

SHERRY WITT
REGISTER OF DEEDS
KNOX COUNTY

This Instrument Prepared By:
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DECLARATION FOR MARKETS AT CHOTO

THIS DECLARATION FOR MARKETS AT CHOTO (the "Declaration") is made and entered into this the 12th day of October, 2011, by **MARKETS AT CHOTO, LLC**, a Tennessee limited liability company (the "Declarant"), with principal offices located at 213 Fox Road, Suite 100, Knoxville, Tennessee 37922.

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real property located in, Knox County, Tennessee, consisting of 14.121 acres, more or less, together with all improvements, easements, rights-of-way and appurtenances thereunto belonging, as more particularly shown on the Final Plat of The Markets at Choto of record as Instrument No. 201110120019865 in the Knox County Register of Deeds Office (the "Final Plat"), to which Final Plat reference is hereby made for a more particular description thereof (hereafter referred to as the "Property"); and

WHEREAS, Declarant anticipates that the Property will be developed substantially in accordance with the Site Plan attached hereto on Exhibit "A" and incorporated herein by this reference (the "Site Plan"); and

WHEREAS, as more particularly set forth on the Final Plat, and also the Site Plan, the Property is divided into four (4) lots, namely Lot 1R1R1, Lot 1R2R, Lot 1R3R and Lot 1R4R; and

WHEREAS, as of the date hereof, Declarant anticipates developing Lot 1R1R1 as a Neighborhood Shopping Center (hereafter referred to as the "Neighborhood Center Tract") and developing Lot 1R2R, Lot 1R3R and Lot 1R4R as outlots or outparcels of the Neighborhood Shopping Center (collectively, the "Outlots" and each an "Outlot");

WHEREAS, it is the Declarant's desire and intention to create certain easements, restrictions and covenants for the mutual benefit and burden of the Property and all parties having any right, title or interest therein or in any part thereof, and their respective heirs, successors and assigns; and

NOW, THEREFORE, in accordance with the foregoing preambles, which are incorporated herein, Declarant does hereby grant, declare, establish and submit the Property to the following easements, restrictions and covenants, which shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit and shall burden each respective owner thereof.

1. Definitions.

(a) “Building” as used herein shall mean any structure erected on the Property and shall include all elements and components of the structure, including eaves, porches, covered walkways, docks and other elements and components.

(b) “Common Areas and Elements” shall mean any portions of the Property and any improvements thereon which Declarant may hereafter declare to be for the use and benefit of all Owners of the Property as more particularly set forth in Section 8(a). Common Areas and Elements may include, without limitation, the Storm Drainage System, the Perimeter Fence, the 1R2R Retaining Wall, entrance structures, medians, curbs, sidewalks, driveways, private roads, utilities, signage, lighting, landscaping, irrigation systems, parks, plazas and similar improvements for common use and benefit, of all Owners of the Property, wherever located on the Property.

(c) “Improvements” shall mean any construction or installation of any type or kind, above or below ground level, including without limitation, grading, clearing, Buildings, outbuildings, utilities, trash facilities, parking lots, roadways, driveways, sidewalks, walls, fences, signs, landscaping and lighting.

(d) “Lot” shall mean any lot, tract or parcel of the Property, including, without limitation, the Neighborhood Center Tract, the Outlots and any lots, parcels or tracts into which the Property may hereafter be subdivided.

(e) “Occupant” shall mean any person or entity, including any Owner who has the right to use or occupy any portion of the Property, including, without limitation, any tenant, lessee, renter or licensee of any part of the Property.

(f) “Owner” shall mean the owner of legal title to the Property or any Lot, not including a trustee who holds the legal title for the sole purposes of securing indebtedness.

(g) “Property” shall mean the land depicted and described on the Final Plat less any portions thereof which may be dedicated for public roads, plus any additional land which Declarant may elect to annex to the Property as hereinafter provided.

2. Applicability.

(a) Establishment of Restrictions. Declarant, for itself, its successors and assigns, hereby declares that the Property is now held, and shall hereafter be held, transferred, sold, conveyed, developed, improved and occupied subject to the easements, covenants, conditions and restrictions set forth herein. The easements, covenants, conditions and restrictions are for the use and benefit of the Property and all subdivisions thereof and shall apply to and inure to the use and benefit of every

subsequent Owner and Occupant of the Property or any Lot into which the Property may be subdivided. Declarant intends that the easements, covenants, conditions and restrictions on the Property shall inure only for the benefit of current and subsequent Owners of any parcels or portions of the Property and no third party or any public body shall have any rights to enforce any portion of this Declaration for itself, in the public interest or otherwise.

(b) The Real Property. Subject to this Declaration is the Property and any additional property which Declarant may elect to annex to the Property as hereinafter provided for the purpose of making such annexed property subject to and entitled to the use and benefit of this Declaration for Markets at Choto. This Declaration does not apply to any other property of Declarant which has not been annexed by Declarant in the manner hereinafter set forth.

3. Outlot Development. The Outlots shall be developed only under the following guidelines:

(a) No temporary or corrugated signs shall be allowed without the prior written approval of Declarant;

(b) No rooftop sign shall be erected on the Building constructed;

(c) No freestanding identification sign may be erected on the Outlots without approval of the Declarant;

(d) All landscaping of the Outlots must be approved by Declarant;

(e) No Improvements shall be constructed, erected, expanded or altered on the Outlots until all architectural and engineering plans and drawings for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Declarant;

(f) All Outlots shall be kept neat, orderly, planted in grass and trimmed until improved and constructed; and

(g) Either the Owner(s) or the tenant(s) or other Occupant(s) of all of the Outlots shall maintain comprehensive public liability insurance, property damage and All-Risk hazard insurance on the Outlots their Buildings, appurtenances and other Improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the State of Tennessee; (ii) comprehensive public liability policies shall have liability limits of at least Two Million Dollars (\$2,000,000) for each occurrence, bodily injury and property damage combined; (iii) property policies shall provide for full replacement value for the Buildings and Improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to Declarant. Comprehensive public liability policies of insurance provided for in this subparagraph shall name Declarant as additional insured, as its

respective interest may appear, and each of them shall provide to Declarant certificates evidencing the fact that such insurance has been obtained.

(h) Due to its location and proximity to the Neighborhood Center Tract, any Building located on Lot 1R2R must be finished on all sides with finished building materials. Further, any parapet must also be on all sides of the Building.

4. Neighborhood Center Tract Insurance Requirements. Either Declarant or the Owner(s) or the tenant(s) or other Occupant(s) of the Neighborhood Center Tract shall maintain comprehensive public liability insurance, property damage and All-Risk hazard insurance on the Neighborhood Center Tract and the Buildings, appurtenances and other Improvements located thereon. Such insurance shall (i) be carried with reputable companies licensed to do business in the State of Tennessee; (ii) comprehensive public liability policies shall have liability limits of at least Two Million Dollars (\$2,000,000) for each occurrence, bodily injury and property damage combined; (iii) property policies shall provide for full replacement value for the Buildings and Improvements covered thereunder and (iv) not be subject to change, cancellation or termination without at least thirty (30) days prior written notice to the Owners of the Outlots. Comprehensive public liability policies of insurance provided for in this subparagraph shall name the Owners of the Outlots as additional insureds, as their respective interests may appear, and either Declarant or the Owner(s) or the tenant(s) or other Occupant(s) of the Neighborhood Center Tract shall provide to the Owners of the Outlots certificates evidencing the fact that such insurance has been obtained.

5. Construction Requirements.

(a) Continuous Construction. After commencement of any construction on any Lot, the Owner or Occupant of the Lot shall diligently and continuously pursue completion of construction, so that no Improvements remain in a partially completed condition longer than reasonably necessary for the completion of such Improvements.

(b) Temporary Facilities. Temporary offices, trailers or other facilities needed during construction shall be placed as inconspicuously as possible. Construction sites, including temporary parking and access roads, shall be maintained in a neat and orderly manner and condition. Temporary facilities shall be removed promptly upon completion of the Improvements, and the area shall be cleaned and landscaped or otherwise improved as soon as the temporary facilities are removed.

(c) Construction Debris. No construction debris shall be burned, buried or otherwise disposed of on site. Construction debris (other than soils, rocks or fuel material) shall be stored in appropriate containers and shall be removed from the site at least every two (2) weeks.

(d) Excavation. Upon completion of excavation, exposed areas shall be back-filled and the disturbed area shall be graded, leveled and promptly paved or landscaped as provided in the approved plans and as necessary to insure proper drainage.

(e) Impact on Surrounding Area. All construction of Improvements shall be undertaken in a manner designed to minimize the physical impact of the construction on adjoining areas. Owners, Occupants and their contractors shall use construction methods designed to minimize dust, mud and other debris on roads and adjoining property. No adjoining property owner of property not subject to this Declaration shall be deemed to have any rights hereunder.

6. General Requirements.

(a) Architectural Review. The Declarant or an architectural review committee appointed by it or the POA, as defined hereafter, (if established) shall have the right to review and approve all architectural and engineering plans and specifications and drawings for any Improvements or Building (collectively, the "Plans") to be located on the Property. In addition to the restrictions and requirements provided herein, the Declarant shall establish architectural design guidelines to provide for the harmonious development of the Property and keeping with the objectives of the Declarant. No Owner or Occupant shall construct, alter or maintain any Improvements or Building on the Property until such Plans have been approved in writing by Declarant. Any Building or Improvements shall be erected or constructed in substantial conformity with the approved Plans. Any changes to the Plans must be approved in advance and in writing by Declarant. Approval for any Plans that comply with the provisions of this Declaration and the architectural design guidelines established by the Declarant will not be unreasonably withheld or delayed. Declarant may exercise reasonable discretion to grant variances to the restrictions, requirements, conditions and provisions contained herein, when in it's reasonable judgment, the granting of a variance would not render the proposed Improvement or Building inharmonious or out of keeping with the objectives of the Declarant.

(b) Setbacks. Area, yard and setback requirements shall conform to applicable zoning ordinances and regulations. With the prior written approval of Declarant, an Owner or Occupant may apply for such variances as may be granted by the applicable governmental entity.

(c) Maximum Height. All Improvements shall comply with the height regulations set forth in the zoning code and regulations. With the prior written approval of Declarant, an Owner or Occupant may apply for such variances as may be granted by the applicable governmental entity.

(d) Exterior Finish. Due to the neighborhood character of the Property, finish building materials must be approved by Declarant in advance and must be applied to all sides of all Improvements. The rear of the Improvements visible from a road must be finished in the same building materials as the front and sides of the Improvements. Unpainted concrete block may not be used in any Improvements.

(e) Rooftop Equipment. All heating and cooling towers, satellite dishes, antennae and other equipment placed on Building roofs shall be screened so that the equipment is not visible

from the graded development/construction pad level of any Lot or painted or otherwise finished so that the equipment is compatible with the finished exterior of the Building.

(f) Service, Storage and Mechanical Equipment Areas. Service areas, storage areas and mechanical equipment areas shall be screened with building materials comparable to the exterior Building finish or shall be screened by landscaping. The screening method and materials shall be submitted to the Declarant for approval.

(g) Curbs and Gutters. Curbs or curb and gutter combinations shall be installed at all streets, along all driveways and beside all parking areas. All curbs must be poured in place.

(h) Parking. Parking on all Lots shall meet all applicable zoning requirements. All parking areas and driveways must be asphalt or concrete. No permanent gravel driveways or parking areas are permitted. Parking and driveway layouts, including proposed curb cuts, must be submitted to the Declarant for approval. Additionally, except for Lot 1R2R, all Lots shall provide direct access to adjacent Lots unless the Declarant waives this direct access requirement in writing as to that Lot. Parking spaces located on the Neighborhood Center Tract shall be for the sole benefit and use of the Owners and Occupants of the Neighborhood Center Tract and their agents, customers, invitees, licensees and employees; provided, however, Declarant reserves the right to designate exclusive parking spaces within the Neighborhood Center Tract for certain Owners and Occupants of the Neighborhood Center Tract in its sole discretion.

(i) Exterior Lighting. Declarant shall have the right to adopt an exterior lighting plan for the Property. Not more than .5 of one foot candle of light shall leave the boundaries of any Lot. As part of the construction of Improvements on any Lot, the Owner or Occupant shall be required to install exterior lighting comparable to exterior lighting in other improved areas of the Property. The exterior lighting plans for each Lot shall be submitted to the Declarant for approval.

(j) Utilities. All permanent utility lines shall be underground unless otherwise approved by the Declarant. Transformers or other aboveground utilities shall be appropriately placed and screened, and the plans for screening the utility equipment shall be submitted to the Declarant.

(k) Storm Drainage and Surface Water. Plans for disposal of surface water and storm drainage shall be submitted to the Declarant for approval and shall be designed to tie into the Storm Drainage System for the Property, unless otherwise excepted by the Declarant.

(l) Landscaping. Declarant may adopt a landscape plan for specific landscaping requirements for the Property. All Lots must be appropriately landscaped following the completion of any improvements on the Lot. No artificial vegetation is permitted on any Lot. For a period of twenty-four (24) months after installation, the Owner shall replace all dead or diseased landscaping material. All landscaping materials shall be mature plants and provided with an adequate irrigation system. All landscape plans shall be submitted to the Declarant for approval. Notwithstanding the preceding provisions of this Section 6(l), Declarant acknowledges that the Owner and/or Occupant of

Lot 1R2R intends use a Leadership in Energy and Environmental Design (“LEED”) landscaping plan for the landscaping of its Lot, which is a conservation plan with plants that do not require water, and Declarant hereby approves the use of LEED landscaping plans for the Lots, provided that any LEED landscaping plan for a particular Lot shall still be subject to the Declarant’s approval. Any LEED landscaping plan must be compatible and in general conformity with the Declarant’s overall landscaping plan for the Property and must be maintained in good condition and appearance.

(m) Signage. All signage must comply with all applicable laws and regulations. THE DECLARANT MUST APPROVE ALL SIGNAGE FOR THE PROPERTY. No temporary or corrugated signs are allowed, and no individuals or persons may stand or hold such signage on the Property without the prior written approval of Declarant.

(n) Perimeter Fence. Declarant will erect and maintain a perimeter fence for the Property along Northshore Drive and Choto Drive (the “Perimeter Fence”). The Perimeter Fence will be a three (3) or four (4) board “horse farm” style fence which is black, made from rough cut wood and have a maximum height of 4 feet in 8 foot sections. Each Owner hereby grants to Declarant an easement across their respective Lot for the installation and maintenance of the Perimeter Fence; provided, however, that Declarant’s erection and maintenance of the Perimeter Fence shall not unreasonably interfere with the use of Lot 1R2R or the business operations thereon.

7. Maintenance. Following completion of the Improvements, the Owners of each Lot shall maintain such Improvements in good condition and repair. The maintenance is to include, without limitation, the following:

(a) Driveways/Parking/Areas/Directional Markers: All surfaces shall be maintained in a level, smooth and evenly-colored condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality use and durability. There shall be placed, kept in repair and replaced appropriate directional signs, markers and lines.

(b) Walls/Retaining Walls. All perimeter and exterior Building walls, including, but not limited to, all retaining walls shall be maintained in a good condition and state of repair.

(c) Lighting. All lighting facilities shall be operated, in accordance with the lighting plan approved by Declarant, and kept in repair and replaced as shall be reasonably required.

(d) Buildings. All Buildings shall remain in good order, condition and repair.

(e) Exterior. All exterior areas of a Lot shall be maintained in a clean, neat and sanitary condition, removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition.



(f) Landscaping. All landscaping on a Lot shall be properly maintained so that the landscaping complies at all times with the landscape plan approved by the Declarant for the Lot, to include mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and landscaping as is necessary.

(g) Maintenance by Declarant. If any Owner or Occupant fails to maintain a Lot or the Improvements thereon as required herein, Declarant may give written notice of such failure to the Owner or Occupant. If the failure to maintain continues for a period of thirty (30) days after such notice, Declarant, at its option, may elect to go onto the Lot and carry out the necessary repairs and maintenance. In such event, Declarant shall be entitled to recover from the Owner of the Lot the cost of such maintenance and repairs, plus an administrative fee of 25% of such cost, and all costs of collection incurred by Declarant, including reasonable attorney fees and expenses.

(h) Expense of Lot Owner. Except as set forth in Section 8 below with regard to Common Areas and Elements, the respective Owners shall be responsible for and pay all maintenance expenses of their respective Lots.

8. Common Areas and Elements.

(a) Establishment of Common Areas and Elements. Declarant, at its sole option, may elect, from time to time, to create and establish Common Areas and Elements on the Property or on public rights-of-way adjacent to the Property. The Declarant hereby establishes the Storm Drainage System, the Perimeter Fence and the 1R2R Retaining Wall as Common Areas and Elements. In addition, the Common Areas and Elements may include, without limitation, retaining walls, entrance structures, medians, curbs, sidewalks, driveways, private roads, utilities, signage for the development, lighting, landscaping, irrigation systems, park, plazas and similar improvements for the common use and benefit of the Owners and Occupants, drainage facilities, storm ponds, drainage pipes, lighting, utilities and similar common elements and areas, and public rights of way and medians on which Declarant has installed landscaping, lighting or other improvements. Nothing contained herein shall require Declarant to establish or create any additional Common Areas and Elements. If Declarant elects to establish any additional Common Areas and Elements, the initial cost of construction of the Common Areas and Elements shall be borne by the Declarant. Notwithstanding the forgoing, Declarant may change, delete, enlarge, reduce or otherwise modify the Site Plan and Common Areas and Elements existing on the Property so long as such changes are done in compliance with applicable laws and ordinances.

(b) Maintenance Assessment. The Owner of each Lot (subject to the special provision for Lot 1R2R in Section 8(f) below) shall pay its pro rata share of the cost of maintaining, repairing and replacing the Common Areas and Elements and providing other services for the benefit of Owners and Occupants. The pro rata share shall be determined by dividing the acreage of the Lot by the total acreage of all Lots or parcels which make up the Property. Declarant, at its option, may elect to establish a monthly billing process for the maintenance assessment, based upon the reasonably projected cost of such maintenance, repairs and replacements. Declarant shall be entitled

POA shall thereupon succeed to the rights of the Declarant in regard to the establishment and collection of the maintenance assessment.

(f) Special Provision Regarding Lot 1R2R. Notwithstanding any other provision of this Declaration, the obligation of the Owner of Lot 1R2R to pay maintenance assessments shall be limited to its pro rata share of the costs of maintaining, repairing and replacing the Storm Drainage System and the asphalt pavement on the access road that runs from Northshore Drive along the southern boundary of Lot 1R2R for approximately two hundred and forty (240) feet and then in a relatively straight line to the back of the paved parking areas on the Neighborhood Center Tract before turning at a ninety degree (90°) angle to the right and running in a southerly direction for approximately two hundred (200) feet until it intersects with Choto Road as shown on the Site Plan attached hereto as Exhibit C and incorporated herein by reference (the "Access Road"), and the Owner of Lot 1R2R shall not be obligated to pay any maintenance assessments with respect to any other Common Areas and Elements or any other services provided for the benefit of Owners and Occupants. The pro rata share of the maintenance assessments to be paid by the Owner of Lot 1R2R with respect to the Storm Drainage System and the Access Road shall be determined by dividing the acreage of the Lot by the total acreage of all Lots or parcels which make up the Property.

(g) Special Provisions Regarding Retaining Wall on Lot 1R2R. Declarant has constructed a retaining wall along the southeast boundary line of Lot 1R2R as shown on the site plan for Lot 1R2R attached hereto as Exhibit B and incorporated herein by reference (the "1R2R Retaining Wall"), and the 1R2R Retaining Wall encroaches on to Lot 1R2R by approximately eight (8) feet at its most encroaching point. Therefore, Declarant hereby establishes the following special provisions regarding the 1R2R Retaining Wall, which shall govern and control any and all contrary provisions regarding retaining walls set forth in Section 7(b) above:

(i) Declarant hereby establishes and reserves unto itself, its successors and assigns, a perpetual non-exclusive easement on, over, under and across Lot 1R2R for the construction, maintenance, repair and replacement of the 1R2R Retaining Wall; provided, however, that said easement is established and reserved by Declarant only with respect to those portions of Lot 1R2R that are located within a ten (10) foot wide area of land located on each side and each end of the 1R2R Retaining Wall (the "Retaining Wall Easement Area"); and further provided that Declarant's erection, maintenance, repair and replacement of the 1R2R Retaining Wall shall not unreasonably interfere with the Owner's or Occupant's use of Lot 1R2R or its business operations thereon;

(ii) Declarant shall be responsible for constructing, maintaining, repairing and repairing the 1R2R Retaining Wall in accordance with all applicable laws and regulations related thereto (including the installation of hand rails on top of the retaining wall if required by applicable building codes); provided, however, that as part of the Common Areas and Elements on the Property, the Owner of each Lot (subject to the special provision for Lot 1R2R in Section 8(f) above) shall pay its pro rata share of the cost of maintaining, repairing and replacing the 1R2R Retaining Wall in accordance with Section 8(b) above;

(iii) Declarant shall defend, indemnify and hold the Owner and Occupant of Lot 1R2R harmless from any and all obligations, losses, costs, claims, actions, damages, expenses and liabilities (including reasonable attorneys fees) in any manner caused by, resulting from, or relating to circumstances or events occurring, or actions taken or failed to be taken by Declarant with respect to or relating to the construction, maintenance, repair and replacement of the 1R2R Retaining Wall, except for any obligations, losses, costs, claims, actions, damages, expenses or liabilities (including reasonable attorneys fees) in any manner caused by or resulting from the negligence, gross negligence or intentional misconduct of the Owner or Occupant of Lot 1R2R;

(iv) The Owner and/or Occupant of Lot 1R2R shall be entitled to construct Improvements on, over and around the 1R2R Retaining Wall, including within the Retaining Wall Easement Area, to facilitate the Owner's or Occupant's business operations on Lot 1R2R; provided, however, that the Owner and/or Occupant of Lot 1R2R shall repair any and all damage that may be caused to the 1R2R Retaining Wall during the construction of such Improvements by the Owner and/or Occupant of Lot 1R2R;

(v) If Declarant is required to excavate any portion of the Retaining Wall Easement Area in order to maintain, repair or replace the 1R2R Retaining Wall, or if Declarant is required to remove any Improvements constructed within the Retaining Wall Easement Area by the Owner or Occupant of Lot 1R2R in order to maintain, repair or replace the 1R2R Retaining Wall, then Declarant shall repair and restore the Retaining Wall Easement Area and all Improvements constructed thereon by the Owner or Occupant of Lot 1R2R immediately following Declarant's completion of the maintenance, repair or replacement work on the 1R2R Retaining Wall, and Declarant shall restore the Retaining Wall Easement Area to the same condition as existed immediately prior to the entry by Declarant for the performance of such maintenance, repair or replacement work; and

(vi) Declarant may transfer and assign its obligations under this Section 8(g) to the POA in accordance with Section 8(e) above to the same extent as any other obligation of Declarant related to the Common Areas and Elements on the Property.

9. Owners' Association.

(a) Creation. Declarant may elect to establish and create an association of the property Owners of Lots (the "POA"). The POA shall be a Tennessee nonprofit corporation, established for the mutual benefit of the Owners of the Lots. Declarant shall have the right to appoint the initial members of the Board of Directors of the POA and to adopt bylaws of the POA. The Board of Directors shall be elected thereafter by the members of the POA.

(b) Membership. If Declarant elects to create and establish the POA, the Owners of all Lots into which the Property is divided or subdivided shall be members of the POA. Each member shall be entitled to one (1) vote for each one (1) acre of Property owned by the Owner, with

ownership of one-half (1/2) acre or more to be rounded up to the next acre, and ownership of less than one-half (1/2) acre to be rounded down; provided, however, each Owner shall be entitled to at least one (1) vote.

(c) Assessments. Upon conveyance of the Common Areas and Elements to the POA, the POA shall have the right to establish maintenance assessments in the same manner provided in Section 8(b), including without limitation the right to recover costs of collection, including reasonable attorney fees and expenses, subject to the provisions of Section 8(f) regarding Lot 1R2R.

10. Enforcement.

(a) Interpretation. In case of uncertainty as to the meaning of any portion of this Declaration, the interpretation of Declarant shall be final and binding upon all parties.

(b) Inspection. Declarant may from time to time during normal business hours enter and inspect any Lot subject to this Declaration to determine compliance of the Lot with the requirements of this Declaration.

(c) Suit to Enforce. Only the Declarant and every Owner and Occupant shall have the right to enforce the provisions of this Declaration by a proceeding at law or in equity against the person or persons who have violated or are violating this Declaration, to enjoin the continued violation of the Declaration, to cause the violation to be remedied and abated and/or to recover damages as a result of the violation. In any legal or equitable proceedings for the enforcement of this Declaration, the prevailing party shall be entitled to recover all cost of enforcement against the other party, including reasonable attorney fees and expenses. The extent to which a party is determined to be a "prevailing party" and the appropriate allocation of attorneys' fees and costs and other expenses shall be decided by the court.

(d) Non-waiver. The failure of Declarant or any Owner or Occupant to enforce this Declaration shall not be deemed to be a waiver of the right to enforce this Declaration thereafter or to enforce any other covenant or restriction of this Declaration.

11. Use. Buildings constructed within the Property shall be used for commercial purposes of the type normally found in a retail neighborhood commercial zone, including, without limitation, financial institutions, service shops, offices, and retail stores.

12. Easements.

(a) Grant of Access Easements. Declarant hereby establishes and grants a nonexclusive easement for the benefit of the Owners and Occupants of the Lots, and their agents, customers, invitees, licensees, tenants and employees, over, through, across and around the driveways, paved areas, roadways and walkways as the same may exist from time to time on the

Property for vehicular and pedestrian access, ingress and egress over and across the Property (the "Cross Access Easement"); provided, however, that as long as LKM Properties, L.P. ("LKM Properties") or another entity under common ownership or control with LKM Properties is the Owner of Lot 1R2R, Lot 1R2R shall not be subject to the Cross Access Easement. Notwithstanding the preceding provisions of this Section 12(a), Lot 1R2R shall be subject to a Cross Access Easement if a Cross Access Easement is required by Knox County or other governmental authority in connection with Declarant's development of the Property, but only with respect to the joint curb cut or joint entrance that is currently planned on Northshore Drive to serve both Lot 1R2R and Lot 1R3R, and not with respect to any other portion of Lot 1R2R or the Access Road adjacent to Lot 1R2R. In the event Lot 1R2R is subsequently sold to a person or entity other than LKM Properties or an entity under common ownership or control with LKM Properties, then Lot 1R2R shall immediately become subject to the Cross Access Easement at the closing of such sale. The Owner or Occupant of a Lot shall be responsible for and pay for any damage caused to any paved areas, driveways, roadways or walkways resulting from the operation of their business, including, without limitation, damage caused by fuel and other delivery trucks. The Owner or Occupant shall repair such damage promptly and in a good workmanlike manner. Any portion of such areas which is damaged shall be restored to the same condition as existed prior to such damage.

(b) Grant of Easement for Common Areas and Elements. To the extent created by Declarant, it hereby establishes and grants a non-exclusive easement for the benefit of the Owners and Occupants of the Lots, and their agents, customers, invitees, licensees, tenants and employees for the use of the Common Areas and Elements. Any activity within or use of the Common Areas and Elements other than their primary purpose shall be permitted only with the prior written consent of Declarant.

(c) Grant of Utility and Service Easements. Declarant hereby establishes and grants a nonexclusive easement for the benefit of the Owner of each Lot, on, across and under the Common Areas and those areas of the Property not used for buildings, to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Property), now upon or hereafter installed on, across or under the Common Areas or those areas of the Property not used for buildings, to the extent necessary to service such Lots (the "Utility Easement"); provided, however, that for so long as LKM Properties or another entity under common ownership or control with LKM Properties is the Owner of Lot 1R2R, Lot 1R2R shall not be subject to the Utility Easement but will be subject to the easement for the Storm Drainage System described in Section 12(d) below. In the event Lot 1R2R is subsequently sold to a person or entity other than LKM Properties or an entity under common ownership or control with LKM Properties, then Lot 1R2R shall immediately become subject to the Utility Easement at the closing of such sale. All parties shall use reasonable efforts to cause the installation of such utility and service lines prior to paving. The location of any utilities hereafter installed shall be determined by the Owner of the Lot upon which such utilities are to be installed. Any utility services installed on a Lot may be relocated by the Owner or Occupant of that Lot, subject to compliance with applicable laws, at the expense of the Owner or Occupant of that Lot, provided that such relocation shall not interfere with, increase the

cost of, or diminish utility services to any other parcel of the Property. If utility services installed on a Lot need to be relocated to facilitate the development or redevelopment of another Lot, the Owner or Occupant of the Lot that is being developed or redeveloped shall be responsible for the costs of relocating the utility services on such other Lot, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other parcel of the Property. Any maintenance or relocation of utilities (“Utility Maintenance”) shall be performed as follows: (a) any and all portions of the surface area which may have been excavated, damaged or otherwise disturbed as a result of Utility Maintenance shall be promptly restored to essentially the same condition as the same were in prior to the commencement of such work; (b) except in case of an emergency, no Utility Maintenance will be done during the months of September, October, November or December; (c) to the extent reasonably practicable, Utility Maintenance will be performed in a manner which affects the least number of parking stalls for the shortest period of time; and (d) access will be available to all portions of the Property from public thoroughfares for both passenger and delivery vehicles at all times while Utility Maintenance is being performed.

(d) Grant of Water Flow Easement. Declarant hereby establishes and grants a nonexclusive easement for the benefit of the Owners of the Lots to utilize and tie into the master storm water drainage system (the “Storm Drainage System”) to be established by the Declarant for the Property as a whole, together with the right to discharge surface water runoff across portions of the Property in accordance with the design of the Storm Drainage System.

13. Eminent Domain. Nothing herein shall be construed to give the Owner of the Lots any interest in any award or payment made to another party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party’s property or giving the public or any government any rights in said property.

14. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the Lots, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on the any Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

15. Release from Liability. Any person acquiring fee or leasehold title on the Lots subject hereto, or any portion thereof, shall be bound by this Declaration only as to the Lot, or portion thereof, acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Lot, or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said property running with the land.

16. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Declaration shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors

and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

17. Duration. Subject to the amendment rights of Declarant set forth in Section 21, the easements, covenants, conditions and restrictions of the Declaration shall run with the land and shall be binding on and inure to the benefit of every subsequent Owner and Occupant of the Property and their respective successors and assigns for a period of thirty (30) years and shall automatically renew thereafter for successive periods of ten (10) years each until such time as the Owners of a majority of the then Owners of the Property, such majority to be determined in the manner set forth in Section 9(b), elect to terminate and release this Declaration by the execution and recording of a termination and release in the Register's Office for Knox County, Tennessee.

18. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

19. Transfer of Interests: Notices.

(a) In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any Lot subject to this Declaration, or any portion thereof, and the Acquiring Party desires to receive any notices provided for in this Declaration, the Acquiring Party shall execute a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Declaration may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). The Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any Lot subject to this Declaration, or any portion thereof, as reflected by the real estate records of Knox County, Tennessee (the "Existing Interest Holders"). Until such time as an Acquiring Party mails such Notice Statement in accordance with the terms of this Subparagraph (a), it shall not be entitled to receive any notice required or permitted to be given under this Declaration, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party.

(b) Any notice hereunder shall be in writing and shall be served by overnight delivery service or certified mail, return receipt requested, postage prepaid. The initial address for Declarant is:

213 Fox Road, Suite 100
Knoxville, Tennessee 37922
Attention: John Huber

A copy of any such notice shall also be contemporaneously delivered in the manner herein specified to any fee mortgagee or Owner who shall have duly registered with any party its name and address. Notice shall be deemed given when received.

20. No Negative Reciprocal Easement or Restriction. Each of the Lots are to be bound and burdened by only those easements, restrictions and covenants that are expressly stated to be applicable to each by the terms of this Declaration. No easement, restriction or covenant shall be extended to include any other tract or parcel of property owned or leased by Declarant or any party through the doctrine of negative reciprocal covenant or easement, by way of implication or in any manner other than the specifically expressed statement that such tract or parcel be so bound.

21. Amendment. Declarant reserves the right to change the Common Areas and Elements and to alter the boundaries of the Lots so long as the Declarant owns the tract so altered. Changes in the boundaries shall be reflected by an amendment to the Final Plat of the Property, and, if necessary, an amendment to this Declaration. An amendment to the Final Plat or the Declaration reflecting an alteration of the Common Areas and Elements and boundaries of the Lots owned by Declarant need be signed and acknowledged only by the Declarant and need not be approved by any Owner or Existing Interest Holders. Further, Declarant reserves the right to supplement or amend this Declaration in whole or in part to facilitate the development of the Property; provided, however, that Declarant may not amend or delete the provisions of Section 6(h), Section 6(l), Section 6(n), Section 8(f), Section 8(g), Section 9(c), Section 12(a), Section 12(c) or Section 21 of this Declaration without the written consent of the Owner of Lot 1R2R for so long as LKM Properties or another entity under common ownership or control with LKM Properties is the Owner of Lot 1R2R. If Declarant subsequently creates a POA, the POA may not amend or delete the provisions of Section 6(h), Section 6(l), Section 6(n), Section 8(f), Section 8(g), Section 9(c), Section 12(a), Section 12(c) or Section 21 of this Declaration without the written consent of the Owner of Lot 1R2R for so long as LKM Properties or another entity under common ownership or control with LKM Properties is the Owner of Lot 1R2R. Any such amendment shall be recorded in the Knox County Register of Deeds Office and a copy sent to the Owners, Occupants and Existing Interest Holders.

22. Transfer of Declarant's Rights and Duties. In connection with a conveyance of all or a portion of the Property to a new Owner or in the event of conveyance of Common Areas and Elements to a POA, Declarant may assign its duties, rights, and powers under the Declaration to the new Owners and/or the POA. Where the transferee consents in writing to accept such assignment and to assume such duties as to the Property or Common Areas and Elements so conveyed, Declarant shall be relieved of all obligations thereafter accruing hereunder as to such Property or Common Areas and Elements so conveyed.

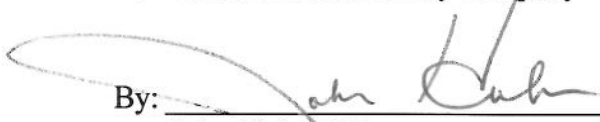
23. Severability. Invalidation of any provision of this Declaration by court order or judgment shall not in any way affect the validity of the other provisions of the Declaration which shall remain in full force and effect.

24. Annexation of Additional Property. Declarant may annex additional property to the Property for the purpose of making such annexed property subject to and entitled to the use and benefit of these easements, covenants, conditions and restrictions. If additional land is annexed as

permitted above, the land so added shall become a part of the Property and subject to the easements, covenants, restrictions and conditions of the Declaration.

IN WITNESS WHEREOF, Markets at Choto, LLC, a Tennessee limited liability company, the Declarant herein, by and through its duly authorized Manager, has executed the foregoing Declaration as of the day and year first above written.

**MARKETS AT CHOTO, LLC, a
Tennessee limited liability company**

By: 
John Huber, Manager

STATE OF TENNESSEE)
)
COUNTY OF KNOX)

Before me, the undersigned authority, Angelia J McNaair [name of notary], a Notary Public in and for said County and State, personally appeared **JOHN HUBER**, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself to be the Manager of **MARKETS AT CHOTO, LLC**, the within named bargainor, a limited liability company, and that he as such Chief Manager being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Chief Manager.

Witness my hand and seal at office, this 12 day of October, 2011.


Notary Public

My Commission expires: _____
My Commission Expires 3/8/2015.




Page: 17 OF 23
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EXHIBIT "B"

Site Plan of Lot 1R2R
Showing 1R2R Retaining Wall

(On Next Page)



Page: 20 OF 23

201110120019866

EXHIBIT "C"

Site Plan Showing "Access Road"

(On Next Page)



Page: 22 OF 23

201110120019866

