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CLUTAVS BELLET MONTEOMERY COUNTY VO

10/16/81

SUPPLEMENTARY DECLARATION

THOMAS CHOICE GARDENS CONDOMINIUM

THIS SUPPLEMENTARY DECLARATION, made and entered into this And day of 1981, by MONTGOMERY VILLAGE ASSOCIATES, of 10138 Little Pond Place, Gaithersburg, Maryland 20879, a Maryland general partnership (an entity controlled by Gary H. Nordheimer, Scott A. Nordheimer and Myer Feldman) (together hereinafter and in the exhibits attached hereto sometimes called the "Declarant").

WHEREAS, prior to the recordation hereof, the Declarant and its predecessor in title recorded among the Land Records of Montgomery County, Maryland, in Liber 5722 at Folio 761, et seq., a certain Declaration for Thomas Choice Gardens Condominium with exhibits thereto (hereinafter called the "Declaration"); and

WHEREAS, prior to the recordation hereof, the Declarant and its predecessor in title recorded among the aforesaid Land Records a certain "Plat of Thomas Choice Gardens Condominium" in Plat Book 24 at Plat 2477, et seq. (hereinafter called the "Plat"); and

WHEREAS, by recordation of the Declaration and Plat, the Declarant submitted the Property as described in Exhibit "A" attached hereto and hereby made a part hereof, to the provisions of the Real Property Article, Title II, Section II-101, et seq., of the Annotated Code of Maryland (1974) (hereinafter called the "Act"), as a Condominium; and

WHEREAS, by Deed dated and recorded September 15, 1981, among the Land Records of Montgomery County, Maryland, in Liber 5766 at Folio 838, the Declarant acquired fee-simple title to certain land and premises and the buildings constructed thereon (hereinafter called the "Property") located in Montgomery County, State of Maryland, and more particularly described in Exhibit "A"; and

WHEREAS, the Declarant is presently the sole owner in fee simple of said Property described in Exhibit "A"; and

WHEREAS, the Declarant intends by the execution and recordation hereof to amend certain provisions of the Declaration.

NOW, THEREFORE, THIS SUPPLEMENTARY DECLARATION WITNESSETH that said Montgomery Village Associates for themselves, their successors and assigns, do hereby publish and declare that the Declaration for Thomas Choice Gardens Condominium is amended as follows:

1. Article I, Sections I(e)-(g) are hereby changed to read Sections I(f)-(h), respectively, and a new Article I, Section I(e), is added as follows:

"(e) 'Eligible Mortgage Holder' means a holder of a first mortgage on a Unit who has requested notice from the Council of Unit Owners of amendments to the Declaration, Bylaws, or plats or other significant matters which would

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affect the interests of the mortgagee."

- Article VIII, Section 1, is amended by deleting the last sentence of Paragraph 1(a) and adding the following:
 - "(c) In accordance with the provisions of Section Il-108.1 of the Act, the maintenance responsibilities for the Property shall be as set forth in the Bylaws.
 - (d) In accordance with the provisions of Section Illis of the Act, the right to make improvements, alterations, additions or changes to any Units by any Unit owner shall be governed by the provisions of the Bylaws."
- 3. Article VIII, Section 5, is deleted and the following is added in substitution thereof:
 - "Section 5. Consents. Notwithstanding any other provision of this Declaration, except as provided by statute in case of condemnation or insurable loss to the Units and/or Common Elements, neither the Council of Unit Owners nor the Board of Directors shall take any of the following actions:
 - (a) by act or omission, seek to abandon or terminate the Condominium unless at least one hundred percent (100%) of the Unit owners and sixty-seven percent (67%) of the Eligible Mortgage Holders have given their prior written approval;
 - (b) change the Percentage Interest or obligations of any individual Unit unless all of the first mortgagees and all Unit owners of the individual Units have given their prior written approval;
 - (c) partition or subdivide any Unit, unless at least fifty-one percent (51%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned), and Unit owners representing sixty-seven percent (67%) of the votes in the Council of Unit Owners have given their prior written approval;
 - (d) by act or omission, seek to abandon, partition, suddivide, encumber, sell or transfer the Common Elements, unless at least fifty-one percent (51%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned), and Unit owners representing sixty-seven percent (67%) of the votes in the Council of Unit Owners have given their prior written approval (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Council of Unit Owners shall not be deemed a transfer

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within the meaning of this clause);

(e) use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Elements) for other than repair, replacement or reconstruction of such Condominium property in accordance with this Declaration and the original plans and specifications; unless at least fifty-one percent (51%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned), and two-thirds (2/3) of the Unit owners (other than the Declarant) of the individual condominium units have given their prior written approval;

(f) unless the consent of the Unit owners having at least sixty-seven percent (67%) of the votes in the Council of Unit Owners are allocated (or such higher percentage as required by statute) and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least fifty-one percent (51%) (or such higher percentage as required by statute) of the votes of Units subject to mortgages or deeds of trust held by Eligible Mortgage Holders is obtained, add or amend any material provisions of the Declaration or Bylaws which establish, provide for, govern or regulate:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Elements (or Units if applicable);
- (iv) Insurance or Fidelity Bonds;
- (v) Right to use the Common Elements;
- (vi) Responsibility for maintenance and repair of the several portions of the Condominium;
- (vii) Expansion or contraction of the Property or the addition, annexation or withdrawal of the Property to or from the Condominium;
- (viii) Boundaries of any Unit;
- (ix) The interests in the General or Limited Common Elements;

- (x) Convertibility of Units into Common Elements or of Common Elements into Units;
- (xi) Leasing of Unit estates;
- (xii) Imposition of any right of first refusal or similar restriction on the right of a Unit owner to sell, transfer, or otherwise convey his or her Unit;
- (xiii) Any provisions which are for the express benefit of mortgage holders, Eligible Mortgage Holders or eligible insurers or guarantors of first mortgages on Units."
- 4. Page (ii) of Exhibit "B" to the Declaration (hereinafter the "Bylaws") is amended by substituting "25" for "24" as the "Definition" page reference, and by deleting the last line on page (ii) which reads "6. Rights of Mortgagees . . . 25".
- 5. The Bylaws are amended by deleting on page (iii) of the Bylaws the reference to Page "26" for Article III Condemnation and substituting therefor page "25".
- 6. Article II, Section 5, of the Bylaws is amended by deleting from the first line "three (3)" and substituting therefor "four (4)".
- 7. Article II, Section 13, of the Bylaws is amended by deleting "fifty percent (50%)" which appears in lines 2 and 3 and inserting "twenty-five percent (25%)" therefor.
- Article V, Section 9, of the Bylaws is deleted and the following is added in substitution therefor:

"Section 9. Insurance. The Board of Directors shall be required to comply with the insurance requirements of the Act and, to the extent not in violation of the Act, shall also comply with the provisions of this Article V, Section 9.

The Board of Directors shall be required to obtain and maintain a multi-peril type policy covering the entire Condominium providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost). If there is a steam boiler in operation in connection with the Condominium, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing as a

minimum One Hundred Thousand Dollars (\$100,000.00) per accident per location. If the Condominium is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Condominium must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Units or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The insured under each required policy shall be the Council of Unit Owners for use and benefit of the individual Unit owners.

Each such policy must contain the standard mortgagee clause, which must be endorsed to provide that any proceeds shall be paid to the Council of Unit Owners for the use and benefit of mortgagees as their interest may appear.

The Board of Directors shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Elements, commercial spaces and public ways in the Condominium. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit owner because of negligent acts of the Council of Unit Owners or other Unit owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and usc. Liability coverage shall be at least One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage.

Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policyholder's rating of at least A. Each insurer must be specifically licensed or authorized by law to transact business within the State of Maryland. The policy contract shall provide that no assessment may be made against the mortgagee, and that any assessment made against others may not become a lien on the Unit superior to the first mortgage.

All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the State of Maryland. The mortgagee clause must provide that the insurance carrier shall notify the first mortgagee (or trustee) and the Council of Unit Owners named at least ten (10) days

in advance of the effective date of any reduction in or cancellation of the policy. The mortgagee clause of each insurance policy must be properly endorsed, and there must have been given necessary notices of transfer, and any other action required to be taken must have been taken, in order to fully protect, under the terms of the policy, and applicable law, the interest of the first mortgagee.

All property insurance policies must provide the following special endorsements: (1) recognition of any Insurance Trust Agreement; (2) a waiver of the right of sub-rogation against Unit owners individually; (3) the insurance is not prejudiced by any act or neglect of individual Unit owners which is not in the control of such owners collectively, and (4) the policy is primary in the event the Unit owner has other insurance covering the same loss. If available, an Agreed Amount and Inflation Guard Endorsement and a Construction Code Endorsement if the Common Areas are subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s) constituting the Condominium, thereby imposing significant costs in the event of partial destruction of the project by an insured peril.

Notwithstanding any provision of the Declaration or these Bylaws relating to property or liability insurance, there may be named as an insured, on behalf of the Council of Unit Owners, the Council of Unit Owners' authorized representative, including any trustee with whom such Council of Unit Owners may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Except to the extent inconsistent with the law, each Unit owner is deemed to appoint the Council of Unit Owners, or any Insurance Trustee or substitute Insurance Trustee designated by the Council of Unit Owners, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents and the performance of all other acts necessary to accomplish such purpose. The Council of Unit Owners or Insurance Trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Unit owners and their first mortgage holders, as their interests may appear."

 Article V, Section 10, of the Bylaws is deleted and the following is added in substitution therefor:

"Section 10. Repair or Reconstruction After Fire or Other Casualty. Except as hereinafter provided, and as provided in the Act (and inconsistent herewith), in the event of damage to or destruction of the Property as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration thereof (including any damaged Units, and any kitchen or bathroom fixtures installed therein on the date of recordation of the Declaration, but not including any wall, ceiling or floor decorations or coverings or other furniture, furnishings, fixtures or equipment installed by Unit owners in the Units), and the Board of Directors or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as provided below.

The Insurance Trustee may rely upon a certificate of the Board of Directors which certifies whether or not the damaged portion of the Property is to be reconstructed or repaired. The Board of Directors, upon request of the Insurance Trustee, shall deliver such certificate as soon as practicable.

If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is borne by the Unit owner, then the Unit owner shall be responsible for the reconstruction and repair after casualty and shall be entitled to apply the applicable insurance proceeds thereto. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Council of Unit Owners.

Immediately after a casualty causing damage to any portion of the Property for which the Council of Unit Owners has the responsibility of maintenance, repair, and/or replacement, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged portions of the Property in as good a condition as existed before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desire.

In the event of reconstruction or repair (as estimated by the Board of Directors) which shall exceed Twenty-Five Thousand Dollars (\$25,000.00), all proceeds of insurance shall be paid over to a trust company or bank having trust powers and authorized to engage in the trust business in the State of Maryland (hereinafter the "Insurance Trustee"), selected by the Board of Directors and shall be paid out from time to time as the reconstruction or repair progresses in accordance with the provisions of an Insurance Trust Agreement and which contains, inter alla, the following provisions:

LIBER 5785 FOLIO 76 |

- (a) the reconstruction or repair shall be in the charge of an architect or engineer, who may be an employee of the Council of Unit Owners, and hereinafter called the "Architect":
- (b) any restoration or repair of the project shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by at least fifty-one percent (51%) of the Eligible Mortgage Holders (based upon one vote for each first mortgage owned), and two-thirds (2/3) of the owners (other than the Declarant) of the individual Units.
- (c) each request for an advance of the proceeds of insurance shall be made to the Insurance Trustee and shall be accompanied by a certificate from the Architect and Board of Directors to the effect that (i) all work then completed has been performed in accordance with the plans and specifications; and (ii) the amount requested to be advanced is required to reimburse the Board of Directors for payments previously made by the Board of Directors or is due to the contractor responsible for the restoration or repair, or to subcontractors, materialmen, laborers, engineers, architects or to other persons responsible for services or materials in connection with such restoration or repair, or for fees or the like necessarily incurred in connection with the same; and (iii) when added to amounts previously advanced by the Insurance Trustee, the amount requested to be advanced does not unreasonably exceed the value of the work done and materials delivered to the date of such request;
- (d) each request for an advance of the proceeds of insurance shall be accompanied by satisfactory waivers of liens covering that portion of the repair or reconstruction for which payment or reimbursement is being requested, together with appropriate evidence from a title insurance company or the like to the effect that there has not been filed with respect to the Property, or any part thereof, any mechanics' or other lien, or notice of intention to file the same, which has not been dismissed, bonded, or satisfied of record;
- (e) the fees and expenses of the Insurance Trustee, as agreed upon by the Board of Directors and the Insurance Trustee, shall be paid by the Council of Unit Owners as a common expense, and such fees and expenses may be deducted from any insurance proceeds in the hands of the Insurance Trustee, pro rata, as the reconstruction or repair progresses.
- (f) such other provisions not inconsistent with the provisions hereof as the Board of Directors or the Insurance

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Trustee may reasonably require.

Upon completion of the reconstruction or repair and payment in full of all amounts due on account thereof, any proceeds of insurance then in the hands of the Insurance Trustee shall be paid to the Board of Directors, shall be considered as one fund and shall be divided among the Unit owners in the same proportion as that previously established for ownership of appurtenant undivided interests in the common elements, after first paying out of the share of the Unit owner (to the extent such payment is required by any lienor and to the extent the same is sufficient for such purpose), all liens upon said Unit."

- 10. Article VI, Section 2, of the Bylaws is amended by deleting "thirty (30)" on the third line and inserting "sixty (60)" therefor.
- 11. Article VI, Section 3, of the Bylaws is amended by adding the following after the first paragraph:

"Any holder, insurer or guarantor of a first mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding year, free of charge to the party so requesting. Any financial statement requested by an eligible mortgagee shall be furnished within a reasonable time following such request."

- 12. Article VI, Section 4, of the Bylaws is deleted and the following is substituted therefor:
 - "Section 4. Notice of Loss to or Taking of Common Elements. The Board of Directors shall give written notice to Eligible Mortgage Holders who have requested such notice of any condemnation or casualty loss which affects a material portion of the Property or any Unit on which there is a first mortgage held, insured or guaranteed by such eligible mortgage holder."
 - 13. Article VI, Section 5, is hereby deleted.
 - 14. Article VI, Section 6, is hereby deleted.
- 15. Article IX is amended by inserting on line 6 after the word "available" the phrase "in accordance with the Act and these Bylaws".

IN WITNESS WHEREOF, the Declarant has caused this writing to be executed and delivered in its name and on its behalf on the day and year first above written.

WITNESS:

MONTGOMERY VILLAGE ASSOCIATES, a Maryland general partnership

Charles Gilbertson

By: Scott X. Nordheimer

DISTRICT OF COLUMBIA

to wit:

On this 21 day of October officer, personally appeared SCOUTA. Northeimer, 1981, before me, the undersigned known to me (or satisfactorily proven) to be the person whose name is subscribed to this written instrument as a partner of Montgomery Village Associates, and acknowledged that he executed the same for the purposes therein contained as his own free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Doris F. Schalk Notary Public

My Commission Expires: January 1, 1985

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ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of an attorney duly admitted to practice before the Court of Appeals of Maryland.

Roger D. Winston

EXHIBIT A

LEGAL DESCRIPTION

THOMAS CHOICE GARDENS CONDOMINIUM

All of the condominium units in the Condominium Project known as Thomas Choice Gardens Condominium (the "Condominium"), as constituted and established under the Maryland Horizontal Property Act, Md. Real Prop. Code Ann. Section 11-101, et seq., as amended, by the Declaration of Condominium and exhibits thereto, recorded among the Land Records of Montgomery County, Maryland on June 29, 1981 in Liber 5722 at folio 761, and as per the Condominium Plat and Plans recorded in Condominium Plat Book 24 at Plats 2477, et seq among the aforesaid Land Records; together with the total undivided proportionate interests appurtenant thereto in all of the Common Elements of the Condominium. A list of all of the Condominium Units in the Condominium is attact hereto as Schedule I and by this reference made a part hereof.

Tax account numbers of property described

above:

9-101-1497598 Montgomery Village Avenue Gaithersburg, Maryland 2

9-101-1497601 Montgomery Village Avenue Gaithersburg, Maryland 2

CLERK'S NOTATION

Document submitted for recording a condition not permitting satisfactory photographic reproduction.

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THOMAS CHOICE

SCHEDULE I

All References to all condominium units in this Schedule I reflect such condominium units' street addresses in the following manner:

Unit Numbers aining the Number	Refer to the Following Street Address	
19301	19301 Club House Road Gaithersburg, Maryland	208
19303	19303 Club House Road Gaithersburg, Maryland	208
19305	19305 Club House Road Gaithersburg, Maryland	208
19307	19307 Club House Road Gaithersburg, Maryland	208
19309	19309 Club House Road Gaithersburg, Maryland	208
19315	19315 Club House Road Gaithersburg, Maryland	208
19317 .	19317 Club House Road Gaithersburg, Maryland	208
19319	19319 Club House Road Gaithersburg, Maryland	208
19321	19321 Club House Road Gaithersburg, Maryland	208
19323	19323 Club House Road Gaithersburg, Maryland	208
19411	19411 Brassie Place Gaithersburg, Maryland	208
19413	19413 Brassie Place Gaithersburg, Maryland	208
19415	19415 Brassie Place Gaithersburg, Maryland	208

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19303-203	.356683 Z		
19303-204	.336128 X		
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	19437-201	.342174 Z
	19437-202	.276278 %
	19437-203	.270233 %
	19437-204 19437-301	.326456 Z
	17437-302	342174 Z
	19437-303	.276278 7
	19437-304	2B3533 %
	19439-101	. 353660 X
	19439-102	.423183 Z
	19439-103	356683 Z
•	19439-104	\$ 336128 Z
	19439-201	353668 X
	19437-202	.423183 Z
	19439-203	.356483 Z
	19439-284	336128 Z
	19439-301	.394165 I
	19439-302	.423183 %

.....

UHIT	NO .	7	INTEREST	AND	VOTE	

LIBER 5785 FOLIO 771.

7

UNIT NO		2 INTEREST AND VOTE	,
19439-30	3	.355683 Z ·	
19437-30	4 .	.353669 Z	
19441-10	i	257765.Z	
19441-10	-	.342174 Z	
19441-10	3	.276278 Z	
19441-18	4	.278233 X	
19441-20	1	.227755 I	
19441-25	2	.342174 Z	
19441-25	3	.275278 Z	
19441-20	4	.270233 Z	
17441-30	1	.326456-7	
19441-30	2	.342174 Z	
19441-38	3	.276278 Z	
19441-39	4	.283533 X	•
19443-10	1 -	.35356\$ Z	•
19443-10	2	.423183 Z	
17443-10	3	.356683 Z	
19443-10	14 .	.33612B Z	٠.
19443-20	1	.353669 Z	
19443-20	2 .	.423183 Z	•
19443-20	3	. X E8482E.	
19443-21	14	.336129 Z	
19443-3		.374165 Z	
.19443-3		. E3183 Z	
19443-3	-	.355583 %	
19443-3	14	.353650 Z	