

# UNOFFICIAL COPY

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Submitted for recordation by, and when recorded, return to:

**Bank of America**

Address 275 SO VALENCIA AVE  
City BREA  
State CA  
Zip 92823

Loan #: 00500-40027-3189001

Reference # 011725-971021048230

DEPT-01 RECORDING \$27.00  
T40014 TRAN 3305 07/05/97 12:29:00  
#5814 # TD #--27-481608  
COOK COUNTY RECORDER

Space above this line for Recorder's Use

## MORTGAGE (Home Equity Loan)

**MAIL TO BOX 352**

This Mortgage is made on June 13, 1997 by  
RUBEN BENAVENTE AND ANA BENAVENTE, WHO ARE MARRIED TO EACH OTHER AND  
GUILLERMINA TOSCA AND GREGORIO TOSCA, WHO ARE MARRIED TO EACH OTHER

(collectively and individually "Mortgagor"); and the Mortgagee, Bank of America, FSB, a federal savings bank ("Bank"). Any non-titleholder signs below as Mortgagor solely for the purpose of subjecting any interest in the property described below to this Mortgage. The words "I," "me," and "my" in this Mortgage refer to the Mortgagor, whether one or more.

Bank and I agree:

1. **Property Security.** For the purpose of securing the obligations described below, I hereby mortgage, grant, convey, transfer and assign to Bank, the property located in COOK County, Illinois described as follows:

LOT 2 IN THE HANS P. HANSEN RESUBDIVISION OF LOTS 3,4,5,6,7 AND 8 (EXCEPT THE NORTH 33 FEET OF SAID LOTS) IN BLOCK 1 IN WHIPPLE'S ADDITION TO NORWOOD PARK A SUBDIVISION OF 23.79 ACRES IN THE EAST HALF OF THE LOT 1 OF THE NORTH EAST QUARTER OF SECTION 1, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

779 307.

277.00  
J.A.

with the street address: 7225 EVERELL AVENUE WEST, CHICAGO, IL 60631 and with Parcel No. 12-01-219-018 and including all improvements and fixtures now or later erected on the property, and all easements, rights, appurtenances and fixtures now or later a part of or related to the above described property (collectively the "Property").

This Mortgage secures (a) all of the obligations of the borrowers under the Disclosure and Loan Agreement dated 06/13/97, and naming GREGORIO TOSCA AND GUILLERMINA TOSCA

as borrowers, in the original principal sum of \$ 25,000.00 with interest thereon, as well as any modifications, extensions and renewals thereof (collectively, the "Loan Agreement"), (b) the repayment of all other sums, with interest thereon, advanced in accordance with this Mortgage, and (c) the performance of each obligation in this Mortgage.

2. **Payment of Principal and Interest.** I will pay or cause to be paid all obligations evidenced by the Loan Agreement as provided therein.

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3. **Insurance.** I will keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Bank requires insurance. I will maintain this insurance in the amounts and for the periods that Bank requires. I am free to buy this insurance from any insurance company authorized to do business in Illinois subject to Bank's right to refuse any insurance company for reasonable cause. All such insurance policies and renewals must be acceptable to Bank. If I fail to maintain coverage described above, Bank may, at its option, obtain coverage to protect Bank's rights in the Property in accordance with Paragraph 7.

All insurance policies and renewals obtained by me related to the Property, including those not required by Bank, together with all compensation, awards, damages, rights of action and proceeds derived therefrom are hereby assigned to Bank and must name Bank as loss payee under a standard mortgagee loss payee clause. Bank will have the right to hold the policies and renewals. If Bank requires, I will promptly give to Bank all receipts of paid premiums and renewal notices. In the event of loss, I will give prompt notice to the insurance carrier and Bank. I authorize Bank to make proof of loss if not made promptly by me.

At the discretion of Bank, the amount collected under any insurance policy attributable to damage to the Property from any insured peril shall be received, controlled and disbursed by Bank. Unless Bank and I otherwise agree in writing, all insurance proceeds from any insurance policy obtained by me, including those not required by Bank, will be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Bank's security interest is not lessened. If the restoration or repair is not economically feasible or Bank's security would be lessened, the insurance proceeds will be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to me. If I abandon the Property, or do not answer a notice from Bank that the insurance carrier has offered to settle a claim within 30 days, then Bank may collect the insurance proceeds. Bank may use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when the notice is given. Unless Bank and I otherwise agree in writing, any application of proceeds to principal will not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If the Property is acquired by Bank under this Mortgage, my right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition will pass to Bank to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

4. **Property Maintenance.** I will keep and maintain the Property in good repair. If this Mortgage is on a leasehold, I will comply with the terms of any lease. If this Mortgage is on a unit in a condominium or planned unit development ("PUD"), I will perform all of my obligations under the Covenants, Conditions and Restrictions (the "Declaration"), Articles of Incorporation, Trust Instrument or any equivalent documents which create the homeowners' association or equivalent entity owning or managing the common areas and facilities of the condominium or PUD (the "Owners' Association") and any bylaws or other rules or regulations of the Owners' Association. I will promptly pay, when due, all dues and assessments imposed by the Owners' Association. In the event of a distribution of hazard insurance proceeds, in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the condominium or PUD, any proceeds payable to me are hereby assigned and shall be paid to Bank, and Bank, at its option, may apply such proceeds to restoration or repair of the Property or to sums secured by this Mortgage. I will take such actions as may be reasonable to insure the Owners' Association maintains a public liability insurance policy acceptable in form, amount and extent of coverage to Bank. I will not, except after notice to Bank, and with Bank's written consent, either partition or subdivide the Property or consent to: (a) the abandonment or termination of the condominium or PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain; (b) any amendment to any provision of the Declaration or other documents creating or governing the Owners' Association if the provision is for the express benefit of Bank; (c) termination of professional management and assumption of self-management of the Owners' Association; or (d) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners' Association unacceptable to Bank.

5. **Hazardous Substances/Environmental Responsibilities.** I shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. I shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding sentence shall not apply to the presence, use, or storage on Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

I shall promptly give Bank written notice of any investigation, claim, demand, lawsuit or other action of any government or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge. If I learn, or am notified by any government or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 5, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and including the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 5, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

6. **Prior Liens.** I will perform all of my obligations under any mortgage, deed of trust, or other security instrument which creates a lien having priority over the lien of this Mortgage. I will pay all taxes, assessments and charges resulting from any lien having priority over this Mortgage, and leasehold payments or ground rents, if any.

7. **Protection of Bank's Security Interest.** If I fail to perform my obligations under this Mortgage, or if any action or proceeding adversely affects Bank's interest in the Property, Bank may, at Bank's option, take any action reasonably necessary (including, without limitation, paying expenses and attorneys' fees) to perform my obligations or to protect Bank's interest. Any sums that Bank pays in accordance with this Paragraph will be an additional indebtedness secured by this Mortgage. These payments will be subject to finance charges in accordance with the variable rate terms of the Loan Agreement and will be due and payable by me immediately upon Bank's demand.

8. **Inspection.** Bank may enter and inspect the Property, after giving me reasonable prior notice.

9. **Condemnation.** I assign to Bank the proceeds of any award or claim for damages arising from any condemnation or taking of all or part of the Property, (and if the Property is a unit in a condominium or PUD, the common areas and facilities, or any part thereof), or for any release instead of condemnation. The proceeds will be paid to Bank.

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10. **Not Released from Liability; Forbearance by Bank not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Bank to me, any borrower under the Loan Agreement or any successor in interest shall not operate to release from liability me, or any borrower under the Loan Agreement or any successors in interest. Bank 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 me and my successors in interest. Any forbearance by Bank in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver of, or preclude the exercise of, any such right or remedy.

11. **Successors in Interest; Joint and Individual Liability; Co-Signers.** This Mortgage will bind and benefit the successors in interest of Bank and me, subject to Paragraph 14 below. If more than one Mortgagor is signing this Mortgage, my obligations will be joint and individual. Any Mortgagor who is not a borrower under the Loan Agreement is: (a) signing this Mortgage only to grant and convey my interest in the Property to Bank according to this Mortgage; (b) not personally liable for obligations under the Loan Agreement; and (c) agreeing that Bank and Mortgagor who is a borrower under the Loan Agreement may extend, modify, forbear, or make any other agreements related to this Mortgage without that Mortgagor's consent, and without releasing Mortgagor from this Mortgage or any extension or modification of this Mortgage.

12. **No Release.** I will not be released from liability under this Mortgage until Bank executes and records a release of Mortgage that releases me from this obligation under the Mortgage.

13. **Transfer of the Property or a Beneficial Interest in Mortgagor.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Mortgagor is sold or transferred and Mortgagor is not a natural person) without Bank's prior written consent, Bank may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Bank if exercise is prohibited by federal law as of the date of this Mortgage.

If Bank exercises this option, Bank shall give me notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which you must pay all sums secured by this Mortgage. If I fail to pay these sums prior to the expiration of this period, Bank may invoke any remedies permitted by this Mortgage without further notice or demand on me.

14. **Acceleration; Remedies.** Except as provided in paragraph 13 hereof, upon my breach of any covenant or agreement in this Mortgage or the Loan Agreement, including the covenants to pay when due any sums secured by this Mortgage, Bank may prior to acceleration give me notice as provided in the paragraph hereof specifying: (a) the breach; (b) the action required to cure such breach; (c) a date, not less than 10 days from the date the notice is mailed to me, by which such breach must be cured; and (d) 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 Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice may further inform me of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of ours to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Bank, at Bank's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceedings. Bank shall be entitled to collect in such proceeding all expenses of foreclosure, including but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports.

15. **Right to Reinstate.** Notwithstanding Bank's acceleration of the sums secured by this Mortgage due to my breach, I shall have the right to have any proceedings begun by Bank to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) I pay Bank all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) I cure all breaches of any other covenants or agreements contained in this Mortgage; (c) I pay all reasonable expenses incurred by Bank in enforcing the covenants and agreements contained in this Mortgage and in enforcing Bank's remedies as provided in paragraph 14 hereof, including, but not limited to, reasonable attorneys' fees; and (d) I take such action as Bank may reasonably require to assure that the lien of this Mortgage, Bank's interest in the Property and my obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by me, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

16. **Request for Notices.** Bank requests that copies of notice of foreclosure from the holder of any lien which has priority over this Mortgage be sent to Bank's address as set forth on page one of this Mortgage. Any notice to me provided for in this Mortgage shall be given by delivering it by first class mail unless law requires use of another method. If a mailing address appears below for any Mortgagor, Bank's notices to that Mortgagor will be mailed to the address shown. Otherwise, notices will be sent to Mortgagor at the Property address shown on the first page of this Mortgage or at such other address as I shall designate by written notice to Bank. Any notice to Bank shall be given by first class mail to Bank's address on the first page of this Mortgage or any other address Bank designates by notice to me. Any notice provided for in this Mortgage shall be deemed to have been given me or Bank when given as provided in this paragraph.

17. **Leasehold.** If this Mortgage is on a leasehold, I shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease creating said estate and interest, and I shall not, without the express written consent of Bank, alter or amend said ground lease. Mortgagor covenants and agrees that there shall not be a merger of the ground lease, or the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Bank shall consent in writing to such merger; if I shall acquire such fee estate, then this Mortgage shall simultaneously and without further action be spread so as to become a lien on such fee estate.

18. **Governing Law; Enforceability.** This Mortgage will be governed by federal law and Illinois law. In the event that any provision or clause of this Mortgage or the Loan Agreement conflict with law, such conflict shall not affect other provisions of the Mortgage or the Loan Agreement which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Loan Agreement are declared to be severable. Bank's failure to exercise any right or remedy under this Mortgage will not waive Bank's rights in the future.

19. **Release of Mortgage.** Upon payment of all sums secured by this Mortgage, Bank will release this Mortgage. I will pay all costs of recordation, if any.

20. **Homestead Waiver.** By signing below, I waive all rights to Homestead exemption in the Property.

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## REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGE OR DEED OF TRUST

Mortgagor and Bank request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Bank, at Bank's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.

Gregorio A. Tosca  
GREGORIO TOSCA Date

Gulfermina Tosca 7/1/97  
GULFERMINA TOSCA Date

Ruben A. Benavente  
RUBEN BENAVENTE Date

Ana Benavente 7/1/97  
ANA BENAVENTE Date

Subscribed and sworn to before me  
this 1st day of July 1997  
at Chicago, County of Cook, State of Illinois

Notary Public  
STATE OF ILLINOIS

COUNTY OF Cook )  
SS. )

Ronald B. Roth a Notary Public in and for said county and state, do hereby certify that  
\_\_\_\_\_ personally known to me to be the same person(s) whose name(s)  
\_\_\_\_\_ subscribed to the foregoing instrument, appeared before me this day  
in person, and acknowledged that he signed and delivered the said instrument as \_\_\_\_\_ free voluntary act, for the  
uses and purposes therein set forth.

Given under my hand and official seal, this 1st day of July, 1997.

My Commission Expires: \_\_\_\_\_  
Ronald B. Roth  
Notary Public

"OFFICIAL SEAL"  
TERRI A. RINEHART  
Notary Public, State of Illinois  
My Commission Expires 2/20/2001

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