

1300



**RESTRICTIVE COVENANT
FOR
MONARCH TOWNHOMES**

THIS RESTRICTIVE COVENANT FOR MONARCH TOWNHOMES ("Covenant") is made and entered into at Breckenridge, Colorado this 13th day of APRIL, 1999, by and between RGB/CB LLC ("Developer") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") (collectively the "Parties").

Recitals

- A. Developer is owner of record of the real property located in the County of Summit and State of Colorado, as further described on Exhibit I attached hereto and incorporated herein by this reference ("Property").
- B. Developer intends to construct, operate and sell an affordable housing complex on the Property, consisting of thirteen (13) residential units ("Units"), to be known as Monarch Townhomes ("Project").
- C. Prior to the sale of the first Unit within the Project, Developer intends to record against the Property a declaration for Monarch Townhomes ("Declaration") containing covenants and restrictions controlling the ownership of the Units in the Project. Developer also intends to incorporate a homeowners association for Monarch Townhomes ("Association") to manage the Project, to collect monthly assessments from owners of Units and to perform other functions required of it pursuant to the Declaration.
- D. The Town has agreed to fully service the Project, including the Units therein, with its required and necessary domestic and other water needs, including lawn tree and shrub irrigation. The Town has further agreed to defer the payment of the water tap fees, known as Plant Investment Fees ("PIFs"), for the Project and for each Unit for so long as the Project and the Units are subject to the terms and conditions of this Covenant.
- E. The Parties acknowledge that this Covenant was entered into at the request of the Developer, was not required by the Town as a condition of any Town approval of the Project, and was entered into by the Town in its proprietary (not governmental) capacity.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Agreement

I.

Definitions

"Affordability Restrictions" means, collectively, the Occupancy Restrictions and the Resale Restrictions.

"Association" means the non-profit corporation to be created pursuant to the Declaration that manages the Project on behalf of Unit Owners, collects monthly assessments from Units Owners and performs other functions required of it pursuant to the Declaration.

"Declaration" means the covenants and restrictions controlling the ownership of the Units and certain common elements in the Project, which Declaration shall be recorded against the Property in the real property records of Summit County, Colorado.

"Occupancy Restrictions" means those restrictions on the Units set forth in Article III hereof.

"Project" means the affordable housing complex to be constructed on the Property, consisting of thirteen residential Units and certain common elements as described in the Declaration, to be known as Monarch Townhomes.

"Property" means the real property located in the County of Summit and State of Colorado, as further described on Exhibit 1 attached hereto, against which this Covenant shall be recorded.

"Qualified Occupant" means (a) a natural person eighteen (18) years of age or older who earns his or her living by working in Summit County, Colorado at least thirty (30) hours per week on an annual basis, together with such person's spouse and minor children, if any, and (b) a natural person age fifty-five (55) years or older who earns his or her living by working in Summit County, Colorado at least fifteen (15) hours per week on an annual basis, together with such person's spouse and minor children, if any.

"Resale Restrictions" means those restrictions on the Units set forth in Article IV hereof.

"Unit" means a physical portion of the Project designated for separate residential ownership, as depicted on a map or plat of the Project to be recorded against the Property, and as further described in the Declaration.

"Unit Owner" means any person or entity at any time owning a Unit; it being understood that such person or persons shall be deemed a "Unit Owner" hereunder only during the period of his, her or their ownership interest in the Unit. "Unit Owner" does not include a person having an interest in a Unit solely as security for the performance of an obligation.

II.
Water Taps

In consideration of the recordation of this Covenant against the Property in the real estate records of the Clerk and Recorder of Summit County, the Town agrees to the following:

2.1 **Provision of Water Taps.** The Town shall allow Developer to connect the Project to the Town's water system in a timely fashion and shall supply the Project with adequate and safe domestic water (including lawn, tree and shrub irrigation) and the water taps necessary and required by Summit County for the Project's approval, including the provision of sufficient water to service the 13 Units and related common elements and facilities to be included in the Project, all pursuant to the Town's usual and customary out-of-town water services policies.

2.2 **Deferral of PIFs.** The Town shall defer the payment of PIFs otherwise chargeable against the Project or a Unit for so long as the Project is subject to the Affordability Restrictions set forth herein.

2.3 **Water Service Contract.** As required by Town ordinance, the obligations of Town to provide water to the Project shall be subject to the Town's standard "out-of-town" water service contract in such form as is agreed to by Town and Developer, which contract shall be executed by Town and Developer prior to the recording of this Covenant. The terms of said water service contract shall be incorporated herein by this reference.

2.4 **Amount of PIFs deferred.** The Parties agree that the amount of PIFs deferred for the Project are 15.6, or 1.2 PIFs per each of the thirteen (13) units. If and when the PIFs become due and payable hereunder, payment shall be made at the Town's then-current PIF rate.

III.
Occupancy Restrictions

3.1 **Occupancy Restriction.** Except as expressly provided in Section 3.2, Units shall only be occupied by Qualified Occupants.

3.2 **Disability Exception.** Notwithstanding Section 3.1, it shall not be a violation of this Occupancy Restriction if a Unit is occupied by a person, who otherwise is or was a Qualified Occupant, but who becomes disabled after commencing occupancy of the Unit such that he or she cannot work the number of hours each week required by the Occupancy Restriction; *provided, however,* that such person shall be permitted to occupy the Unit for a maximum period of one (1) year following the commencement of such person's disability unless a longer period of occupancy is authorized in writing by the Town.

3.3 Default: Notice. In the event of any failure of a Unit Owner to comply with the Occupancy Restriction provisions of this Article III, the Town may inform the Unit Owner by written notice of such failure and provide the Unit Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of the Town within the period of time specified by the Town, which shall be at least thirty (30) calendar days after the date any notice to the Unit Owner is received as provided in Section 7.8, or within such further time as the Town determines is necessary to correct the violation, but not to exceed any limitation set by applicable law, the Town may without further notice declare a default under this Covenant effective on the date of such declaration of default; and the Town may then proceed to enforce this Covenant as provided in Sections 3.4 and 3.5, and Article VI, below.

3.4 Forced Sale on Default.

3.4.1 *Forced Sale.* In the event of a default pursuant to Section 3.3, Town may demand, in writing to the Unit Owner, that the Unit Owner sell the Unit ("Town's Demand to Sell"), and the Unit Owner shall thereupon immediately list the Unit for sale and shall diligently and in good faith pursue the sale of the Unit. The Resale Restrictions set forth in Sections 4.1 and 4.2 below shall apply to any such sale. The highest offer by a Qualified Occupant, for not less than ninety-five percent (95%) of the Maximum Sale Price (as defined in Article IV below) or the appraised market value, whichever is less, shall be accepted by the Unit Owner. If all offers are below ninety-five percent (95%) of the Maximum Sale Price and the appraised market value, the Unit shall continue to be listed for sale until an offer in accordance with this subsection 3.4.1 is made, which offer must be accepted by Unit Owner. The cost of any appraisal shall be paid by the Unit Owner. The appraisal shall be conducted by a licensed appraiser selected by the Unit Owner and approved by Town. The Unit Owner shall consent to any sale, conveyance or transfer of the Unit to a Qualified Occupant and shall execute any and all documents necessary to do so.

3.4.2 *Town May Purchase.* Notwithstanding subsection 3.4.1, the Town, or its respective assignee or designee, as applicable, shall have the right and option to purchase the Unit, exercisable by notice ("Option Notice") delivered to the Unit Owner within a period of fifteen (15) calendar days after delivery by Town of Town's Demand to Sell. In the event of exercising this right and option, the Town shall purchase the Unit from the Unit Owner for a price equal to ninety-five percent (95%) of the Maximum Sale Price, or the appraised market value, whichever is less. The closing of Town's purchase shall take place no later than forty-five (45) calendar days after the delivery of the Town's Option Notice to the Unit Owner. At the closing, the Unit Owner shall convey the Unit to the Town by special warranty deed.

3.5 Additional Remedies/Enforcement. In addition to any other methods of enforcement as may be available to Town pursuant to Article VI below, in the event of a Unit Owner's default hereunder, Town may enforce this Covenant by bringing an appropriate action in the Breckenridge Municipal Court in accordance with the provisions of Section 9-1-26 of the Breckenridge Town Code, or any successor municipal ordinance provision of the Town of Breckenridge.

IV.
Resale Restrictions

4.1 Maximum Sale Price. Subject to Section 4.2 below, in no event shall a Unit be sold for an amount in excess of the Unit Owner's original purchase price, plus the lesser of either :

a. An increase of five percent (5%) over such Unit Owner's original purchase price per year from the date of Unit Owner's purchase to the date of Unit Owner's Notice of Intent to Sell (as defined in Section 4.3 below), or to the date of Town's Demand to Sell (if sale is pursuant to Section 3.4 above) (prorated at the rate of .41 percent for each whole month); or

b. The percentage increase in the figure that reflects one hundred (100%) percent of the annual area median income of a family of four for Summit County as determined by the United States Department of Housing and Urban Development, or successor thereto, between the date of the Unit Owner's original purchase of the Unit and the date of the Unit Owner's Notice of Intent to Sell (as defined in Section 4.3 below), or to the date of Town's Demand to Sell (if sale is pursuant to Section 3.4 above).

The sale price so calculated shall be the "Maximum Sale Price," subject to adjustment only as specifically allowed hereafter under Section 4.2 below. **NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE TOWN, THE DEVELOPER, OR ANY OTHER PARTY, THAT THE UNIT OWNER WILL BE ABLE TO OBTAIN THE MAXIMUM SALE PRICE, AND THE TOWN AND DEVELOPER HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY THAT MIGHT OTHERWISE BE ALLEGED OR ATTRIBUTED.**

4.2 Permitted Additions to Maximum Sale Price.

4.2.1 *Capital Improvements.* For the purpose of determining the Maximum Sale Price in accordance with Section 4.1 above, the Unit Owner may add to the amount specified in Section 4.1 above, the cost of Permitted Capital Improvements (as defined in Exhibit 2 attached hereto and incorporated herein by this reference); *provided, however,* that in no event shall said additional amount under this Section exceed ten percent (10%) of the Unit Owner's original purchase price for the Unit. Notwithstanding the foregoing, for every ten (10) year period commencing after the date which is ten years from and after the date of a Unit Owner's original purchase of said Unit, a maximum of an additional ten percent (10%) of the Unit Owner's initial purchase price for the Unit may be added to the value of the Unit for and to the extent of any further Permitted Capital Improvements under this Section installed during said ten-year period. In calculating the additional amount under this Section, only the Unit Owner's actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to the Unit Owner's personal labor or "sweat equity" or to any appreciation in the value of the improvements.

4.2.2 Permitted Sales Costs. For the purpose of determining the Maximum Sale Price in accordance with Section 4.1 above, the Unit Owner may add to the amount specified in Section 4.1 above, the cost of:

- a. Realtor sales commission, not to exceed seven (7%) percent;
- b. Owners title insurance premium;
- c. Tax certificate; and
- d. Other normal and customary closing costs incurred by a seller for similar sales in Summit County, which costs shall not include appraisal costs.

4.3 Notice of Intent to Sell. In the event that a Unit Owner desires to sell his or her Unit, the Unit Owner shall provide to the Town a written notice of the Unit Owner's intent to sell the Unit ("Notice of Intent"). Said Notice of Intent shall be delivered to the Town prior to the earlier of the date the Unit Owner: (a) lists the Unit for sale, (b) offers the Unit "for sale by owner," or (c) executes any contract for the sale of the Unit. The Notice of Intent shall contain a statement of (a) the Unit Owner's original purchase price for the Unit, (b) any permitted additions to the Maximum Sale Price, pursuant to Section 4.2 above, which the Unit Owner believes he or she is entitled, together with written evidence (e.g., receipts) of the cost and nature of said permitted additions, and (c) the Unit Owner's best estimate of the maximum price for which the Unit may be sold hereunder ("Total Sale Price").

4.4 Notice of Non-Compliance. Town shall have the right, exercisable within twenty (20) calender days of receipt of Unit Owner's Notice of Intent, to declare by written notice to the Unit Owner ("Notice of Non-Compliance") either: (a) that the Notice of Intent is deficient, in which event the Unit Owner shall provide all additional information requested by Town in its Notice of Non-Compliance within twenty (20) calender days after delivery of the Notice of Non-Compliance, or (b) that the Total Sale Price does not comply with the terms of this Article IV, in which event the Town shall provide its best estimate of the Total Sale Price in its Notice of Non-Compliance. In the event such Notice of Non-Compliance is timely delivered, the Unit Owner shall not be entitled to sell the Unit until he or she receives written notice of compliance with Sections 4.2 and 4.3 ("Notice of Compliance") from the Town. Town shall have the right to record the Notice of Non-Compliance in the real property records of the Clerk and Recorder of Summit County. In the event that the Town fails to timely deliver such Notice of Non-Compliance, the Unit Owner's Notice of Intent and Total Sale Price shall be deemed satisfactory for all purposes hereunder.

4.5 Notice of Sale. Immediately upon sale of the Unit, the Unit Owner shall provide the Town with written notice of the sale, including (a) an affidavit of the Unit Owner stating the actual sale price of the Unit and the date of sale, (b) a copy of the contract of sale, and (c) a copy of the deed transferring title to the Unit.

4.6 Non-complying Sale. If a Unit Owner sells a Unit: (a) without providing the notices described in Sections 4.3 and 4.5, (b) for a price greater than the Total Sale Price indicated either in the Unit Owner's Notice of Intent or in the Town's Notice of Compliance, or (c) despite receiving a Notice of Non-Compliance from the Town which was not resolved to the written satisfaction of Town, pursuant to a Notice of Compliance, then the Unit Owner shall be subject to all remedies available to Town pursuant to Article VI below.

V.

Term and Termination

5.1 Term of Covenant. The term of this Covenant shall be for a period of ninety-nine (99) years, commencing with the date of the recording of this Covenant with the Clerk and Recorder of Summit County, Colorado. This Covenant may be sooner terminated, in whole or in part, in accordance with Sections 5.2 below.

5.2 Waiver, Termination, Modification Of Covenant. The Affordability Restrictions may be waived or terminated as to one or more Units by written agreement of both the Town and Summit County. The Affordability Restrictions and any other provision of this Covenant may be modified with the written consent of all Unit Owners, Town and Summit County. No such waiver, modification, or termination shall be effective until a proper instrument in writing shall be executed and recorded in the office of the Clerk and Recorder of Summit County, Colorado.

VI.

Remedies

6.1 All Remedies Available. Town shall have any and all remedies provided by law for violation or other breach, or prospective breach, of this Covenant or any of its terms, including but not limited to:

a. Damages (including damages resulting from the sale of a Unit in violation of this Covenant, which damages are deemed to include, without limitation, the proceeds of the sale that exceed the Maximum Sale Price applicable to the Unit at the time of sale under this Covenant);

b. Specific performance and injunction, including an injunction requiring sale of the Unit by the Unit Owner as set forth in Article III of this Covenant or as may be otherwise provided herein, and including an injunction and temporary restraining order to prohibit a sale of a Unit in violation of this Covenant;

c. Termination of the deferral of PIFs, provided pursuant to Article II above, which are attributable to a non-complying Unit and which shall be paid to the Town by the non-complying Unit Owner within thirty (30) calendar days after Town notice to the Unit Owner of said termination pursuant to this paragraph. In the event that said payment is not timely made, any outstanding balance due shall bear interest at the rate of twelve percent (12%) per annum until paid;

- d. Eviction of non-complying Unit Owners and/or occupants; and
- e. All costs of the Town in enforcing this Covenant, including attorney fees and paralegal fees, to be payable by the non-complying Unit Owner.

6.2 Eliminating Resale Gain. In the event of a breach of any of the terms or conditions contained herein by a Unit Owner, his or her heirs, successors or assigns, the Unit Owner's initial purchase price of the Unit shall, upon the date of such breach as determined by the Town, automatically cease to increase as set out in Article IV of this Covenant, and shall remain fixed until the date of cure of said breach.

VII. Miscellaneous

7.1 Owner's Covenant of Title and Authority. Developer covenants, represents and warrants to Town that Developer has good and marketable title to the Property and full and complete legal authority to execute and deliver this Covenant with Town, subject only to liens and encumbrances of record, and taxes for 1998 and subsequent years.

7.2 No Conflicting Agreement. Developer covenants, represents and warrants to the Town that the execution and delivery of this Covenant to Town will not violate any agreement now existing with respect to the Property. Developer shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Covenant, and in any event, it is agreed that the provisions of this Covenant are paramount and controlling as to the rights, obligations and limitations herein set forth and shall supersede any other provision or agreement in conflict herewith.

7.3 Records; Inspection; Monitoring. Unit Owner and Association records with respect to the use, occupancy and sale of the Units shall be subject to examination, inspection and copying by the Town, its authorized agent or designee, upon reasonable advance notice. The Town, its authorized agent or designee, shall also have the right to enter into the Project for the purpose of determining compliance with the provisions of this Covenant; *provided, however*, that the Town or its agent shall first attempt to secure the permission of any occupants of a Unit prior to making entry thereto. Unit Owners and the Association shall submit any information, documents or certificates requested from time to time by the Town with respect to the occupancy, use and sale of the Units which Town reasonably deems necessary to substantiate the Unit Owners continuing compliance with the provisions of this Covenant.

7.4 Statute of Limitations. Developer, for itself and its successors, hereby waives the benefit of, and agrees not to assert in any action brought by Town or its designee to enforce the terms of this Covenant, any applicable statute of limitation which might otherwise operate to bar the ability of the Town or its designee to enforce this Covenant, including, but not limited to, the provisions of §38-41-119, C.R.S. In the event that any statute of limitations may lawfully be asserted by Developer or its successors in connection with an action brought by Town or its designee to enforce the terms

of this Covenant, it is agreed between Developer and Town that each and every day during which any violation of the terms of this Covenant occurs shall be deemed to be a separate breach of this Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

7.5 Subordination. Developer covenants to obtain and record the subordination to this Covenant of the relative recording priority of any prior recorded lien on the Property, and such subordination and evidence thereof satisfactory to Town shall be a condition precedent to Town's duties under Article II above. Such subordination shall be in a form reasonably satisfactory to Town. This Covenant is intended to be an encumbrance on the Property which is superior to all other liens and encumbrances except those for general property taxes.

7.6 Recording and Filing/ Covenant Running With the Land.

7.6.1 *Recording and Filing*. This Covenant shall be recorded in the real estate records of Summit County upon the approval of this Project by Summit County and the Town and prior to the recordation of the Declaration, and thereupon the terms, conditions and covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, Developer and Developer's successors and assigns, all subsequent owners of the Property or any portion thereof, and Town, for the period of time prescribed in Article V above. During the term of this Covenant, the terms, conditions and covenants contained herein shall survive and be effective as to all owners of the Property, and their successors and/or assigns, regardless of whether a contract, deed or other instrument conveying the Property, or portion thereof, shall expressly provide that such conveyance is subject to this Covenant.

7.6.2 *Covenant Running With the Land*. Developer agrees that any and all laws of the State of Colorado required in order for the provisions of this Covenant to constitute a restrictive covenant running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land.

7.7 Attorney's Fees. If any action is brought in a court of law by Town, Developer, the Association or any Unit Owner, or other party subject to this Covenant, concerning the enforcement, interpretation or construction of this Covenant, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

7.8 Notices. Unless otherwise provided herein, all notices and demands required or permitted under this Covenant shall be in writing, as follows: (1) by actual delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be given three days after the date of its mailing; (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be given as of the date it is sent; or (4) by facsimile to the facsimile number of the appropriate party indicated

below, in which case it will be deemed received at the time indicated on the facsimile confirmation report. All notices which concern this Covenant shall be sent to the address or facsimile number of the appropriate party as set forth below:

TOWN:

Address: Town of Breckenridge
c/o Town Manager
P.O. Box 168
Breckenridge, Colorado 80424

FAX: _____
PHONE: _____

DEVELOPER: RGB/CB, LLC

Address: PO Box 2280
Breckenridge Co
80424

FAX: _____
PHONE: _____

To Unit Owner: To the Unit address of the Unit Owner as set forth in the recorded deed by which the Unit Owner took title to the Unit.

7.9 **Perpetuities Savings Clause.** If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for a period of the lives of the current duly elected and seated members of the Town Council of the Town, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

7.10 **Applicable Law.** This Covenant shall be interpreted in all respects in accordance with the laws of the State of Colorado.

7.11 **Entire Agreement.** This Covenant, including the attached exhibit, constitutes the entire agreement and understanding between the parties relating to the subject matter of this Covenant, and supersedes any prior agreement or understanding relating thereto.

7.12 **Severability.** In case one or more of the provisions contained in this Covenant or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and

EXHIBIT 1

LEGAL DESCRIPTION:

THAT PORTION OF THE OLD IRONSIDES , BEN HARRISON, COUNTESS, AGGIE AND MAGGIE LODE MINING CLAIMS, U.S. SURVEY NO. 7388 , AND OF THE MONARCH AND BADGER LODE MINING CLAIMS, U.S. SURVEY NO. 7569 , DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER NO. 13 OF JUNIATA EXTENSION, U.S. SURVEY NO. 6989;
THENCE N 09° 36' 00" E, 300.00 FEET; THENCE S 20° 30' 37" E, 198.00 FEET;
THENCE S 69° 29' 23" W, 534.10 FEET; THENCE S 65° 03' 27" E, 192.90 FEET;
THENCE N 60° 30' 51" E, 1489.96 FEET; THENCE N 21° 14' 16" W, 232.29 FEET;
THENCE S 28° 27' 55" W, 390.19 FEET; THENCE N 61° 22' 13" W, 301.33 FEET;
THENCE N 22° 35' 31" E, 37.12 FEET; THENCE S 60° 26' 00" W, 706.89 FEET;
THENCE S 00° 21' 51" W, 10.39 FEET; THENCE N 89° 38' 09" W, 18.05 FEET;
THENCE S 60° 26' 00" W, 299.67 FEET; THENCE S 20° 26' 51" E, 160.50 FEET;
THENCE N 69° 31' 36" E 1.32 FEET; THENCE N 89° 38' 20" W, 419.39 FEET;
THENCE S 69° 35' 13" W 62.50 FEET; THENCE S 80° 35' 15" E, 362.13 FEET;
THENCE N 15° 59' 00" E 156.56 FEET, TO THE POINT OF BEGINNING.

COMPRISING 13.4 ACRES, MORE OR LESS BALDY RIGHT OF WAY OF 2.508 ACRES,
LEAVING 10.982 NET ACRES.

THIS DESCRIPTION IS BASED ON A JUNE 29, 1981 PERIMETER SURVEY COMPLETED BY
RAYMOND D. MCGINNIS L.S. NO. 9939, AND RECORD INFORMATION.



EXHIBIT 2
Permitted Capital Improvements

1. The term "Permitted Capital Improvement" as used in this Covenant shall only include the following:

A. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to a Unit, excluding repair, replacement and/or maintenance improvements.

B. Improvements for energy and water conservation.

C. Improvements for health and safety protection devices; and

D. Improvements to finish existing storage space.

2. Permitted Capital Improvements as use in this Covenant shall NOT include the following:

A. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets, flooring, counter tops, cabinets, tile and other similar items included as part of the original construction of the Unit;

B. The cost of adding decks and balconies, and any extension thereto;

C. Jacuzzis, saunas, steam showers, and other similar items;

D. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting and other similar items; and/or

E. Upgrades or addition of decorative items, including lights, window coverings and other similar items.

3. All Permitted Capital Improvement items and costs shall be approved by Town prior to being added to the Maximum Sale Price as defined in this Covenant.