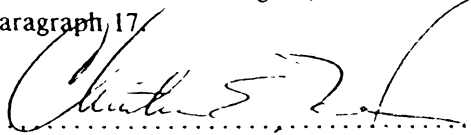
If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails 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.

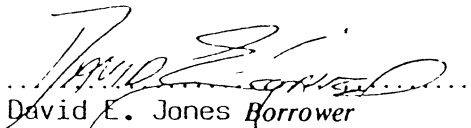
An Adjustable Rate Loan Rider supplements the Deed of Trust and provides:

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 00075

.....  
*Loan Number*

  
..... (Seal)  
Christian E. *Borrower* Hansen

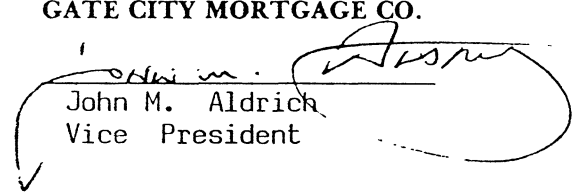
  
..... (Seal)  
David E. Jones *Borrower*

..... (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

GC 202085

# ADJUSTABLE RATE LOAN RIDER

NOTICE THE SECURITY INSTRUMENT SECURES A NOTE WHICH 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

This Rider is made this 30th day of December 19 81 and is incorporated into and shall be deemed to amend and supplement the Mortgage Deed of Trust or Deed to Secure Debt (the Security Instrument ) of the same date given by the undersigned (the Borrower ) to secure Borrower's Note to Gate City Mortgage Company (the Lender ) of the same date (the Note ) and covering the property described in the Security Instrument and located at 3493 West Wrangler Way, Park City, Utah 84060  
Partly filled in

**Modifications** In addition to the covenants and agreements made in the Security Instrument Borrower and Lender further covenant and agree as follows

## A INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note has an Initial Interest Rate of 18.75 % The Note interest rate may be increased or decreased on the 1st day of the month beginning on March 19 83 and on that day of the month every 12 months thereafter

Changes in the interest rate are governed by changes in an interest rate index 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) ☐ \*

(Check one box to indicate whether there is any maximum limit on changes in the interest rate on each Change Date if no box is checked there will be no maximum limit on changes)

- (1) ☐ There is no maximum limit on changes in the interest rate at any Change Date  
(2) ☒ The interest rate cannot be changed by more than 2.00 percentage points at any Change Date

If the interest rate changes the amount of Borrower's monthly payments will change as provided in the Note Increases in the interest rate will result in higher payments Decreases in the interest rate will result in lower payments

## B LOAN CHARGES

It could be that the loan secured by the Security Instrument is subject to a law which sets maximum loan charges and that law is interpreted so that the interest or other loan charges collected or to be collected in connection with the loan would exceed permitted limits If this is the case then (A) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit and (B) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower

## C PRIOR LIENS

If Lender determines that all or any part of the sums secured by this Security Instrument are subject to a lien which has priority over this Security Instrument Lender may send Borrower a notice identifying that lien Borrower shall promptly act with regard to that lien as provided in paragraph 4 of the Security Instrument or shall promptly secure an agreement in a form satisfactory to Lender subordinating that lien to this Security Instrument

## D TRANSFER OF THE PROPERTY

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

By signing this Borrower agrees to all of the above

State of Utah County ss:

On this 30th day of December, 1981, personally appeared before me Christian E. Hansen and David E. Jones the signers of the above instrument, who duly acknowledged to me that they executed the same.

Christian E. Hansen

(Seal)  
Borrower

David E. Jones

(Seal)  
Borrower

My commission expires: 12/31/81

Residing at: 1000 N. 1st St. Salt Lake City, Utah

\* If more than one box is checked or if no box is checked, no limit will apply

ADJUSTABLE RATE LOAN RIDER-6/81 FHLMC UNIFORM INSTRUMENT

GC 1156 (7-81)

GC 202086