

**DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS AND CONDITIONS**

THIS Declaration of Protective Covenants, Restrictions and Conditions (this “Declaration”) is made this 30th day of June 2020, by GW Eastland, LLC, a Kentucky limited liability company and 1540 Eastland, LLC, a Kentucky limited liability company (hereinafter collectively referred to as “Declarant”), c/o Jon A. Woodall at 201 East Main Street, Suite 900, Lexington, Kentucky 40507.

RECITALS

A. Declarant owns the real property located in Lexington, Kentucky as more particularly described on Exhibit “A” attached hereto and incorporated herein (the “Property”).

B. The Property shall be the subject to this Declaration and for the purposes of this Declaration shall be known as the Eastland Retail Center (the “Center”).

C. Declarant intends to develop the Center as a planned and landscaped business and commercial complex of high quality.

NOW, THEREFORE, pursuant to a general plan of improvement for the Center, the Declarant hereby declares that the Property, is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, developed and improved subject to the covenants, conditions, restrictions, and limitations hereinafter set forth, all of which are declared to be in furtherance of a plan for the subdivision, improvement, sale and lease of Lots (as defined in Section 1.6 below) in the Center, and are established for the purpose of complementing Lexington-Fayette Urban County Government (“LFUCG”) ordinances, resolutions and regulations, and enhancing the value, desirability, and attractiveness of the Center and every part thereof. Except where the provisions of this Declaration conflict with such LFUCG ordinances, resolutions and regulations, all of said covenants, conditions, restrictions and limitations shall run with the Center and every part thereof, shall bind all parties having or acquired any right, title or interest in the Center or any part thereof, shall be for the benefit of each Owner (as defined in Section 1.9 below) of any portion of the Center, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the Owners thereof.

**ARTICLE I
DEFINITIONS**

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Declaration, have the meanings herein specified.

Section 1.1 Architect. “Architect” shall mean a person holding a currently valid and effective certificate to practice architecture in the Commonwealth of Kentucky under authority of Chapter 323 of the Kentucky Revised Statutes and any regulations issued thereunder.

Section 1.2 Landscape Architect. “Landscape Architect” shall mean a person holding a currently valid and effective certificate to practice landscape architecture in the Commonwealth of Kentucky under authority of Chapter 323A of the Kentucky Revised Statutes and any regulations issued thereunder.

Section 1.3 Building. “Building” shall mean the principal structure or structures on any Lot, including all garages, outside platforms, outbuildings, docks and the like.

Section 1.4 Declarant. “Declarant” shall mean both GW Eastland, LLC, a Kentucky limited liability company, as well as 1540 Eastland, LLC, a Kentucky limited liability company, and their respective successors and assigns, which shall be deemed to include any party whom Declarant designates, by means of a notice recorded in the office of the Fayette County Clerk, as the party who, from and after the date such notice is recorded, will perform Declarant’s functions under this Declaration.

Section 1.5 Improvements. “Improvements” shall include Buildings, outbuildings, roads, driveways, Parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, exterior lighting, signs, loading areas, propane and other tanks, utility improvements and all other structures and/or equipment or landscaping improvements of every type and kind.

Section 1.6 Lot. “Lot” or “Lots” shall mean a contiguous area of land in the Center which is owned of record by the same Owner, whether designated as one or more Lots, one or more parcels, or as a combination of Lots, parcels or portions of Lots or parcels on any recorded plat of the Center or any portions of the Center.

Section 1.7 Mortgage. “Mortgage” shall mean, with respect to any portion of the Center, a duly recorded mortgage or other instrument which creates a lien on the portion of the Center it purports to describe.

Section 1.8 Mortgagee. “Mortgagee” shall mean, with respect to any Mortgage on any portion of the Center, the holder of record of the security interest under such Mortgage.

Section 1.9 Owner. “Owner” or “Owners” shall mean any person, firm, corporation, or other legal entity (including Declarant) which owns fee simple title to a Lot, as shown by the records in the office of the Fayette County Clerk; provided, however, that a Mortgagee shall not be deemed an Owner.

ARTICLE II **PURPOSE**

The Center is hereby made subject to the following conditions, covenants, restrictions and reservations, all of which shall be deemed to run with the Center and every parcel thereof, to ensure proper use and appropriate development and improvement of said premises so as to: (a) protect the Owners and lessees of Lots against such improper development and use of surrounding Lots as will depreciate the value and use of their Lots; (b) prevent the erection on the Center of structures

constructed of improper or unsuitable materials or with improper quality and methods of construction; (c) ensure adequate and reasonably consistent development of the Center; (d) encourage and insure the erection of attractively designed permanent improvements appropriately located within the Center in order to achieve harmonious appearance and function; (e) provide adequate off-street Parking and loading facilities; and (f) generally promote the welfare and safety of the occupants, lessees and Owners of Lots.

ARTICLE III
ADDITION OF PROPERTY TO THE CENTER

At any time, Declarant may add to the Center any portion of any land, which whether now owned or hereafter acquired, is contiguous to the perimeter of the Center (or which is contiguous to the perimeter of the Center except for the fact that it is separated by a public street). The addition may be effected by, and only by, recording, by the Owner with respect to the land, a supplemental declaration of covenants, restrictions and conditions of the Center which contains and applies to the land all the provisions of this Declaration and which expressly states that the land is to be included in the Center. Thereupon, such land shall be included in the Center for all purposes and subject to this Declaration in the same manner as if such land were originally covered by this Declaration. Such Supplemental Declaration shall contain, among other provisions, a reference to this instrument, including the date and place of its recordation in the office of the Fayette County Clerk.

ARTICLE IV
APPROVALS

Section 4.1 Approval Required. No Improvement shall be constructed, maintained, altered or permitted to remain within the Center unless and until duplicate plans and specifications showing the Lot layout, exterior elevations with materials and colors thereof, signs, landscaping plan, and any other Improvements shall have been submitted to and approved in writing by Declarant. The duplicate plans and specifications shall be submitted to Declarant in writing over the authorized signature of the Owner, lessee, licensee or other occupant of the Lot or its authorized agent prior to final submission of said plans to officials of the LFUCG for a building permit. Changes in approved plans and specifications which affect building size, placement, landscaping or external appearance must be similarly submitted in duplicate to and approved by Declarant. Notwithstanding the Declarant's written approval of any such final plans and specifications, such approval shall not in any way alter, amend, modify or abridge the conditions, covenants and restrictions of this Declaration, it being the expressed intention of Declarant to avoid inadvertently approving any such plans and specifications which conflict with this Declaration.

Section 4.2 Basis for Approval. The Declarant shall base its approval (or disapproval) on considerations which shall include, without limitation: (a) accurate Lot dimensions; (b) conformity and harmony of external design with adjoining Lots; (c) the nature of harmony of external design with adjoining Lots; (c) the nature of Improvements on adjoining Lots; (d) the types of operations and uses thereof; (e) relation of topography, grade and finish ground elevation of the Lot being improved to that of the adjoining Lots; (f) proper facing of main elevation with respect to nearby streets; (g) adequacy of screening of mechanical, air conditioning or other roof top installations; and (h) conformity of plans and specifications to the purpose and general plan

and intent of this Declaration. Declarant shall not unreasonably withhold its approval of such plans and specifications, subject to the provisions of this Declaration. Minimum Lot size of one (1) acre, except those Lots originally platted as being less than one (1) acre, will be required unless otherwise approved in writing by the Declarant; it being specifically understood that Declarant may approve the further subdivision of a Lot into two (2) or more Lots of less than one (1) acre.

Section 4.3 Presumptive Approval. If Declarant fails either to approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to Declarant, it shall be conclusively presumed that Declarant has approved said plans and specifications. If within said thirty (30) day period Declarant gives written notice of the fact that a reasonable additional period is required for the approval of such plans and specifications, (said time period not to exceed an additional ten (10) days) there shall be no presumption that the same are approved until the expiration of the extended period set forth in said notice. Such presumptive approval of plans and specifications shall be subject to all the restrictions set forth in this Declaration and shall not relieve applicant from any intended covenant.

Section 4.4 Liability. Declarant's approval of any Building plans, specifications, Lot or landscape plans or elevations or any other approvals or consents given by Declarant pursuant hereto or otherwise, is given solely to protect the property values and overall visual appeal of the Center and shall not be deemed a warranty, representation or covenant that such Buildings, Improvements, landscaping or other action taken pursuant thereto or in reliance thereon complies with, or is not in violation of, any applicable laws, rules or regulations, and by taking title to or leasing any part of the Center, the Owner and/or occupant, for themselves and their heirs, successors and assigns, do hereby expressly release and relieve Declarant of any and all liability in connection therewith. Declarant shall not be liable for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, specifications, Lot or landscape plans or elevations or any other approvals or consents whether or not defective; (b) the construction or performance of any work whether or not defective regardless of whether said approval or disapproval be made by Declarant or a division of LFUCG; (c) the construction or performance of any work whether or not pursuant to approved plans, drawings and specifications; or (d) the development of any property within the Center.

ARTICLE V **REGULATION OF IMPROVEMENTS**

Section 5.1 Zoning Designation. The Center is in an area designated as a Highway Service Business (B-3) Zone as set forth in the LFUCG Zoning Ordinance. In the event that any of the provisions contained in this Declaration conflict with any provision of the LFUCG Zoning Ordinance, the LFUCG Zoning Ordinance shall control.

Section 5.2 Minimum Setback Lines. No Building or structures of any kind and no part thereof shall be placed closer than ten (10) feet from any side property line, three (3) feet from a rear property line or twenty (20) feet from any right-of-way line, except those Lots designated as having lesser or greater building setbacks as shown on the applicable final record plats of the Center, in which case the setbacks as shown on such plats will prevail. Declarant may waive this

regulation to conform to Section 5.11 below or any applicable Ordinance, regulation or condition of the LFUCG.

Section 5.3 Exceptions to Setback Requirements. The following structures and Improvements are specifically excluded from the foregoing setback requirements:

- (a) Roof overhang, subject to the specific approval of Declarant in writing;
- (b) Steps, walks, and walkways, subject to the specific approval of Declarant in writing;
- (c) Paving and associated curbing;
- (d) Fences, except that no fence shall be placed within the street setback area unless it is 36 inches or less in height, and screen walls with specific approval by Declarant in writing;
- (e) Landscaping, as set forth in Section 5.11 below;
- (f) Planters, not to exceed three (3) feet in height;
- (g) Signs, as set forth in Section 5.6 below, and
- (h) Lighting facilities, subject to the specific prior written approval of Declarant.

Section 5.4 Completion of Improvements.

(a) Commencement of Work. Upon receipt of approval from Declarant pursuant to Article IV above, the Owner or lessee to whom the same is given shall as soon as practical satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved construction, refinishing, alterations and excavations. In all cases, work shall be commenced within one (1) year from the date of such approval. If there is a failure to comply with this Section 5.4(a), then the approval given pursuant to Article IV above shall be deemed revoked unless Declarant, upon request made prior to the expiration of said one (1) year period, extends the time for commencing work.

(b) Completion of Work. In any event, construction, refinishing or alteration of any such Improvements shall be completed within one (1) year after the commencement thereof except for so long as such completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, pandemics, epidemics, government closures, natural calamities or other supervening forces beyond the control of the Owner, lessee, licensee, or occupant or such entity's agents. Failure to comply with this Section 5.4(b) shall constitute a breach of this Declaration and subject the defaulting party or parties to all the remedies or enforcement procedures available hereunder or at law or in equity.

Section 5.5 Excavation. No excavation shall be made on, and no sand, gravel, soil or other material shall be removed from, any Lot, except in connection with the construction of

Improvements. Upon completion of such construction, exposed openings shall be backfilled to grade and disturbed ground shall be graded level and paved or landscaped in conformity with the requirements of this Declaration.

Section 5.6 Signs. No signs of any type shall be permitted on any Improvements or land in the Center unless specific approval of the wording, size, location, design, materials and color thereof is given by Declarant in writing prior to the erection thereof. All signs shall be subject to the ordinances, resolutions and regulations of the LFUCG. Declarant may establish in writing sign criteria for the Center and may amend such sign criteria from time to time.

Section 5.7 Real Estate and Construction Signs. All signs relating to the sale of the property or the leasing, financing or construction within the Center shall comply with the provisions of Section 5.6 above and with uniform standards and design criteria adopted by Declarant for such signs. No more than one (1) such sign shall be displayed on any Lot at one time except corner Lots which may be permitted two (2) signs, one (1) for each street frontage.

Section 5.8 Communications Equipment, Antennas and Solar Devices. The location, size and design of any communications equipment constructed on any Improvements or land in the Center shall be subject to the prior written approval of Declarant. Declarant reserves the right to approve or disapprove at its sole discretion the construction and maintenance of any such communications equipment on any Lot. No antenna for transmission or reception of television signals, satellite dish receivers or any other form of electromagnetic radiation shall be erected, used or maintained on any Lot outside any Building, whether attached to an Improvement or otherwise, without the prior written approval of the Declarant. Solar collectors are permitted. All solar panels, collectors and accessories must be architecturally integrated into the Building design, or, if free standing, must be visually screened from both adjoining Lots and all streets by landscaping or other means acceptable to Declarant.

Section 5.9 Parking Areas. Adequate off-street Parking shall be provided to accommodate all Parking needs for employee, visitor and company vehicles on each Lot. The intent of this provision is to eliminate the need for any on-street Parking; provided that this provision does not prohibit on-street Parking of public transportation vehicles. If Parking requirements increase as a result of a change in use or number of employees, additional off-street Parking shall be provided by the Owner or lessee or occupant of the Lot to satisfy the intent of this Section 5.9, provided, however, that such additional Parking shall not, as determined by Declarant, conflict with the approved landscape plan for the Lot or any other provision of this Declaration. The size of Parking spaces shall satisfy the requirements of applicable law, including, without limitation, applicable ordinances, resolutions and regulations of the LFUCG. The number of Parking spaces required for each Lot, and the specific location of the same, shall be designated in plans for each Lot which have been submitted and approved in the manner set forth herein. In determining the number of Parking spaces and the location thereof on each Lot, Declarant shall consider the exact nature of the use proposed for the Lot; the anticipated number and manner of employment of persons on the Lot; the nature and location of proposed structures on the Lot; and such other matters as Declarant shall deem relevant. There shall be maintained on each Lot facilities for Parking and passenger loading and unloading sufficient to serve the business conducted thereon without using adjacent streets therefor.

Parking shall be designed and constructed in accordance with the plans approved by the Declarant and shall be maintained thereafter in good condition and repair by the occupant or use. Parking shall not be permitted between public street pavements and the street property line or closer than ten (10) feet to any street curb line. The Parking requirements may be modified by Declarant as to any particular Lot.

Section 5.10 Freight Loading and Unloading. Improvements shall be designed and located on each Lot so that vehicles will not be loaded or unloaded on or from any street unless Lot contours and Lot size unfairly restrict proposed construction. Sufficient space for loading and unloading (according to the reasonable requirements of the occupant of the Lot) shall be provided on each Lot. Loading and unloading docks shall be set back a minimum of 40 feet from the street curb line, unless specific approval is given by Declarant in writing, and shall be screened to minimize the effect from the street and from the adjoining Lots.

Section 5.11 Landscaping. Landscaping shall be as required under Article 6-9 of the Land Subdivision Regulations, Article 18 of the Zoning Ordinance. Every Lot on which a Building shall have been placed shall be landscaped and maintained in accordance with landscaping criteria established by Declarant, as the same may be modified from time to time, and in accordance with the plans and specifications submitted to and approved by Declarant pursuant to Article IV above. Landscape plans shall be submitted to Declarant for review by Landscape Architect retained by Declarant. Plans shall reflect location of all plant material, their respective sizes and a schedule indicating detailed information on plant species. Other pertinent landscape features such as berms, signs, fences, walls and landscape lighting shall also be indicated on such landscape plans. Landscaping as approved by Declarant shall be installed within ninety (90) days of occupancy or completion of the Building, whichever occurs first, unless Declarant approves, in writing, another completion date. The Owner of every Lot or part thereof shall at all times maintain the required landscaping in a sightly and well kept condition, including, without limitation, such replanting and replacement as is from time to time required.

Minimum plant material requirements shall be:

- | | | |
|----|--------------------------------|------------------------|
| a. | Shade Trees | - 2" caliper |
| b. | Flowering Trees | - 2 1/2" caliper |
| c. | Coniferous Evergreen Trees | - 6' height |
| d. | Shrubs – Deciduous & Evergreen | - 18" height |
| e. | Ground Cover | - 6-8 liners per clump |

A listing of acceptable and unacceptable plant materials shall be maintained at Declarant's office.

Undeveloped areas proposed for future expansion shall be maintained in a weed-free condition and shall be landscaped if required by Declarant. In general, Declarant will not approve landscaping plans which do not provide for (a) landscaping (including grass or ground cover) the areas between public street pavements and the sidewalk (excluding driveways) and maintained as though it were within the Lot and (b) at least ten percent (10%) of the gross area of the Lot being maintained in lawns and/or approved ground cover (for Lots up to two (2) acres and five percent

(5%) for Lots over two (2) acres). All Lots shall have perimeter landscaping which totals thirty-six (36) feet in width on four (4) sides, but the front planting area will be no less than ten (10) feet and no side or rear yard shall be less than three (3) feet minimum. Declarant may waive the three (3) feet minimum if the Building abuts a property line along a railroad or a special condition exists where the Building foundation serves as a retaining wall. Unpaved areas between the street curb line and the Building line shall be landscaped (including grass or ground cover) and maintained by the Owner or occupant. Areas used for Parking or access drives shall be landscaped, bermed or fenced in such a manner as to screen said areas from view from adjacent streets and expressways. The screening in conjunction with berming shall extend at least twenty-four (24) inches above the high point of the finished pavement in the Parking area. Plant materials used for this purpose shall consist of lineal or grouped masses of shrubs and/or trees. Lots less than one (1) acre may be reduced by up to fifty percent (50%) of the preceding setbacks only with demonstrated cause and permission of Declarant.

If, in the reasonable opinion and sole discretion of the Declarant, the required landscaping is not maintained in a slightly and well-kept condition, Declarant shall have the right, but not the obligation, through its agents and employees, to enter any Lot and to take such steps as may be necessary to maintain the landscaping in a slightly and well-kept condition. Declarant, or any such agent or employee, shall not thereby be deemed to have trespassed upon such Lot and shall be subject to no liability to the Owner or occupant of such Lot for entry and for any action taken in connection with such necessary maintenance. The cost of any such maintenance hereunder shall be a binding personal obligation of such Owner, secured by a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided in this literary paragraph shall not be valid as against a bona-fide purchaser (or bona-fide mortgagee) of a Lot in question unless a notice of lien shall have been filed in the office of the Fayette County Clerk before the recording of a deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

Sewer manholes shall not be covered by grading, sodding or any other construction activity.

Section 5.12 Storage Areas. No materials, products, supplies, equipment, trash containers, trash, refuse, inoperable vehicles, boats, motor homes or trailers shall be stored on a Lot (or on any dedicated right-of-way on any record plat) except (a) inside a Building or (b) behind a visual barrier which screens the stored material from view from street, which barrier shall not be less than six (6) feet in height, or higher if approved in writing by the Declarant. Screening shall be a combination of a permanent fence, and/or deciduous and/or evergreen trees. Screening and fence detail shall be submitted for review. Storage areas shall not be located in front of a Building line. all storage areas shall be treated so as to minimize dust and odors in a manner approved in writing by Declarant.

All piping, air conditioning, fire sprinkler risers, water conditioning, heating, mechanical, electrical and communication facilities shall be screened such that they are not unsightly from any dedicated street in the Center unless specifically approved by Declarant in writing.

Notwithstanding the foregoing provisions, (1) the Declarant shall have the right to approve in writing the storage on a Lot of any matters described above which would otherwise be prohibited and such written approval shall constitute a waiver of the otherwise prohibited storage on a Lot and (2) the display of construction equipment and tools (including but not limited to, excavating equipment, aerial lifts, utility vehicles, trailers, rollers, portable buildings [not including portable toilets], playground equipment or yard equipment and supplies) for sale or rental shall be permitted upon Lots 1 and 2.

Section 5.13 Storm Drain Facilities. All on-site storm drain facilities shall be installed and maintained at the sole cost of the Owner, lessee or occupant of the Lot.

Retention areas are to be maintained free and clear of all debris and silt by the property owner and may not be altered from the approved conditions without written approval from the LFUCG, Division of Engineering. The Owner shall maintain said areas at all times in such a fashion as not to create a potential or actual safety hazard. Any alterations to the design will require a resubmittal to the LUFCG, Division of Engineering.

Section 5.14 Dumpster Screening. Any dumpster placed on any Lot shall be screened (including a gate if visible from a street) and shall meet the requirements of the LFUCG dumpster screening specifications. Materials shall be permanent and shall match the façade materials of the Building located on the same Lot. Wood fencing will be allowed with Declarant's approval. All concrete block shall be painted or stained a color approved by Declarant.

Section 5.15 Maintenance By Owner.

(a) Improvements. All Improvements on each Lot, including, without limitation, all walks, driveways, Parking areas, landscaping and the exterior of all Buildings on each Lot, shall be maintained by the Owner in good order, repair and condition. All exterior painted surfaces shall be maintained in first-class condition and shall be repainted periodically. In the event of damage or destruction to any Building or structure, landscaping and paved areas, the Building or structure, landscaping and paved areas may be repaired or constructed in accordance with previously approved plans and specifications therefor without resubmission of such plans and specifications to Declarant for its approval.

(b) Access Easement Responsibility of Owners. The Owners of this property and any successors in title assume full liability and responsibility for any construction, maintenance, reconstruction, snow removal, cleaning or other needs related to the access easements so designated on the final record plats of the Center, and do hereby fully relieve the LFUCG and the Declarant from any such responsibility. The access easements will not result in any reduction in required taxes required by and payable to the LFUCG by the Owners. Furthermore, if the Owners in the future should request that the access easements be changed to public streets, the, the Owners will bear full expenses of reconstruction or any other action necessary to make the access easement fully conform to the requirements applicable at that time for public streets prior to dedication and acceptance of such streets by the LFUCG. Finally, these access easements shall be dedicated to public use without compensation to the Owners and without the Owners expense in making such

access easements conform to the requirements applicable at that time for public streets, if at some future date, the LFUCG so requests.

(c) Government and Utility Access. The Owners must grant full rights of access to this property over the designated access easement, utility, and other easements for governmental and utility agencies to perform their normal responsibilities.

Section 5.16 Building Specifications. All Buildings and Improvements shall be constructed and maintained by the Owner in accordance with the following standards, as well as all those promulgated by the LFUCG, unless an exception is approved by the Declarant in writing. In the event of a conflict between the following building standards and those promulgated by the LFUCG, the LFUCG standards shall control.

(a) Maximum Building height shall be eighty-five (85) feet for the primary Building and forty-five (45) feet for any accessory Building.

(b) Exterior walls shall be of masonry (dryvit or equivalent material), concrete panels, glass, wood or decorative concrete block or approved equivalent material. Declarant shall approve metal clad Buildings of type and design whose exterior surface is finished in "architectural panels" interlocked and without any exposed rivets and fasteners. Declarant limits this approval to partial metal clad buildings having at least 50% masonry on any street frontage. Metal roofing is permissible and should be hidden from view by parapet walls, front and sides when reasonably possible. All gutters, coping and metal trim shall be of sufficient gauge to eliminate "Oil Can" effect and all colored metal shall have a life expectancy of twenty (20) years.

(c) Exterior walls shall be painted, stained or otherwise finished in a manner acceptable to Declarant and no uncolored concrete walls will be permitted. Exterior walls shall not be repainted or refinished a different color unless and until Declarant shall have approved the color and finishing materials to be used; all metal wall colors must be approved in writing by Declarant.

(d) All on-site electrical, telephone and other utility lines shall be underground and shall not be exposed on the exterior of any Building or Improvement. Excepted from this condition will be any Lots which will be directly served by existing overhead electrical lines although electric service is expected to enter a Building via underground conduit wherever practical. All electrical and mechanical apparatus, equipment, fixtures (other than lighting fixtures), conduit, ducts, vents, flues and pipes located on the exterior of any Building shall be concealed from view from streets and from Buildings on other Lots to the greatest degree possible, and shall be architecturally treated in a manner approved by Declarant. Roof top heating/cooling units should be located as to be shielded from view from ground level of surrounding properties and streets.

Section 5.17 Temporary Improvements. No temporary Buildings or other Improvements of a temporary nature, including, without limitation, trailers, tents and shacks shall be permitted in the Center. Temporary Improvements used solely in connection with the construction of permanent approved Improvements may be permitted provided they are located as inconspicuously as possible and are removed immediately after completion of such construction. Temporary overhead electrical lines for construction purposes will be permissible.

ARTICLE VI
REGULATIONS OF USES

Section 6.1 Permitted Uses. Unless otherwise specifically prohibited herein or by the LFUCG Zoning Ordinance, any business or industrial use will be permissible if it is performed or carried out entirely within a Building that is so designed and constructed that the enclosed uses do not cause or produce a nuisance to adjacent Lots. A “nuisance” for this purpose shall mean, but shall not be limited to, any vibration, sound or noise, electro-mechanical disturbance, radiation, air pollution, water pollution, dust, heat, glare, emissions of odorous or toxic or non-toxic matter. Permitted uses will include manufacturing, product assembly, processing, storage, retail, wholesaling, office uses, laboratory uses, professional uses and research and development uses. Except as otherwise set forth in Section 6.2 below, conditional I-1 uses, as listed in Exhibit “B” attached hereto and otherwise permitted by the Zoning Ordinance of the LFUCG, may be permitted if approved by the appropriate governmental authority and by Declarant, in writing.

Section 6.2 Prohibited Uses. Without limiting the generality of the foregoing, the following uses shall not be permitted on any property subject to this Declaration without the prior written consent of the Declarant (which consent may be granted or withheld in the sole and absolute discretion of the Declarant):

- (a) Residential;
- (b) Trailer courts;
- (c) Columbariums and Crematories;
- (d) Penal or correctional institutions;
- (e) Refuse dumps, landfills or incinerators;
- (f) Grain drying;
- (g) Automobile racetracks.
- (h) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any Building in the Center;
- (i) Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
- (j) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any Building);
- (k) Any fire sale, going out of business sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (l) Any bowling alley or skating rink;
- (m) Any mortuary, funeral home or crematory;
- (n) Any adult bookstore, adult entertainment establishment, adult video store, adult movie theater or other establishment selling, renting or exhibiting pornographic materials or drug-related paraphernalia (except that this provision shall not prohibit the operation of a bookstore or video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public [as opposed to a specific segment thereof]);
- (o) Any flea market, amusement or video arcade, pool or billiard hall, tattoo parlor or dance hall (except that this provision shall not prohibit a Restaurant from including three or fewer video games as an incidental use to its operations); and

(p) Any massage parlor (except that this provision shall not prohibit massages in connection with a beauty salon, health club or athletic facility).

Section 6.3 Nuisances. No noxious or offensive activity shall be carried on nor shall anything be done on any Lot which may be or become an annoyance or nuisance to the Owners or occupants of other Lots, or which will be offensive to the Owners or occupants of other Lots by reason of odor, fumes, discharge of any chemical or industrial waste above or below ground, dust, dirt, fly-ash, smoke, noise, glare, or heat which will be hazardous by reason of danger of fire or explosion or any other hazard. No waste, toxic chemicals or any substance or materials of any kind shall be discharged into any public sewer serving the Center, or any part thereof, in violation of any regulations of any public body having competent jurisdiction.

Section 6.4 Right of Entry. During reasonable hours, and subject to reasonable security requirements, Declarant, or its authorized representative, shall have the right to enter upon and inspect any Building, Lot or parcel and the Improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 6.5 Improvements. The Declarant reserves the sole right to grant consents for the construction and operation of public transit facilities, public utility facilities, electric light, telephone and telegraph pole lines, above ground or underground conduits, and gas pipes in and upon any and all street rights-of-way now existing or hereafter established upon which any portion of the Center may now or hereafter front or abut. The Declarant receives and is hereby granted the exclusive right to grant consents to, and to petition the property authorities for, any and all street improvements such as grading, seeding, tree planting, sidewalks, paving, lighting and sewer and water installation, whether they be on the surface or sub-surface, which in the opinion of the Declarant, are necessary in or to the Center.

Section 6.6 Other Operations and Uses. Operations and uses which are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by Declarant and/or the LFUCG. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this Declaration or upon the occupants thereof, but approval or disapproval thereof shall be in the sole discretion of Declarant and/or the LFUCG.

Section 6.7 Use of Lots 1 and 2. Notwithstanding the foregoing, no part of the Center, other than Lots 1 and 2, shall be used or leased by any other person or entity for the purpose of leasing or selling construction equipment or tools so long as Bypass Rental Centers of Lexington, Inc., its successors or assigns, remains in business upon the said Lots 1 and 2 and continues to sell or lease construction equipment or tools at said location.

ARTICLE VII
DURATION, MODIFICATION AND REPEAL

Section 7.1 Duration of Restrictions. This Declaration shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject hereto (subject, however, to amendment and repeal as provided for herein) until December 31, 2035.

Section 7.2 Termination and Modification. This Declaration, or any provision hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any portion thereof, by the Declarant until such time as its authority has been transferred to the Association (as defined in Section 9.2 below) as provided for in Section 9.2 below and thereafter by the action of the Association as provided for in its Articles of Incorporation and By-Laws. Any termination, extension, modification or amendment hereof shall not be effective until a written instrument embodying the same has been executed and recorded in the office of the Fayette County Clerk.

ARTICLE VIII
ENFORCEMENT

Section 8.1 Abatement and Suit. Violation or breach of any restriction contained herein shall give (i) to Declarant or the Association, as provided in Section 9.2 below, the right, but not the obligation, to enter the property upon or as to which said violation or breach exists and summarily to abate and remove, at the expense of the Owner, lessee or occupant thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, and/or (ii) to Declarant, the Association, as provided in Section 9.2 below, or Owner of any Lot the right, but not the obligation, to prosecute a proceeding at law or in equity against the person or persons who have violated or who are attempting to violate any of the restrictions contained in this Declaration to enjoin or prevent them from doing so, to cause said violation to be remedied, or to recover damages for said violation.

Section 8.2 Deemed to Constitute a Nuisance. The result of every action or omission whereby any restriction contained herein is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner and/or occupant, either public or private, shall be applicable against every such result and may be exercised by Declarant, the Association, as provided in Section 9.2 below, or Owner of any Lot.

Section 8.3 Attorney's Fees. In any legal or equitable proceeding for the enforcement of or to restrain the violation of this Declaration or any provision hereof, the Declarant shall be entitled to the payment of all costs of the litigation, including reasonable attorneys' fees, in such amount as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

Section 8.4 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association or any Owner to enforce any restriction or provision contained herein shall in no event

be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction or provision.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 9.1 Assignment of Rights and Duties. Any and all of the rights, powers and reservations of Declarant contained herein may be assigned to any person, partnership, corporation or the Association which will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, partnership, corporation or the Association evidencing its consent in writing to accept such assignment and assume such duties, he, she or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. If at any time Declarant ceases to exist and has not made such an assignment, a successor Declarant may be appointed in the same manner as this Declaration may be terminated, extended, modified or amended under Section 7.2 above. Any assignment or appointment made under this Section 9.1 shall be in recordable form, and shall be recorded in the office of the Fayette County Clerk.

Section 9.2 Eastland Center Association, Inc. The Owners of the Lots in the Center are automatically members of the Eastland Center Association (the "Association"), a corporation to be formed by Declarant. The Association shall have the authority to enforce the protective covenants, restrictions and conditions contained herein imposed after the Declarant has sold and approved construction on 75% of the Lots, or at any prior time as the Declarant transfers such authority to the Association. The Declarant may assign any and all rights herein retained by the Declarant to the Association at any time.

Section 9.3 Membership and Voting Rights of the Association.

(a) **Membership.** Every person or entity who is the Owner of record of a fee simple or undivided interest in any Lot which is or shall subsequently be made subject to this Declaration shall be a member of the Association, provided that any person or entity who holds an interest merely as security for the performance of an obligation shall not be a member.

(b) **Voting Rights.** The Association shall have two (2) classes of voting memberships:

Class A – All members of the Association, with the exception of the Declarant, shall belong to this class and shall be entitled to one (1) vote for each Lot. If more than one (1) person is an Owner of any Lot, all such persons shall be members; and the vote for such Lot shall be exercised as they determine among themselves; but in no event shall more than one vote be cast with respect to any such Lot.

Class B – The Class B member shall be the Declarant, its successors and assigns. Class B members shall be entitled to four (4) votes for each Lot in which they hold the interest required for membership, provided, however, that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever

occurs earlier: (a) January 1, 2035 or (b) upon a release by the Declarant of the Class B membership rights. All Class B votes shall be exercised as the Declarant determines. When the Class B membership is converted to Class A membership as herein provided, each Lot shall be entitled to one (1) vote and the votes shall be exercised by the respective Owners of the Lots.

Section 9.4 Constructive Notice and Acceptance. Every person or other entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the property and Lots made subject hereto is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in said property or Lots.

Section 9.5 Waiver. Neither Declarant, the Association nor their successors or assigns shall be liable to any Owner, lessee, licensee or occupant of land subject to this Declaration by reason of any mistake in judgment, negligence, nonfeasance, action or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner, lessee, licensee or occupant of any of said property by acquiring its interest therein agrees that it will not bring any action or suit against Declarant, the Association or their successors and assigns to recover any such damages or to seek equitable relief therefor.

Section 9.6 Mutuality, Reciprocity; Runs with Land. All covenants, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every parcel of property now or hereafter made subject to this Declaration; shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all grantees of said Lots, their heirs, successors and assigns; and shall, as to the Owner of each Lot, its heirs, successors and assigns, operate as covenants running with the land for the benefit of all other Lots and the Owners thereof.

Section 9.7 Remedies. As remedies at law may not adequately compensate for a violation of any protective covenant, restriction or condition contained herein, Declarant, the Association, as provided in Section 9.2 above, or the Owner of any Lot shall have the right to obtain from any court of competent jurisdiction injunctive relief against any Owner or tenant of any of the Center, or any of their agents, contractors or assigns, enjoining any activity which is in violation of any provision of this Declaration and shall not be required to post any bond as a condition to the granting of any such injunctive relief (including a preliminary injunction or temporary restraining order), nor shall any such right to such injunctive relief be affected by any arbitration provisions in any contract executed by such Owner, tenant or their agents. The rights and remedies set forth hereinabove shall be in addition to, and not in lieu of, any other rights and remedies that any party may have in the event of a violation of any provision of this Declaration. All such rights and remedies shall be cumulative, and the exercise of any one or more of such rights and remedies shall not be deemed an election precluding the exercise of any of the others. All reasonable costs incurred in any dispute or litigation involving enforcement of any provision of this Declaration (including expert witness fees and attorneys' fees) shall be awarded as additional damages to the prevailing party who shall also be entitled to all additional costs incurred in enforcing or collecting any judgment rendered.

Section 9.8 Rights of Beneficiaries. No breach of the restrictions and other provisions contained herein shall defeat or render invalid the lien of any Mortgage now or hereafter executed upon land subject to this Declaration; provided, however, that if any portion of any property subject to this Declaration is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser at such sale and its successors and assigns shall hold any and all property so purchased subject to all of the restrictions and other provisions of this Declaration.

Section 9.9 Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope or intent of the particular paragraphs or sections to which they refer.

Section 9.10 Severability. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

Section 9.11 Right of First Refusal on Transfer of Unimproved Lots.

(a) The Declarant shall have the right of first refusal to purchase a Lot on which construction of a Building has not been commenced, and no Lot or interest in any Lot upon which the construction of a Building has not been commenced shall be sold or transferred unless and until the Declarant has either exercised its right to purchase a Lot or waived, in writing, its right to purchase the Lot in accordance with the following provisions:

(i) Any Owner intending to make a bona fide sale of his Lot, or any interest therein, shall give the Declarant notice of such intention, together with a fully executed copy of the proposed contract of sale (the "Proposed Contract"). Within fifteen (15) days of receipt of such notice and information, the Declarant shall either exercise or waive exercise of its right to first refusal. If the Declarant elects to exercise its right of first refusal, it shall, within fifteen (15) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot or property upon the following terms:

(a) The price to be paid and the terms of payment shall be that stated in the Proposed Contract; and

(b) The sale shall be closed within thirty (30) days after the delivery or making of said agreement to purchase.

If the Declarant shall fail to exercise or waive exercise of its right of first refusal within the said fifteen (15) days of receipt of the Proposed Contract, the Declarant's right of first refusal shall be deemed to have been waived, and the Declarant shall furnish a certificate of waiver as herein provided in Section 9.11(a)(ii) below.

(ii) If the Declarant shall elect to waive its right of first refusal, or shall fail to exercise said right within fifteen (15) days of receipt of the Proposed Contract, the Declarant's waiver shall be evidenced by a certificate executed by the Declarant in

recordable from which shall be delivered to the Proposed Contract purchaser and may be recorded by the Owner in the Fayette County Clerk's Office.

(iii) This Section 9.11(a) shall not apply to any transfer to or sale by any national or state bank, life insurance company, federal or state savings and loan association, real estate investment trust, retirement fund or institutional lender which acquires its title as a result of owning a Mortgage or holding a deed of trust upon the Lot concerned; and this shall be so whether the title is acquired by deed from the holder of such Mortgage or deed of trust or its successors in title or through foreclosure proceedings. This Section 9.11(a) shall also not apply to any sale by any such institution which so acquires title. Neither shall this Section 9.11(a) require the waiver by the Declarant as to any transfer of title to a Lot at a duly advertised public sale with open bidding which is provided by law such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale of any Lot upon which a Building has been constructed and for such a certificate of occupancy has been issued therefor.

Section 9.12 Limitation of Covenants. The protective covenants, restrictions and conditions contained herein are intended to apply only to the property described on Exhibit "A" attached hereto and are not to be extended or determined applicable to any other property of Declarant by implication, inference or otherwise, unless by like declaration in writing and duly recorded, in the office of the Fayette County Clerk. The property described on Exhibit "A" attached hereto is, or will in the future be, divided into or designated as units and blocks as shown on record, or to be recorded, plats for purposes of this Declaration.

(a) The Declarant shall have the absolute right to remove from the operation and control of this Declaration any specific unit or units, or block or blocks in any unit or units of the Property by filing of record in the office of the Fayette County Clerk a declaration to that effect. Notwithstanding the foregoing, the Declarant shall only have the right to remove a unit or units or block or blocks from the operation and control of this Declaration if the declaration accomplishing same is executed and recorded prior to the recording of any deeds of conveyance of any Lots contained in said unit or units or block or blocks unless the grantee in any such deed of conveyance joins in said declaration consenting to said action. In the event the Declarant shall remove any one or more unit or units or block or blocks from the operation and control of this Declaration, this Declaration shall nevertheless remain in full force and effect as to all other Lots in the Center not contained in the unit or units or block or blocks so removed.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Protective Covenants, Restrictions and Conditions of Enterprise Industrial Center West as of the date first above written.


GW EASTLAND, LLC, DECLARANT

K & H INVESTMENTS, LLC, MEMBER

BY: 
JERRY WOODALL

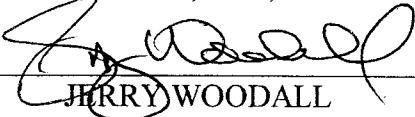
TITLE: Manager

C. CLAY GREEN, MEMBER

BY: 
C. CLAY GREEN

1540 EASTLAND, LLC, DECLARANT

K & H INVESTMENTS, LLC, MEMBER

BY: 
JERRY WOODALL

TITLE: Manager

C. CLAY GREEN, MEMBER

BY: 
C. CLAY GREEN

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

Subscribed, acknowledged and sworn to before me by Jerry Woodall in his capacity as Manager of K & H Investments, LLC, a Kentucky limited liability company, as Member of GW Eastland, LLC, a Kentucky limited liability company; and as Member of 1540 Eastland, LLC, a Kentucky limited liability company, on this the 30th day of June, 2020.

My Commission Expires: 2.2.23

Molly M. Bottoms
NOTARY PUBLIC, STATE AT LARGE

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)



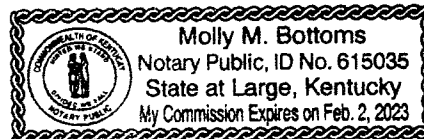
Subscribed, acknowledged and sworn to before me by C. Clay Green in his capacity as Member of GW Eastland, LLC, a Kentucky limited liability company; and as Member of 1540 Eastland, LLC, a Kentucky limited liability company, on this the 30th day of June, 2020.

My Commission Expires: 2.2.23

Molly M. Bottoms
NOTARY PUBLIC, STATE AT LARGE

PREPARED BY:

MCBRAYER PLLC
201 EAST MAIN STREET, SUITE 900
LEXINGTON, KENTUCKY 40507
(859) 231-8780



BY: _____
JON A. WOODALL