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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

WHEN RECORDED RETURN TO: 2019 037536

2019 JUN 21 PM 3:11

Michael B. Reichert  
Wooden McLaughlin LLP  
One Indiana Square  
Suite 1800  
Indianapolis, Indiana 46204

MICHAEL B. BROWN  
RECORDER

6

**DECLARATION OF RESTRICTIVE COVENANT**

<sup>1st</sup> This Declaration of Restrictive Covenant ("**Declaration**") is executed as of this day of June, 2019 (the "**Effective Date**"), by MAPLE LEAF APTS, LLC, an Indiana limited liability company ("**Owner**").

**RECITALS**

- A. Owner is the owner of that certain parcel of land located in the County of Lake, State of Indiana (the "**State**"), which is more fully described on Exhibit A hereto (the "**Property**").
- B. A portion of the Property shown on the Survey by Randy Sekerez of Zarko Sekerez & Associates, Inc., dated January 31, 2019, a copy which is depicted on Exhibit B, is located within a 100 year Floodplain (said portion of the Property hereinafter referred to as the "**Floodplain**")
- C. In connection with the financing of the Property through a loan from Merchants Capital Corp., an Indiana corporation, insured by the United States Department of Housing and Urban Development ("**HUD**"), Owner has agreed to establish certain restrictions with respect to the use of the Floodplain that are intended to run with the land as more fully set forth herein.
- D. The purpose of this Declaration is to provide for permanent preservation of the Floodplain, as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises, the making, receiving and insuring of the loan, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner declares as follows:

- 1. Use Restrictive Covenant.
  - (a) From and after the Effective Date, (i) no new structure, paving, or other improvements shall be constructed on, and no new modifications or landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding or seeding, or other similar activities) shall be carried out within the Floodplain; and (ii) the use of the Floodplain shall be limited solely to passive open or green space.

**FILED**

JUN 21 2019

041905

JOHN E. PETALAS  
LAKE COUNTY AUDITOR

RETURN TO  
Chicago Title  
Closer: AJ  
File No. (TNA) 1900288

# 25<sup>00</sup>  
V# 12259  
AB

- (b) This Declaration and the covenants set forth herein restricting the use and occupancy of the Floodplain (i) shall be and are covenants running with, touching, and encumbering the Property, binding upon the Owner and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property, and (ii) are not merely personal covenants of the Owner.
- (c) Any and all requirements of the laws of the State to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to insure that these restrictions run with the land. Each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof (excluding instruments granting security interests) 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.
2. Enforcement. In the event of a breach or threatened breach of this Declaration, any party adversely affected by such breach, the county or municipality where the Property is located, the State, or the United States of America shall be entitled to institute proceedings at law or in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation thereof. The prevailing party in any such action shall be awarded its costs and expenses, including reasonable attorneys' fees, which shall be deemed to have accrued on the commencement of such action and shall be awarded whether or not such action is prosecuted to judgment.
3. Superiority. The charges and burdens of this Declaration are, and shall at all times be, prior and therefore superior to the lien or charge of any mortgage or deed of trust hereafter made affecting the Property or any part thereof, including any improvements now or hereafter placed thereon, and notwithstanding a foreclosure or other voluntary or involuntary transfer of title pursuant to such instrument, shall remain in full force and effect, but are subordinate to the security interests of record on the Effective Date. Provided, however, that a breach of any of the restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The charges and burdens of this Declaration are not intended to either create a lien upon the Property, or grant any right of foreclosure, to any person or party.
4. Release. Any person or entity having or acquiring fee or leasehold title to the Property or any portion thereof shall be required to comply with this Declaration only during the period such person or entity is the fee or leasehold owner of the Property, and thereafter shall be released therefrom, except that such person or entity shall continue to be liable for, and shall not be released from liability for, obligations, liabilities or responsibilities that accrue or accrued during said period of ownership. Although persons or entities may

be released under this paragraph, the restrictions of this Declaration shall continue to be restrictions upon the Property, running with the land, and shall inure to the benefit of, and be binding upon, their successors and assigns in title or interest.

5. Notices. All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service, mailed in the United States mail postage prepaid, or sent by electronic or facsimile transmission, and, regardless of the method of delivery used, shall be considered delivered upon the actual receipt or refusal of receipt thereof. The name, address and other information to be used in connection with such correspondence and notices to Owner shall be the then-current owner's name and address information maintained in the official real property tax records with respect to the Property.
6. Miscellaneous.
  - (a) Headings. The headings in this Declaration are for convenience only and do not in any way limit or affect the terms and provisions hereof.
  - (b) Unenforceability. If any provision of this Declaration is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
  - (c) Gender. Wherever appropriate in this Declaration, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.
  - (d) Governing Law. This Declaration shall be construed and enforced in accordance with the laws of the State.
  - (e) Remapping of Floodplain. In the event that a final Flood Insurance Rate Map or a Letter of Map Amendment issued by the U.S. Federal Emergency Management Agency (or successor federal agency having responsibility therefor) after the date of this Declaration revises the boundaries of the Floodplain with the effect of reducing the extent of the Property that is within the floodplain, the Use Restrictive Covenant in the Declaration shall apply within the revised boundaries of the Floodplain from and after the effective date of the revised Flood Insurance Rate Map or Letter of Map Amendment; provided, that Owner and its successors may not deposit fill within the Floodplain nor obtain a Letter of Map Revision based upon such fill, and any such Letter of Map Revision based on fill shall not alter the applicability of the Use Restrictive Covenant to the Floodplain as delineated prior to such Letter of Map Revision.
  - (f) Amendments. This Declaration may be amended or canceled only by written instrument executed by HUD and the then-current owner of the Property.
  - (g) No General Public Access. This Declaration does not establish any rights of access in favor of the general public for any purposes whatsoever.

- (h) Entire Agreement. This Declaration constitutes the entire agreement of Owner with respect to the subject matter hereof and supersedes all prior negotiations or discussions, whether oral or written, with respect thereto.

[Signature on following page]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be signed by its duly authorized representatives, as of the day and year first above written.

OWNER  
MAPLE LEAF APTS, LLC,  
an Indiana limited liability company

By: Maple Leaf Apartments Limited Partnership,  
an Illinois limited partnership,  
its Sole Member

By: Maple Leaf Investments Limited Partnership,  
an Illinois limited partnership,  
its General Partner

By: Financial Equity Associates, Inc.,  
an Illinois corporation,  
its General Partner

By: [Signature]  
John H. Cox, President

STATE OF California )  
 ) SS:  
COUNTY OF San Diego )

Before me, a Notary Public in and for said County and State, personally appeared John H. Cox, President of Financial Equity Associates, Inc., an Illinois corporation, which is the General Partner of Maple Leaf Investments Limited Partnership, an Illinois limited partnership, which is the General Partner of Maple Leaf Apartments Limited Partnership, an Illinois limited partnership, which is the Sole Member of Maple Leaf Apts, LLC, who, after having been duly sworn, acknowledged the execution of the foregoing Declaration of Restrictive Covenant for and on behalf of Maple Leaf Apts, LLC.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and official seal in said County, State of California as of this 14 day of June, 2019.

My Commission Expires:  
Sept. 20, 2022

[Signature]  
Notary Signature

County of Residence:  
San Diego

Mclayn Steinwascher  
Notary Printed



This instrument was prepared by Michael B. Reichert, Attorney-at-Law, Wooden McLaughlin LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204-4208. I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law (Michael B. Reichert)

**Warning**

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

**EXHIBIT A**

## Description of the Property

Lots 1 to 4, Maple Leaf, an addition to the Town of Merrillville, as shown in Plat Book 68, page 59, and as amended by plat recorded in Plat Book 81, page 28, in the Office of the Recorder of Lake County, Indiana; excepting therefrom that part of Lot 1 conveyed to the State of Indiana by Warranty Deed recorded February 24, 2006 as Document No. 2006 014912.

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**EXHIBIT B**

Depiction of the Floodplain

[See attached survey]



CONVEYANCE TO BE MADE BY THE LANDLORD TO THE TENANT... [REDACTED]

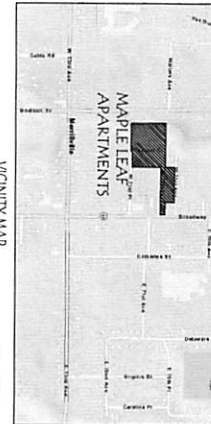
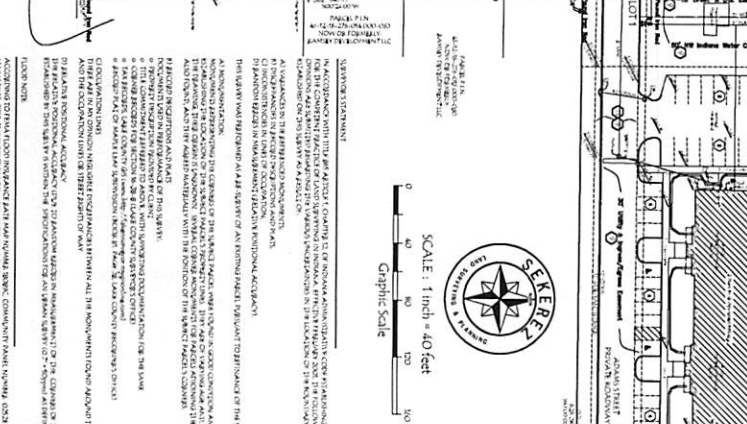
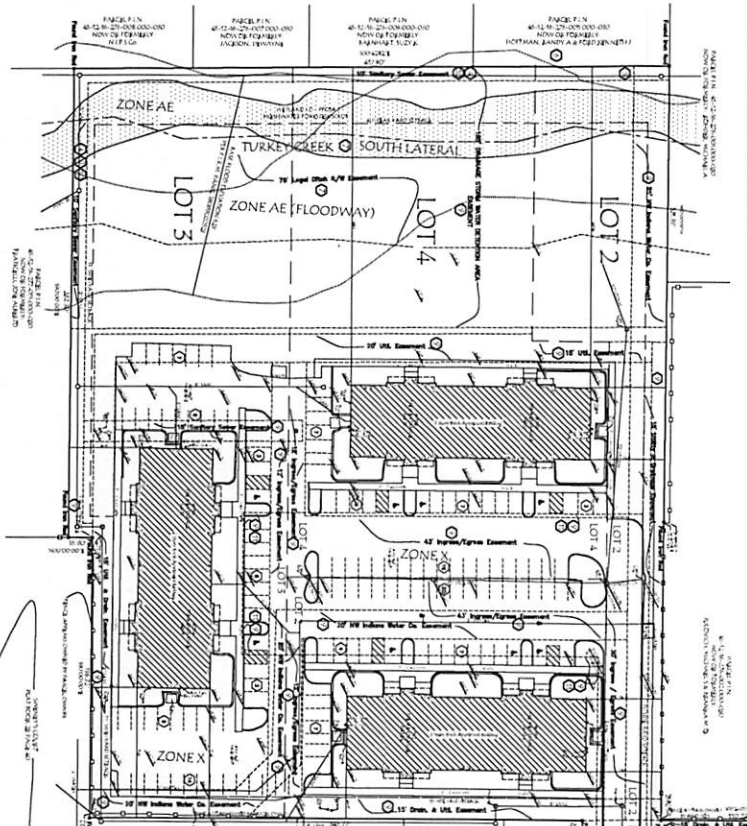
1. The property is to be used as a... [REDACTED]

2. The property is to be used as a... [REDACTED]

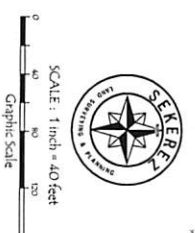
3. The property is to be used as a... [REDACTED]

4. The property is to be used as a... [REDACTED]

5. The property is to be used as a... [REDACTED]



SUBJECT PARCEL IS OWNED BY... [REDACTED]



STATE	CURRENT ZONING	RECOMMENDED ZONING	STATUS
IN	RES-3	RES-3	Consistent
IN	RES-3	RES-3	Consistent
IN	RES-3	RES-3	Consistent
IN	RES-3	RES-3	Consistent
IN	RES-3	RES-3	Consistent

1. The property is to be used as a... [REDACTED]

1. The property is to be used as a... [REDACTED]

1. The property is to be used as a... [REDACTED]

COX, OAKES & ASSOCIATES LTD  
1051 Perimeter Drive, Suite 550  
Schaumburg, Illinois

ALTA/NSPS LAND TITLE SURVEY  
7106 - 7120 Broadway  
Merrillville, Indiana

ZARKO SEKEREZ & ASSOCIATES, INC.  
Land Surveyors & Land Planners

SHEET 1 OF 1  
DATE: May 27, 2009  
PROJECT NO: 18653