

AFTER RECORDING PLEASE RETURN TO:

Gardner Thanksgiving Point  
c/o The Gardner Company  
90 South 400 West, Suite 360  
Salt Lake City, UT 84101  
Attn: Christian Gardner

ENT 53133:2014 PG 1 of 7  
Jeffery Smith  
Utah County Recorder  
2014 Jul 31 02:37 PM FEE 22.00 BY SW  
RECORDED FOR First American Title Insurance  
ELECTRONICALLY RECORDED

NCS-660452

**DECLARATION OF EASEMENT FOR DUMPSTER**

THIS DECLARATION OF EASEMENT FOR DUMPSTER (the "**Declaration**") is made this 17 day of July, 2014 by GARDNER THANKSGIVING POINT, L.C., a Utah limited liability company ("**Declarant**").

**RECITALS:**

- A. Declarant owns the following real property (the "**Lot 2 Property**"):

Lot 2 of Thanksgiving Point Business Park, according to the official plat thereof on file in the Utah County Recorder's Office.

- B. Declarant owns the following parcel of real property (the "**Lot 1 Property**"):

Lot 1 of Thanksgiving Point Business Park, according to the official plat thereof on file in the Utah County Recorder's Office.

C. As of the date hereof, a commercial-grade dumpster area is located across the border of the Lot 2 Property and the Lot 1 Property, with the legal description of such dumpster area and the accompanying dumpster enclosure being described on Exhibit A (the "**Dumpster Area**"), on which is located various dumpsters (collectively, the "**Dumpsters**"). The Dumpsters and the Dumpster Area are for the exclusive use of Lot 2, despite the encroachment of the Dumpster Area on to Lot 1.

D. For the benefit of the Lot 2 Property, Declarant desires to create a perpetual, exclusive easement for use of the Dumpster Area to permit the placement and use of the Dumpster therein on the portion of the Dumpster Area located on the Lot 1 Property.

NOW, THEREFORE, for the foregoing purposes, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby establishes the following easements and establish the following covenants, all of which apply to, bind, affect and run with title to each Parcel.

1. Definitions. Certain capitalized terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined capitalized terms, the following capitalized terms shall have the meanings indicated:

**"Benefitted Parties"** means, with respect to a Parcel, the Owner and Occupants of such Parcel and their respective successors, assigns, employees, contractors, customers, guests and invitees.

**"Occupant"** means any Person that, pursuant to a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use all or any portion of a Parcel.

**"Owner"** means the Person that, at a specified time, is the owner of record in the office of the County Recorder of Utah County, Utah, of a fee or an undivided fee interest in a Parcel or any portion thereof. In the event that, at any time, there is more than one Owner of a Parcel, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several.

**"Parcel"** means any one of the Parcels.

**"Parcels"** means the Lot 2 Property and the Lot 1 Property.

**"Person"** means a natural person, legal entity or trust.

2. Grant of Easements. Declarant hereby grants and creates, for the benefit of the Benefitted Parties of the Lot 2 Property the following easements:

(a) A perpetual, exclusive easement for the placement, location, use, replacement, repair, and maintenance of the Dumpster and its enclosure on, over and across the portion of the Dumpster Area located on the Lot 1 Property;

(b) A perpetual, exclusive easement to place trash, debris and other refuse into the Dumpster; and

(c) A perpetual, non-exclusive easement for pedestrian and vehicular access over and across the Lot 1 Property to the portion of the Dumpster Area on the Lot 1 Property for purposes of emptying the Dumpster, maintaining the Dumpster and the Dumpster Area, including the Dumpster enclosure that is presently located within the Dumpster Area.

3. Maintenance; No Interference. The Owner of the Lot 2 Property, at its sole cost and expense, shall maintain the Dumpster in good condition and repair. In addition, the Owner of the Lot 2 Property, at its sole cost and expense, shall keep and maintain the Dumpster Area in a safe, clean and attractive condition consistent with the standards of maintenance and cleanliness in effect with respect to first class mixed-used centers, including maintenance and repair of the Dumpster Enclosure located in the Dumpster Area. The Owner of the Lot 2 Property shall not unreasonably interfere with the use of the Lot 1 Property in the exercise of the easements granted hereunder.

4. Compliance with Law; Hazardous Materials. Any exercise of the easements granted herein shall at all times comply with all applicable law. The Owner of the Lot 2 Property shall not place, nor cause to be placed, any Hazardous Materials on or under the portion of the Dumpster Area located on the Lot 1 Property. The term "**Hazardous Materials**" shall mean any substance:

(a) which is flammable, explosive, radioactive, toxic, corrosive, infectious, carcinogenic, mutagenic, or otherwise hazardous under applicable law of the United States, the state of Utah or any political subdivision thereof;

(b) which contains asbestos, organic compounds known as polychlorinated biphenyls; chemicals known to cause cancer or reproductive toxicity or petroleum, including crude oil or any fraction thereof; or which is or becomes defined as a pollutant, contaminant, hazardous waste, hazardous substance, hazardous material or toxic substance under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6992k; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9657; the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. §§ 5101-5127; the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Clear Air Act, 42 U.S.C. §§ 7401-7671q; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692; the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001-11050; and title 19, chapter 6 of the Utah Code, as any of the same have been or from time to time may be amended; and any similar federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Materials on the Dumpster Area, including all interpretations, policies, guidelines and/or directives of the various governmental authorities responsible for administering any of the foregoing, now in effect or hereafter adopted, published and/or promulgated (other than customary janitorial chemicals and substances); or

(c) the presence of which on the Dumpster Area requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law.

If the Owner of the either Property discovers that any spill, leak, or release of any quantity of any Hazardous Materials has occurred on, in or under any portion of the Dumpster Area, the discovering Owner shall promptly notify the other Owner. In the event such release is caused by the Benefitted Parties of either Property, the Owner of the Property that is the source of such spill, leak or release shall (or shall cause others to) promptly and fully investigate, cleanup, remediate and remove all such Hazardous Materials as may remain and so much of any portion of the environment as shall have become contaminated, all in accordance with applicable government requirements, and shall replace any removed portion of the environment (such as soil) with uncontaminated material of the same character as existed prior to contamination.

5. Covenants to Run with Land. This Declaration and the easements and covenants created by this Declaration are intended by the parties to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner any Person who acquires or comes to have any interest in any Parcel or portion thereof, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Parcel or portion thereof, the Person so acquiring, coming to have such interest in, or occupying a Parcel or portion thereof, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration. This Declaration and the easements granted hereunder shall not be terminated in connection with a breach of this Declaration by any party hereto.

6. Enforcement. The Owner of a Parcel or any portion of a Parcel shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration, the party prevailing in such action or arbitration shall be entitled to recover from the unsuccessful party's reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered.

7. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

8. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated only by an instrument filed for record in the office of the County Recorder of Utah County, Utah that is executed by all of the Owners of both of the Parcels. Unless otherwise provided in this Declaration, the term of this Declaration is perpetual; this Declaration shall be and remain in force and effect until terminated pursuant to this Section.

9. Property Taxes. The Owner of the Lot 2 Property shall pay all taxes and assessments imposed and assessed against the Lot 2 Property from time to time, and the Owner of the Lot 1 Property shall pay all taxes and assessments imposed and assessed against the Lot 1 Property from time to time.

10. Miscellaneous.

a. Titles, Captions and References. All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration.

b. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules that would apply the law of another jurisdiction.

c. Exhibits. All exhibits attached to this Declaration are hereby expressly made a part of and incorporated into this Declaration by reference as fully as though completely set forth in this Declaration.

d. Binding Effect. This Declaration shall bind and inure to the benefit of the Owners of the Lot 1 Property and of the Lot 2 Property and on their successors and assigns from time to time.

*(Signature on the following page)*

EXECUTED as of the date and year first above written.

"DECLARANT"

GARDNER THANKSGIVING POINT, L.C., a Utah limited liability company, by its Manager:

KC GARDNER COMPANY, L.C., a Utah limited liability company

By: [Signature]

Name: Christian Gardner

Its: Manager

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 17 day of JULY, 2014 by CHRISTIAN K. GARDNER, a Manager of KC Gardner Company, L.C., a Utah limited liability company, which is the manager of Gardner Thanksgiving Point, L.C., a Utah limited liability company.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 10-16-16



**Exhibit A**

**(Legal Description of Dumpster Area)**

Commencing at a point being located South 86°47'24" West along the South boundary line of Lot 2, Plat "F", Thanksgiving Point Subdivision 61.66 feet and North 6.36 feet from the Southeast corner of Lot 2, Plat "F", Thanksgiving Point Business Park Subdivision, as shown on record in the office of the Utah County Recorder's office, said point also being located South 00°01'07" East along the Section line 1692.98 feet and West 2299.84 feet from the Northeast corner of Section 36, Township 4 South, Range 1 West, Salt Lake Base and Meridian; thence South 16°09'36" West 15.00 feet; thence North 73°50'24" West 15.00 feet; thence North 16°09'36" East 15.00 feet; thence South 73°50'24" East 15.00 feet more or less to the point of beginning.

AREA = 225 sq.ft.

