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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

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The Prudential Savings Bank, F.S.B.

MARGARET L. CLEVELAND
RECORDER
Home Equity Account
Loan No. 274788

**SECOND REAL
ESTATE MORTGAGE**

THIS MORTGAGE ("Mortgage") is made on April 15, 1996 by DARRELL F. RUSHER AND PATRICIA A. RUSHER, HUSBAND AND WIFE, whose address is 5855 EAST 107TH PLACE, CROWN POINT, IN 463070000 (including successors and assigns, herein jointly "Borrower"), to THE PRUDENTIAL SAVINGS BANK, F.S.B., which is organized and existing under the laws of the United States of America, whose address is Two Concourse Parkway, Suite 500, Atlanta, Georgia 30328 (including successors and assigns, herein "Lender").

WITNESSETH:

WHEREAS, Borrower and Lender have entered into a certain Home Equity Account Agreement and Disclosure Statement of even date herewith (the "Agreement"), pursuant to which Lender has established a credit line and account for Borrower's benefit in the amount of twenty-two thousand and 00/100 Dollars (\$22,000.00), which Agreement is due and payable in full on 04/15/2026, if not paid earlier. The Agreement, which is secured by this Mortgage, contains provisions regarding, among other things: i) loan advances made under the line of credit established thereby; ii) Borrower's use of loan proceeds; iii) Borrower's promise to pay; iv) minimum and maximum amounts of credit outstanding; v) provisions for the adjustment of the interest rate according to the method set forth therein; vi) insurance to be maintained in connection with the Property (hereinafter defined); vii) finance charges; and viii) various other matters set forth therein. The Agreement is incorporated herein by this reference and is hereby made a part of this Mortgage. All initial capitalized terms contained in this Mortgage, unless otherwise specifically defined herein, shall have the same meanings as in the Agreement.

Borrower, in order to secure to Lender the repayment of all loan advances made or to be made under the Agreement, including future advances allowed thereby, and other amounts owed to Lender under the Agreement and this Mortgage, and further to secure the performance by Borrower of all of Borrower's other obligations under the Agreement and of all of Borrower's covenants and agreements contained in this Mortgage, does hereby MORTGAGE and WARRANT to Lender certain property located in LAKE County, in the state of Indiana, which property is more particularly described in the attached Exhibit A and incorporated herein by this reference; TOGETHER with all the improvements, rights, easements, hereditaments and appurtenances now or hereafter located thereon or belonging thereto (all of the foregoing described herein as the "Property").

Borrower covenants that: i) Borrower is lawfully seized of the estate hereby mortgaged; ii) Borrower has the full right and power to mortgage the Property to Lender; and iii) Borrower will warrant and defend generally the title to the Property against all claims and demands whatsoever, subject only to a) the lien of a certain mortgage granted by Borrower to The Prudential Home Mortgage Company, Inc. on 04/15/1996, which mortgage was recorded on 4/17/96, in the office of the Recorder of LAKE county, Indiana, as Instrument No. 96024737, in Mortgage Record Book , Page (the "Senior Mortgage"), and b) to those matters set forth in the attached Exhibit B which are incorporated herein by this reference.

Borrower (jointly and severally) covenants and agrees with Lender as follows:

1. **Payment of Indebtedness.** Borrower shall pay when due all indebtedness secured by this Mortgage, on the dates and in the amounts, respectively, as provided in the Agreement and in this Mortgage, without relief from valuation and appraisal laws, and with attorney fees and costs of collection.

2. **Charges Against the Property.** Borrower shall promptly pay or cause to be paid all taxes, assessments, liens and all other charges, fines and impositions attributable to or which affect or may affect the Property, and all charges or taxes necessary to record this Mortgage and maintain the same as a valid lien against the Property. 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 interest in the Property, then Lender may make such appearances, disburse such sums and take such action as it may deem necessary, in its sole and complete discretion, to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Lender may advance funds to pay or advance funds to protect the security hereof without waiving or affecting any of its rights under or by virtue of this Mortgage, and may charge the Borrower's account for amounts so advanced as provided in the Agreement. Borrower shall not permit any liens of mechanics or materialmen to attach to or remain on the Property, or any part thereof, for more than forty-five (45) days after receiving notice thereof.

3. **Preservation, Maintenance and Insurance of Property; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good condition and repair, shall not commit waste or permit impairment or deterioration of the Property, and shall keep the Property insured as required by the Agreement. If this Mortgage 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 Mortgage, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider were a part hereof.

4. **Forbearance by Lender Not a Waiver.** No forbearance by Lender in the exercise of any of its rights under this Mortgage shall preclude Lender from the exercise thereof in the event of a subsequent default by Borrower hereunder, and no delay by Lender in the exercise of its rights under this Mortgage shall preclude Lender from the exercise thereof so long as Borrower is in default hereunder. Lender may enforce any one or more of its rights or remedies hereunder successively or concurrently.

5. **Remedies Cumulative.** All of the remedies provided in this 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.

6. **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 by mailing such notice by U.S. mail, first class, certified mail, return receipt requested, addressed to Borrower and/or Lender at the addresses set forth on page one hereof, or at such other address or addresses as Borrower or Lender may designate by notice to the other as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given on the date when mailed in the manner designated herein.

7. **Due on Sale; Assumption.** If all or any part of the Property, or any legal or equitable interest therein, is sold, leased, transferred, assigned, further encumbered by the creation of a security interest in, or otherwise hypothecated, without Lender's prior written consent, Lender, at its option, may declare all sums secured by this Mortgage immediately due and payable. Any contract of sale of any kind including, without limitation, land contract, conditional sales contract, installment sales contract, lease with option to purchase (whether such option is oral or contained within such lease or in any other document) or any other transfer of any legal or equitable interest in the Property (including a transfer by a devise or descent, or a transfer by operation of the law to and surviving co-tenant, or the creation of a leasehold interest of three (3) years or less shall be deemed a transfer requiring the prior written consent of Lender. Lender reserves the right, in its unlimited discretion, on any basis deemed appropriate to Lender, to refuse such consent, to condition such consent on a change in the interest payable on the indebtedness secured by this Mortgage, and/or otherwise change the terms of this Mortgage. If Lender exercises the option to accelerate payment of the indebtedness secured hereby, all such indebtedness shall become due and payable within ten (10) days after the mailing of a notice from Lender to Borrower setting forth the total sums due. In the event of the failure of Borrower to pay such sums prior to the expiration of such ten (10) day period, Lender may, without further notice or demand, invoke any remedy permitted hereunder for default.

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8. *Future Advances.* Upon request by Borrower, Lender, at any time during the term of this Mortgage, will make future advances to Borrower as long as the Borrower is not in default either under the terms of the Agreement or this Mortgage. Such future advances, whether advances under the line of credit established by the Agreement or other advances, with interest thereon, shall be secured by this Mortgage when made in accordance with the provisions of the Agreement or, in the case of other advances not made under the line of credit established in the Agreement, when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the maximum principal amount of U.S. \$22,000.00, plus interest thereon. At no time shall a reduction in the principal amount of the indebtedness secured by this Mortgage to Zero Dollars (\$0.00) constitute a satisfaction of this Mortgage, unless a written release of this Mortgage is executed and delivered by Lender. It is hereby agreed that it is the intent of Borrower and Lender that notwithstanding the reduction of the indebtedness secured hereby to Zero Dollars (\$0.00), this Mortgage shall survive to secure Borrower's obligations to repay future advances which may be made by Lender to Borrower under the Agreement.

9. *Borrower's Obligations with Respect to the Senior Mortgage.* Borrower hereby represents, warrants, covenants and agrees that:

A. This Mortgage is lawfully executed and delivered in conformity with the Senior Mortgage; and

B. Borrower will promptly pay, on or before its due date, all indebtedness secured by the Senior Mortgage; and

C. Borrower will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Borrower under the Senior Mortgage, within the period (exclusive of grace periods) provided in the Senior Mortgage, and will do all things necessary to preserve and to keep the Senior Mortgage free from default; and

D. Borrower will i) promptly notify the Lender in writing of (a) any default by Borrower under the Senior Mortgage, (b) the receipt by Borrower of any notice (other than notices customarily sent on a regular periodic basis) from the lender under the Senior Mortgage; and (c) any notice noting or claiming any default by Borrower in the performance or observance of any of the terms, covenants or conditions on the part of Borrower to be performed or observed under the Senior Mortgage; and ii) promptly cause a copy of each such notice received by Borrower from the lender under the Senior Mortgage to be delivered to Lender; and

E. Borrower shall not, without the prior written consent of Lender, enter into any agreement or accept the benefit of any arrangement whereby the holder of the Senior Mortgage waives, postpones, extends, reduces or modifies the payment of any installment of principal or interest, or any other item or amount required to be paid under the terms of the Senior Mortgage, or modifies any provision thereof; and

F. Borrower will furnish to Lender, upon demand, proof of payment of all items which are required to be paid by the Borrower pursuant to the Senior Mortgage, and proof of payment of which is required to be given to the lender under the Senior Mortgage; and

G. In the event of a default under the Senior Mortgage, Borrower shall execute and deliver, on request of Lender such instruments as Lender may reasonably deem useful or required to permit Lender to cure any default under the Senior Mortgage, or permit Lender to take such other action as Lender considers desirable to cure or remedy the matter in default and preserve the interest of Lender in the Property.

10. *Default.* The Lender may terminate the Agreement and accelerate payment of the outstanding balance thereof prior to the scheduled expiration date of the Agreement if:

(a) There has been fraud or material misrepresentation by Borrower in connection with the Agreement, including fraud or misrepresentation (whether by acts of omission or overt acts) during the application process or at any other time when the Agreement is in effect;

(b) Borrower fails to make any required payment under the Agreement or this Mortgage when due; or

(c) Any action or inaction by Borrower adversely affects the Property, or any right of the Lender in such Property. For example, if Borrower transfers title to the Property or sells the Property without the Lender's prior written permission, or if Borrower fails to maintain the insurance required by paragraph 3 of this Mortgage, or if Borrower commits waste or otherwise destructively uses or fails to maintain the Property such that it adversely affects the Property, the Lender is entitled to terminate the Agreement and accelerate the balance outstanding. Further, Borrower's failure to pay taxes on the Property as required by paragraph 11 (or any other action by Borrower resulting in the filing of a lien senior to that held by the Lender), Borrower's death or the taking of the Property through eminent domain permit the Lender to terminate the Agreement as well. Moreover, in some circumstances the filing of a judgment against Borrower, the illegal use of the Property or the foreclosure by a prior lienholder may permit termination of the Agreement if the Lender determines that the Property or the Lender's interest in the Property is or may be adversely affected.

Upon occurrence of any such event of default, Lender, at its option, may declare all sums secured by this Mortgage immediately due and payable, without notice or demand, which are hereby expressly waived, and Lender shall thereupon, have and be entitled to all remedies set forth in the Agreement or allowed by law, including the right to foreclose the lien of this Mortgage, to reform it, and to enforce the payment of all sums secured hereby and all claims hereunder. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses incurred by Lender in foreclosing this Mortgage, including, but not limited to attorney's fees and costs of title evidence; (b) to all sums secured by this Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto. Borrower shall also pay all costs, fees, charges and expenses of every nature and kind, including attorney's fees, and cost of abstracts of title or title insurance, incurred or expended at any time by Lender as a result or pursuant to any default on the part of Borrower in making any of the payments, or in the performance of any of the agreements, conditions or covenants of the Agreement and this Mortgage, and in enforcing, sustaining or defending the lien or priority of this Mortgage, and such expenses and costs shall be secured by the lien hereof.

11. *Taxes and Assessments.* Borrower shall pay all taxes or assessments levied or assessed against the Property, or any part hereof, as or when the same become due and before penalties accrue.

12. *Advances to Protect Security.* Lender, at its option, may advance and pay all sums necessary to protect and preserve the security intended to be given by this Mortgage. All sums so advanced and paid by Lender shall become a part of the indebtedness secured hereby, and shall bear interest from the date or dates of payment at the Annual Percentage Rate, provided in the Agreement. Such sums may include, but are not limited to, insurance premiums, taxes, assessments and liens which may be or become prior and senior to this Mortgage as a lien on the Property, or any part thereof, and all costs, expenses and attorneys' fees incurred by Lender in respect of any and all legal or equitable proceedings which relate to this Mortgage or to the Property.

13. *Extensions; Reductions; Renewals; Continued Liability of Borrower.* Lender, at its option, may extend the time for the payment of the indebtedness, or reduce the payments thereon, or accept a renewal note or notes therefor, without the consent of any junior lienholder, and without the consent of Borrower if Borrower has then parted with title to the Property. No such extension, reduction or renewal shall affect the priority of this mortgage or impair the security hereof in any manner whatsoever, or release, discharge, or affect in any manner the personal liability of Borrower to Lender. This Mortgage shall secure any notes or other evidence of indebtedness given in substitution for the Agreement.

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

15. *Applicable Law.* This Mortgage shall be governed and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the day, month and year first above written.

By *[Signature]* "BORROWER"
DARRELL F. RUSHER
By *[Signature]*
PATRICIA A. RUSHER
by Darrell F. Rusher
with Power of Attorney

STATE OF INDIANA)
COUNTY OF Lake) SS: .

Before me a Notary Public in and for said County and State, personally appeared Darrell F. Rusher for himself and with Power of Attorney for Patricia A. Rusher and _____, who each acknowledged the execution of the foregoing Mortgage.

Witness my hand and Notarial Seal this 15th day of April, 1996.

[Signature]
(signature) Notary Public

Kim A. Diaz (printed name)

My Commission Expires: 2/15/99

My County of Residence: Lake

This instrument was prepared by and upon recordation should be returned to:

Altn: Loretta Christians
The Prudential Home Equity Program
P.O. Box 701
Frederick, MD 21705-9931



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Exhibit A

Lot 17 in Trees, Unit 2, as per plat thereof, recorded in plat book 69, page 22, in the Office of the Recorder of Lake County, Indiana.

(copy legal here)



Exhibit B

Subject only to the following matters:

1. Mortgage from DARRELL F. RUSHER AND PATRICIA A. RUSHER, HUSBAND AND WIFE. [as mortgagor (s)] to The Prudential Home Mortgage Company, Inc. [as mortgagee] dated 04/15/1996, recorded in Official Records Volume/Book doc.#96024737, page _____, public records of LAKE County, Indiana, (said mortgage being referred to in the Mortgage to which this Exhibit "A" is attached as the "Senior Mortgage").