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Housing Planner  
City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201

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Cook County Recorder of Deeds  
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## DECLARATION OF COVENANTS REGARDING TRANSFER

THIS DECLARATION OF COVENANTS REGARDING TRANSFER (this "Declaration") dated as of March 30, 2005, is made by Evanston Community Development Association ("ECDA"), the address of which is 944 Elmwood, Evanston, Illinois 60202, in favor of the City of Evanston, Illinois, the address of which is 2100 Ridge Avenue, Evanston, Illinois 60201, Attention: Planning Division (the "City").

### RECITALS

WHEREAS, the City has determined that there exists a shortage of decent, safe and affordable housing within the City available for purchase by Eligible Buyers (defined below), and that the creation and maintenance of such affordable housing is essential to the well-being, stability and economic health of the City; and

WHEREAS, to assist in the creation and maintenance of affordable housing as described above, the City has made a loan to ECDA in the amount of \$80,000 under the HOME Investment Partnership Program and the regulations issued thereunder and Title II, the Cranston-Gonzalez National Affordable Housing Act, Public Law No. 101-625 104 Stat. 4079 (1990), 24 C.F.R. Part 92 ("the HOME Program") subject to the conditions and covenants set forth herein, for the rehab of and sale of the townhome unit located at 1717 B McDaniel, Evanston, Illinois, which property is more particularly described on **Exhibit A** attached hereto; and

WHEREAS, as a condition to receipt of the loan funds, ECDA has agreed to sell the unit, once rehabilitated, at an effective purchase price of \$172,000 based on a HOME subsidy of \$80,000 to an Eligible Buyer, (defined below), who will use the townhome unit as their principal residence; and

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WHEREAS, the City further requires that any purchaser of the townhome unit (referred to herein as a "Buyer") must be an Eligible Buyer, and each seller of the townhome unit (each is referred to herein as a "Seller") must only sell the Townhome unit to another Eligible Buyer throughout the Affordability Period (defined below), and must sell the Townhome unit for a price not to exceed the Allowable Sale Price (defined below); and

WHEREAS, the Owner under this Declaration intends, declares and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property for the term described herein, are binding upon any Buyer, Seller and all subsequent owners of the Property, or any part thereof, for such term, and are not merely personal covenants of the Owner;

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ECDA declares as follows:

1. The foregoing Recitals are hereby incorporated into and are a part of the body of this Declaration.

2. Each Buyer must certify to the Seller and the City that the Buyer will use the Townhome unit as their principal residence during the term of this Declaration.

3. Any Seller shall sell each Townhome unit only to an Eligible Buyer and the purchase price may not exceed the Allowable Sale Price.

(a) As used herein, during the first fifteen (15) years of the Affordability Period, the term "Eligible Buyer" shall mean a Buyer that will be an owner-occupant of the Townhome unit and have an annual household income less than or equal to eighty percent (80%) of the Chicago-area Median Income, based on household size, as such annual income and Chicago-area Median Income are determined from time to time by the United States Department of Housing and Urban Development ("HUD"). As used herein, during the last five (5) years of the Affordability Period, the term "Eligible Buyer" shall mean a Buyer that will be an owner-occupant of the Townhome unit (and no income restrictions shall be applicable)

(b) As used herein, during the first fifteen (15) years of the Affordability Period, the term "Allowable Sale Price" means a price that does not exceed the sum of (i) the purchase price paid by the current Seller, plus (ii) an annual inflation adjuster equal to the greater of three percent (3%) or the annual change in the Area Median Income for the Chicago PMSA published annually by HUD, plus (iii) the capital improvements (excluding maintenance) to the Townhome unit installed or made by the current Seller during the period of time that it owned the Townhome unit and evidenced by receipts, up to an average aggregate amount of one percent (1%) of the initial sale price per year of ownership, unless approved in writing by ECDA. The list of allowed capital improvements is attached as **Exhibit C**. As used herein, during the last five (5) years of the Affordability Period, the term "Allowable Sale Price" means a price equal to (i) the prior year's Allowable Sale Price plus (ii) one fifth (1/5th) of the difference between the appraised market value at the end of year 15 (beginning of year 16) and the Allowable Sale Price in Year 15. Thus during the last five years of the Affordability Period, the Allowable Sale Price

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is increased in equal increments from year sixteen (16) through year twenty (20) until it reaches the appraised market value of the Townhome unit at the end of the fifteenth (15th) year. For example, if on the date which is fifteen (15) years from the date of recording of this Declaration (the beginning of the 16th year) the Townhome unit's appraised market value is \$523,890 and the Allowable Sale Price in year 15 was \$260,165, then the Allowable Sale Price for that year, year 16, is \$260,165 plus one fifth (1/5th) of the sum of \$496,943 less \$260,165, which is \$47,355.60; and thereafter the Allowable Sale Price will grow in equal increments for four (4) years until it equals \$498,943, which, in the case of this example, would equate to annual increases in the Allowable Sale Price of \$47,355.60. **Exhibit B** attached hereto is incorporated herein and made a part hereof. The owner of the Townhome unit at the end of the fifteenth (15th) year of the term of this Declaration shall obtain, at such owner's cost, an appraisal of the Townhome unit.

4. This Declaration shall be in effect from the date of recording of this Declaration with the Recorder of Deeds of Cook County, Illinois until the twentieth (20<sup>th</sup>) anniversary of the recording date, known as the "Affordability Period" and, except as waived in writing by ECDA and the City, shall be binding upon any Buyer, Seller and their transferees, heirs, successors or any other person or entity that owns all or any portion of the Property (or any interest therein) during the term.

5. If a Seller proposes to transfer the Townhome unit or any interest therein to a proposed Buyer, the Seller shall give written notice to ECDA and the City at their respective addresses set forth above. The City will calculate the proposed Allowable Sale Price with the Seller and provide information on current income eligibility requirements for the Buyer. In addition, the City may assist the Seller in finding a suitable Eligible Buyer. If the Seller is unable to find an Eligible Buyer to purchase the applicable Townhome unit for the Allowable Sale Price and close on a sale within 90 days from putting the Townhome unit up for sale, the Buyer may appeal to the Director of Community Development of the City of Evanston to consider a change in the resale requirements contained herein. The Director shall respond within 30 days.

6. Upon execution of a purchase contract, the Seller shall give thirty (30) days prior written notice of such proposed transfer to ECDA and the City, along with the proposed Buyer's certification to keep the Townhome unit as their principal residence, and documentation required by the City regarding (i) whether the proposed purchase price fulfills the requirements of being an Allowable Sale Price hereunder, and (ii) whether the proposed Buyer fulfills the requirements of being an Eligible Buyer hereunder. The City shall determine, in its sole discretion, whether the proposed transfer would be in compliance with the terms of this Declaration and, if not, the purchase contract between the Seller and the proposed Buyer would be void; each purchase contract executed by a Seller and proposed Buyer for the Townhome unit shall refer to the terms of this Declaration.

7. In the event that (i) the Seller attempts to sell the Townhome unit to a Buyer that is not an Eligible Buyer or for a price that is greater than the Allowable Sale Price, or (ii) either the Seller or Buyer violates any other term of this Declaration, then ECDA shall have a right of first refusal to purchase the Townhome unit for a price equal to the Allowable Sale Price.

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8. ECDA shall cause this Declaration to be recorded with the Recorder of Deeds of Cook County, Illinois. ECDA shall pay all fees and charges incurred in connection with any such recording. Upon recording, ECDA shall immediately transmit to the City an executed original of this Declaration showing the date and recording number of record.

9. This Declaration and the covenants set forth herein regulating and restricting the use, occupancy and transfer of the Property (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Declaration, and binding upon ECDA's successors in title and all subsequent owners of the Property, (ii) are not merely personal covenants of ECDA, and (iii) shall bind ECDA, and any Buyer or Seller, and their respective successors and assigns, as applicable, during the term of this Declaration.

10. Any and all requirements of the laws of the State of Illinois to be satisfied in order for the provisions of this Declaration to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. For the term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.

11. No Buyer may refinance any existing or future mortgage loan secured by the Townhome unit without the prior written consent of the City. However, no Buyer or Seller may borrow funds pursuant to any loan that contains any provisions for negative amortization. In order to ensure awareness of the resale restrictions on the part of any subsequent lenders, the Buyer will grant a junior mortgage to the City of Evanston for the amount of the subsidy. Upon Buyer's request, the City shall subordinate the City Deed of Trust or Mortgage to a deed of trust or mortgage made by or held by an institutional lender or investor which is given in connection with any refinancing of any such loan that does not exceed the Allowable Sale Price described in Section 3.

12. In the event of default and foreclosure, the City and ECDA shall have the same right as the owner of the Townhome unit to cure defaults and redeem the Townhome unit prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the City or ECDA to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the City or ECDA failed to file the request for notice of default, the City's and ECDA's right to purchase the Townhome unit shall commence from the date the notice of default is given by the City to the owner of the Townhome unit.

13. Upon violation of the requirements of this Declaration by the owner of the Townhome unit, the City shall give written notice thereof to such owner. If such violation is not corrected to the satisfaction of City within 30 days after the date such notice is mailed, or within



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such further time as the City in its sole discretion permits, the City may declare the owner to be in default under this Declaration, effective on the date of such declaration of default and notice thereof to the owner, and upon such default the City may pursue all available remedies at law, or in equity, or by statute.

14. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof. In the event that a court of competent jurisdiction finds that the length of the term of this Declaration would result in this Declaration being unenforceable under applicable law, then (i) this Declaration shall be deemed to have been amended to include a term which would be enforceable by such court and (ii) for the period beginning at the end of such amended term and continuing until the end of the 15th year of the term of this Declaration, the current owner of the Townhome unit may sell the Townhome unit without restriction, but if such sale does not comply with the provisions of this Declaration (including, without limitation, Section 3), then the current owner must re-pay the City its subsidy of \$80,000, such payment to be made by the owner upon demand by the City.

15. The rights and remedies of the City provided for in this Declaration are cumulative and are not intended to be exclusive of any other remedies to which the City may be entitled to at law or in equity or by statute. The exercise by the City of any right or remedy to which it is entitled hereunder shall not preclude or restrict the exercise of any other right or remedy provided hereunder.

16. The rights hereby granted shall include the right of the City to enforce this Declaration by appropriate court proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Townhome unit (or any portion thereof) to its condition prior to any such violation and shall be in addition to, and not in limitation of, any other rights and remedies available to the City. The current owner of the Townhome unit covenants and agrees to reimburse the City all reasonable costs and expenses (including with limitation counsel fees) incurred in enforcing this Declaration or in taking reasonable measures to cure any violation hereof, provided that a violation of this Declaration is acknowledged by the current owner or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Declaration the City does not undertake any liability or obligation relating to the condition of the Townhome unit.

17. This Declaration may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of ECDA and the City, which consent shall not be unreasonably withheld or delayed.

18. The provisions of this Declaration shall cease to be in effect in the event that title to the Townhome unit is transferred by foreclosure (or an instrument in lieu of foreclosure) of any mortgage which is recorded against the Townhome unit (a) on or prior to the date hereof, (b) with the consent of the City, or (c) in accordance with Section 11 hereof. However, if any time during the Affordability Period and following the occurrence of a cessation of enforceability of the provisions of this Declaration as provided in the preceding sentence, the owner (or any person or entity with whom the owner has or had family or business ties) obtains an ownership

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interest in the Townhome unit, the provisions of this Declaration shall again be enforceable as of the date such ownership interest is obtained through the remainder of the Affordability Period.

[Signature Page Follows]

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## **EXHIBIT A** **LEGAL DESCRIPTION**

PIN: 10-13-120-048-0000

Legal Description:

PARCEL 1:

THAT PART OF LOT 9 LYING EAST OF A LINE DRAWN FROM A POINT IN THE NORTH LINE OF SAID LOT, 59.95 FEET WEST OF THE NORTHEAST CORNER THEREOF, AS MEASURED ALONG SAID NORTH LINE, TO A POINT IN THE SOUTH LINE THEREOF, 58.59 FEET WEST OF THE SOUTHEAST CORNER, AS MEASURED ALONG SAID SOUTH LINE THEREOF, EXCEPT THE SOUTH 16 FEET OF THE NORTH 18 FEET OF THE EAST 20 FEET THEREOF, IN CHAPMAN EVANSTON INCORPORATED RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 1 TO 13 BOTH INCLUSIVE, IN BLOCK 6 IN ARTHUR T. MCINTOSH'S CHURCH STREET ADDITION TO EVANSTON, BEING A SUBDIVISION OF PART OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS APPURTENANT TO PARCEL 1 FOR INGRESS AND EGRESS AS SET FORTH IN THE DECLARATION RECORDED AS DOCUMENT NUMBER 18084308.

Commonly known as: 1717 – B McDaniel, Evanston, Illinois 60201




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**EXHIBIT B**  
**20 Year Affordability Restrictions**  
**for**  
**1717-B McDaniel**

[Attached]

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EXHIBIT B

## Evanston Community Development Association 1717 B McDaniel 20 Year Affordability Restrictions

**Assuptions and Comments:**

- A City of Evanston HOME Fund affordability loan of \$80,000 comes with a transfer/sale restriction for 20 years. During the first 15 years any sale price increase is limited to the rate of increase in the Area Median Income or 3%, whichever is greater.
- For the first 15 years, any Buyer must be an owner-occupant and have a household income that is 80% or less of Area Median Income. There are no income restrictions for the last five years, but the purchaser must be an owner-occupant.
- The maximum Allowable Sale Price begins in 2005 with an initial sale price of \$172,000.
- For the first 15 years Column B will need to be determined each year according to the change in Area Median Income as published annually by HUD or 3%, whichever is greater. (The chart uses an annual increase of 3% for illustrative purposes only.) Based on the initial sale price, allowed capital improvements of up to 1% per year are permitted. (For example, in the seventh year, if no other capital improvements have been claimed, up to \$12,040 (\$1,720 X 7) of capital improvements could be added to the maximum Allowable Sale Price.)
- At the end of year 15 the townhouse will be appraised at owner's cost and the maximum Allowable Sale Price will be calculated as a percentage of the appraised market value, which percentage will be the ratio that the unit owner's Allowable Sale Price in the Condominium unit bears to the appraised market value. For illustrative purposes, assume the townhouse's value increases by 5% annually, so that in 15 years the townhouse's market value is \$498,943, the Maximum Allowable Sale Price is \$260,165, and the Maximum Allowable Sale Price is 52.14% of such market value. From years 16 through 20 the Allowable Sale Price will increase to 100% of that appraisal, by equal increments.
- After 20 years, the unit can be sold at market rate with no restrictions.

A	B	C	D
Year	Maximum Allowable Sale Price	Percentage of Estimated Market Value	Estimated Market Value
1	\$ 172,000		252,000
2	\$ 177,160		264,600
3	\$ 182,475		277,830
4	\$ 187,949		291,722
5	\$ 193,588		306,308
6	\$ 199,395		321,623
7	\$ 205,377		337,704
8	\$ 211,538		354,589
9	\$ 217,884		372,319
10	\$ 224,421		390,935
11	\$ 231,154		410,481
12	\$ 238,088		431,006
13	\$ 245,231		452,556
14	\$ 252,588		475,184
15	\$ 260,165	52.14%	498,943
16	\$ 307,921	61.71%	523,890
17	\$ 355,676	71.29%	550,084
18	\$ 403,432	80.86%	577,589
19	\$ 451,187	90.43%	606,468
20	\$ 498,943	100.00%	636,791
21	<b>Resale with No Restrictions</b>		

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## EXHIBIT C ALLOWABLE CAPITAL IMPROVEMENTS

These add to the value of your home, prolong its useful life, or adapt it to new uses.

### Additions

Bathroom  
Deck  
Patio

### Heating & Air Conditioning

Heating system  
Central air conditioning  
Furnace  
Duct work  
Central humidifier  
Filtration system

### Lawn & Grounds

Retaining wall  
Sprinkler system

### Plumbing

Septic system  
Water heater  
Soft water system  
Filtration system

### Interior Improvements

Built in appliances  
Kitchen modernization

### Flooring

### Insulation

Attic  
Walls, floor  
Pipes, ductwork

### Miscellaneous

Storm windows, doors  
New Roof  
Wiring upgrades  
Security system

Repairs: these maintain your home in good condition but do not add to its value or prolong its life. You do not include these as capital improvements. *Examples*: Repainting your house, fixing your gutters or floors, repairing leaks or plastering and replacing broken window panes