

**WHEN RECORDED RETURN TO:**

Skylar Tolbert  
Ivory Development, LLC  
978 East Woodoak Lane  
Salt Lake City, Utah 84117  
(801) 747-7000

15-754-0001 thru 0025

15-809-0001 thru 0015



\*W3282412\*

E# 3282412 PG 1 OF 4  
Leann H. Kiltz, WEBER COUNTY RECORDER  
04-May-23 0308 PM FEE \$100.00 DEP SI  
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

**LAND DRAIN SYSTEM MAINTENANCE AGREEMENT  
FOR  
FAIRHAVEN SUBDIVISION**

This Land Drain System Maintenance Agreement (“Maintenance Agreement”) is executed by IVORY DEVELOPMENT, LLC., of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the “Declarant”)

**RECITALS**

A. Declarant is the owner of that certain real property located in Weber County, Utah and described with particularity on Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”).

B. Declarant intends to sell the Property in subdivided residential lots (“Lots”) to various purchasers.

C. Declarant desires to execute this Maintenance Agreement to provide common use and maintenance of a shared land drain system located within the Property.

**AGREEMENT**

NOW THEREFORE, for the reasons recited above and based upon the promises and covenants set forth below, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Declarant and any and all future owners, grantees, assigns, or successors in interest in and to the Property (each an “Owner” and collectively the “Owners”) shall be subject to and bound by following terms and provisions with regard to the Property:

1. Responsibilities of Owners. Each Owner shall be responsible for the inspection, maintenance and repair of the portion of the land drain system within the Owner’s Lot.

2. Restrictions of Use and Development.

- a. No Owner shall construct any building or other structure of whatsoever nature or allow any use of their respective portions of the Property if such construction or use would impair the operation of the land drain system.
- b. No Owner shall install any landscaping or perform any soil grading or compaction if such work may impair the operation of the land drain system.
- c. If an Owner’s activities result in damage to the land drain system, or if an Owner fails to maintain its portion of the land drain system, such Owner is wholly liable for the cost to repair and replace the portion(s) of the land drain system that have been damaged or negligently maintained. If any Owner fails to repair or replace any portion(s) of the land drain system for which they are responsible within a reasonable period of time, then the other Owners shall be entitled (i) to obtain an injunction or court order requiring such specific performance, or (ii) to undertake all reasonably

necessary maintenance and bill such Owner(s) for the cost to complete the repair or replacement.

3. Land Drain Commission Agent.

- a. Ivory Development, LLC shall be the Land Drain Commission Agent during the Declarant Control Period. The Declarant Control Period shall expire thirty (30) days after Declarant sells its last Lot. After the expiration of the Declarant Control Period, a Land Drain Commission Agent shall be elected by a majority of the Owners who participate in the vote after receiving not less than ten (10) days' notice of the date and manner of the vote, will serve a term as agreed to by the Owners, and can be replaced or renewed at any time by a simple majority vote of the Owners.
- b. The Land Drain Commission Agent shall be responsible to coordinate an annual inspection of the land drain system and invoice the Owners for their pro-rata share of the cost of inspection and any maintenance not located within any Owner's lot recommended thereby. Owners shall pay all invoices within fourteen (14) days of receipt. If an Owner fails to make timely payment, then the Owner shall be liable for a late fee of Twenty-Five Dollars (\$25) per day. The Land Drain Commission Agent shall have the authority to collect the late fees through a private right of action or a lien against the Owner's Lot.

4. No Third-Party Enforcement. It is the intent of this Declaration that only the parties hereto or their successors or assigns in title shall be entitled to enforce or bring an action to enforce the terms hereof and no tenant, occupant or other third party is an intended beneficiary hereof, and any benefits flowing to such persons are merely incidental. In addition, it is the intent of Declarant that no third party shall have an independent right of action hereunder.

5. Duration. The covenants, restrictions and other provisions of this Declaration shall become effective upon the recording of this Declaration in the Office of the Weber County Recorder and shall continue in perpetuity.

6. Discharge of Rights and Duties Upon Transfer. In the event of assignment, transfer or conveyance of the whole of the interest of any Owner in and to any Lot, without retaining any beneficial interest other than under the terms of a deed of trust, mortgage or similar instrument, the powers, rights and obligations created hereunder will be deemed assigned, transferred and conveyed to such transferee, and such powers, rights and obligations will be deemed assumed by such transferee, effective as of the date of transfer. The obligations and rights of the transferor shall immediately thereafter be deemed discharged as to any such rights and obligations arising after transfer of the interest.

7. Amendment. This Declaration or any easement, covenant, restriction or undertaking contained herein, may be terminated, extended or amended by recording of an appropriate document in the Office of the Salt Lake County Recorder, State of Utah, which document must be executed in a recordable form by the Owners.

8. No Public Dedication. Nothing contained in this Declaration shall, constitute a gift or dedication of any portion of any Lot to the general public or for any public purpose whatsoever.

9. Waiver. No waiver of any breach of any of the terms hereof shall be construed or constitute a waiver of any other breach or acquiescence in or consent to any further or succeeding breach of the same or other covenant or term of this Declaration.

10. Enforcement and Severability. If any party to this Declaration takes action to enforce the terms of this Declaration, the substantially prevailing party shall be entitled to recover his, her or its reasonable attorneys' fees and costs incurred in any reasonable enforcement of this Declaration. If



**EXHIBIT "A"**

Lots 101 through 125, inclusive, FAIRHAVEN PHASE 1, according to the official plat thereof recorded July 21, 2021 as Entry No. 3169886 in the Office of the Weber County Recorder.

ALSO:

Lots 201 through 215, inclusive, FAIRHAVEN PHASE 2, according to the official plat thereof recorded January 18, 2023 as Entry No. 3270375 in the Office of the Weber County Recorder.