

Inst # 1996-39828

12/04/1996-39828
11:16 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
004 SMA 17.00

ALABAMA

**Pentagon Federal Credit Union
Home Equity Line of Credit
MORTGAGE**

96051875

THIS MORTGAGE INCLUDES A DUE ON SALE PROVISION AND SECURES INDEBTEDNESS UNDER A HOME EQUITY LINE OF CREDIT AGREEMENT WHICH PROVIDES FOR A REVOLVING LINE OF CREDIT AND AN ADJUSTABLE RATE OF INTEREST.

This mortgage executed this 8th day of November, 1996, between DALE HOWER AND ELIZABETH L. HOWER, AS JOINT TENANTS

(hereinafter "Borrower") and Pentagon Federal Credit Union, a federally chartered credit union with its principal place of business at 1001 North Fairfax Street, Alexandria, Virginia 22314 (hereinafter "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 19,000.00 which indebtedness is evidenced by Borrower's Home Equity Line of Credit Promissory Note and Disclosure dated 11/08/96 and extensions and renewals thereof (Herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on _____;

WHEREAS, this Mortgage secures to Lender:

- (a) The repayment of the debt evidenced by the Note, in the principal sum with interest, and all advances, renewals, extensions and modifications;
- (b) repayment of all other sums, with interest, advanced hereunder by Lender to protect the security under this Mortgage; and
- (c) the performance of Borrower's covenants and agreements under this Mortgage and the Note.

WHEREAS to secure to Lender the repayment of the indebtedness evidenced by the Note which permits the Borrower to obtain advances from time to time up to a limit of NINETEEN THOUSAND AND 00/100 DOLLARS

(\$ 19,000.00) Dollars, (including any future advances), with interest thereon and the payment of all other sums with interest thereon advanced in accordance herewith to protect the security of this Mortgage and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby Mortgage, grant and convey to Lender the following described property in the County of SHELBY State of Alabama:

LOT 59, 2ND SECTOR, ACCORDING TO THE SURVEY OF ALTADENA WOODS, 2ND AND 5TH SECTORS, AS RECORDED IN MAP BOOK 10, PAGE 54 A & B, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

which has the address of 2257 VANESSA DR
BIRMINGHAM AL 35242

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to hereafter as the "Property".

NOW THEREFORE BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for the encumbrance of record noted herein. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to said encumbrance of record.

BORROWER AND LENDER FURTHER COVENANT AND AGREE AS FOLLOWS:

1. **Payments.** Borrower shall repay to Lender all advances, Finance Charges, Late Charges, and other amounts which Borrower agrees to repay in the Note by making each of the payments required by the Note promptly when they are due. Unless applicable law provides otherwise, all payments received by Lender under the Note shall be applied in accordance with the terms of the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law, Lender, at its option, may require Borrower to pay to Lender on the monthly due date under the Note a sum (hereinafter "Funds") equal to one-twelfth of the yearly taxes and assessments (and ground rents, if any) which may attain priority over this Mortgage plus one-twelfth of yearly premium installments for hazard insurance, all as reasonably estimated by the Lender. Borrower shall not be obligated to make such payment of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust, if such holder is an institutional Lender.

If the Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits of which are insured by a Federal or state agency, including Lender, if applicable. Lender shall apply the Funds to pay said taxes, assessments and premiums as they become due. Lender shall not be required to pay interest on the Funds. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds shall exceed the amount required to pay said taxes, assessments and premiums as they fall due, Lender shall promptly repay or credit Borrower's account. If the amount of the Funds is not sufficient to pay said taxes, assessments and premiums, Borrower shall pay to Lender any amount necessary to make up such deficiency.

3. **Prior Mortgages or Deeds of Trust.** Borrower shall promptly pay when due all amounts required to be paid by any and all deeds of trust, mortgages, or other security agreements having or appearing to have priority over this Mortgage, and shall perform all covenants, agreements and obligations set out in such agreements. Borrower shall not seek additional funds which may be secured by Property from any creditor which may hold a prior encumbrance upon the Property.

The Borrower hereby authorizes the holder of any prior mortgage encumbering the Property to disclose to the Lender the following information: (1) the amount of indebtedness secured by such mortgage; (2) the amount of such indebtedness that is unpaid; (3) whether any amount owed on such indebtedness is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the indebtedness secured hereby; and (5) any other information regarding such mortgage or the indebtedness secured thereby which the Lender may request from time to time.

4. **Charges; Liens.** Borrower shall pay promptly to payee when due all taxes, assessments and other charges and fines attributable to the Property which may attain priority over this Mortgage. Borrower shall promptly discharge in a manner acceptable to Lender any lien which has priority over this Mortgage except the encumbrance of record noted herein.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards as Lender may require and in such amounts and for such periods as Lender may require. The insurance carrier shall be chosen by the Borrower subject to approval by Lender, which approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of the Lender which shall be provided to the Lender. In the event of any loss to the property, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless otherwise agreed in writing, insurance proceeds shall be applied to the restoration and repair of the Property damaged in economically feasible. If such restoration and repair is not economically feasible, the insurance proceeds shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Borrower. Any such application of proceeds shall not extend or postpone the due date of the payments or change the amount of the payments referred to in Paragraph 1 and the Note.

6. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Mortgage is on a unit in a condominium or planned unit development, Borrower shall promptly perform all obligations under the declaration of covenants, by-laws and other documents creating and governing the condominium or planned unit development.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interests in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a debtor in bankruptcy 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.

Any amounts disbursed by Lender pursuant to this paragraph, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payments, 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 shall require Lender to incur any expense or take any action hereunder.

8. **Acceleration; Remedies.** Borrower agrees that time is of the essence of this Mortgage. If any payment provided for in the Note or this Mortgage is not paid when due or if any of the Borrower's obligations or agreements set forth herein is breached, Lender, at its option, may require immediate payment in full of all sums secured by this Mortgage and may foreclose this Mortgage and sell the Property in the manner provided by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Paragraph and under applicable law, including but not limited to court costs, reasonable attorney's fees, and costs of title evidence.

UPON CONDITION, HOWEVER, that if the Borrower pays the Debt (which debt includes the indebtedness evidenced by the Promissory Note hereinabove referred to and any or all extensions and renewals thereof and advances and any interest due on such extensions, renewals and advances) and all other indebtedness secured hereby and reimburses the Lender for any amounts the Lender has paid in payment of Liens or insurance premiums, and interest thereon, and fulfills all of Borrower's obligations under this Mortgage, this conveyance shall be null and void. But if: (1) any warrant or representation made in this Mortgage is breached or proves false in any material respect; (2) default is made in the due performance of any covenant or agreement of the Borrower under this Mortgage; (3) default is made in the payment to the Lender of any sum paid by the Lender under the authority of any provision of this Mortgage; (4) the Debt, or any part thereof, remains unpaid at maturity; (5) the interest of the Lender in the Real Estate becomes endangered by reason of the enforcement of any prior lien or encumbrance; (6) any statement of lien is filed against the Real Estate, or any part thereof, under the statutes of Alabama relating to the liens of mechanics and materialmen (without regard to the existence or nonexistence of the debt or to the lien on which such statement is based); (7) any law is passed imposing or authorizing the imposition of any specific tax upon this mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal or interest of the Debt, or by virtue of which any tax lien or assessment upon the Real Estate shall be chargeable against the owner of this Mortgage; (8) any of the stipulations contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction; (9) Borrower or any of them (a) shall apply for or consent to the appointment of a receiver, trustee or liquidator thereof of the Real Estate or of all or a substantial part of such Borrower's assets, (b) be adjudicated a bankrupt or insolvent or file a voluntary petition in bankruptcy, (c) fail, or admit in writing such Borrower's inability, generally to pay such Borrower's debts as they come due, (d) make a general assignment for the benefit of creditors, (e) file a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law, (f) file an answer admitting the material allegations of, or consent to, or default in answering a petition filed against such Borrower in any bankruptcy, reorganizing; or insolvency proceedings; or (10) an order for relief or other judgment or decree shall be entered by any court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Borrower, or any of them, if more than one, or appointing a receiver, trustee or liquidator of any Borrower or of the Real Estate or of all or a substantial part of the Assets of any Borrower, then, upon the happening of any one or more of said events, at the option of the Lender, the unpaid balance of the Debt shall at once become due and payable and this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages; and the Lender shall be authorized to take possession of the Real Estate and, after giving notice of time, place and terms of sale by publication once a week for three consecutive weeks in some newspaper published in the county in which the Real Estate is located to sell the Real Estate in front of the courthouse door of said county at public outcry, to the highest bidder for cash and to apply the proceeds of said sale as follows: first, to the expense of advertising, selling and conveying the Real Estate and foreclosing this mortgage, including a reasonable attorney's fee; second, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, liens or other encumbrances, with interest thereon; third, to the payment in full of the balance of the Debt and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale and any unearned interest shall be credited to the Borrower; and fourth, the balance, if any, to be paid to the party or parties appearing of record as the owner of the Real Estate at the time of sale, after deducting the cost of ascertaining who is such owner. The Borrower agrees that the Lender may bid at any sale had under the terms of this Mortgage and may purchase the Real Estate if the highest bidder thereof. At the foreclosure sale the Real Estate may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner the Lender may elect. The Borrower agrees to pay all costs, including reasonable attorney's fees, incurred by the Lender in collecting or securing or attempting to collect or secure the Debt, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any lien or encumbrance on the Real Estate, unless this Mortgage is herein expressly made subject to any such lien or encumbrance; and/or all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Lender shall be a part of the Debt and shall be secured by this Mortgage. The purchaser at any such sales shall be under no obligation to see to the proper application of the purchase money. In the event of a sale hereunder, the Mortgagee, or the owner of the Debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Borrower a deed to the Real Estate.

9. **Condemnation.** The proceeds for any award, direct or consequential, in connection with any condemnation, partial or total, or other taking of the Property, or any part or interest thereof, are hereby assigned and shall be paid to Lender. The proceeds shall be applied to the sums secured by this Mortgage in accordance with the terms of the Note, with the excess, if any, paid to Borrower. Any such application of the proceeds shall not extend or postpone the due date of the payments or change the amount of the payments referred to in Paragraph 1 and the Note. If Borrower abandons the Property or fails to accept an award from condemnor within the appropriate time, Lender is authorized to collect and apply the proceeds at its option either to restoration or repair of the Property or to the sums secured by this Deed.

10. **Borrower Not Released.** Extension of time for payment, release of any person liable for payment of the indebtedness secured hereby, alteration of existing security, or acceptance of additional security, or modification of amortization of the sums secured by this Mortgage granted by Lender to the Borrower or 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 Mortgage 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 Mortgage.

12. **Remedies Cumulative.** All remedies provided in the Mortgage are distinct and cumulative to any other right or remedy under this Mortgage 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 headings of the paragraphs of this Mortgage 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, any notice provided for in this Mortgage shall be given mailing such notice by first class mail, postage prepaid, addressed to Borrower or Lender at the address noted hereon or at such other address as Borrower or Lender may designate by notice to the other as provided herein.

15. Governing Law; Severability. This Mortgage shall be governed by and construed under the laws of the United States and the State of Alabama. In the event any provision of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions therein which can be given effect without the conflicting provisions. The provisions of this Mortgage and the Note are severable.

16. Borrower's Copy. Borrower shall be given a conformed copy of the Note and this Mortgage.

17. Transfer of Property. If all or any part of the Property or any right, title, or interest, (either legal or equitable) is sold, transferred or conveyed in any manner, Lender may, at its option, declare all sums secured by this Mortgage to be immediately due and payable as described in Paragraph 8.

18. Assignment of Rents and Profits; Receiver; Lender in Possession. Borrower hereby assigns to the Lender the rents and profits of the Property as additional security hereunder. Upon acceleration hereunder and proceedings to foreclose or abandonment of the Property, Lender, either 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 and apply those rents and profits to the indebtedness secured hereby. Lender shall incur no liability to Borrower for such action.

19. Release. Upon payment of all sums secured by this Mortgage and the Note, and in the event of cancellation of the Home Equity Line of Credit by written notice from the Borrower, Lender shall cancel this Mortgage without charge, except recordation costs, to Borrower.

20. Homestead Waiver. Borrower hereby waives all right of homestead exemption in the Property under Federal and state law and relinquishes all right of dower and curtesy in the Property.

21. Prior Encumbrance. The property is unencumbered except for the following described prior encumbrance, to wit: _____

IN WITNESS WHEREOF BORROWER has executed this Mortgage as of the day and year first above written intending to be bound thereby.

Signed, sealed and delivered in the presence of:

Amy M. Clark
Witness

Amy M. Clark
Witness

Renee A. Weyand
Witness

Dale E. Hower
Borrower

Elizabeth L. Hower
Borrower

Inst # 1996-39828
Borrower

Witness

STATE OF ALABAMA

COUNTY OF SHELBY) ss

12/04/1996-39828
11:16 AM IDENTIFIED
SHELBY COUNTY JUDGE OF PROBATE
004 SNA 17.00

The foregoing instrument was acknowledged before me this 8th day of November, 1996
by Dale E. Hower and Elizabeth L. Hower known to
me to be the person(s) whose name(s) is/are subscribed hereto.

My commission expires:

5-6-99

Susan C. Robertson
Notary Public