# **DRIVEWAY MAINTENANCE AND REPAIR AGREEMENT**

THIS DECLARATION, made on the date hereinafter set forth by BRUSH CREEK VIEW, LLC, an Oklahoma Limited Liability Company, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain real property in Payne County, State of Oklahoma, and Declarant has caused the such real property to be surveyed and subdivided into separate tracts, such tracts being described as Lots 8 through 13, inclusive, of Brush Creek View subdivision where the number defines a Lot and any letter following the lot designation defines a component of the numbered Lot and a 60-foot-wide Private Access Roadway and General Utility Easement Tract, all according to the plat thereof recorded in Book 2489 at Pages 346 through 351 in the records of the Payne County Clerk.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following terms and conditions, which are for the purpose of protecting the value and desirability of the described property, and which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

Section 1. Declarant grants and conveys, in perpetuity from the effective date of the conveyance, an easement for driveway and utility purposes over and across the property owned by Declarant and described above as the Private Access Roadway and General Utility Easement Tract, more particularly described in Exhibit "B" attached hereto. An easement for a common driveway and utilities is thereby created over the Driveway and Utility Tract for the benefit of all of the above-described Tracts. The easement created by this agreement is superior and paramount to the rights of the parties to this agreement in the respective servient estates so created. The owner of each Tract shall have a right and easement of enjoyment in and to the Driveway and Utility Tract that shall be appurtenant to and shall pass with the title to every Lot.

<u>Section 2</u>. Owners of each of the Lots shall share equally the costs and expenses of maintaining the above-described Driveway and Utility Tract in good repair for the use and benefit of each property owner and to provide a source of common access to such Tracts. The existing driveway is a level, grated gravel-based surface.

Section 3. The repairs and maintenance to be undertaken and performed under this agreement shall include the following and only the following: maintenance and repairs, such as filling of chuckholes, resurfacing and grading of such easement. Any additional repairs or maintenance deemed necessary or advisable, but not included within the maintenance and repair specified above, shall not be undertaken under this agreement except with the express written consent of each of the Lot Owners and an assumption by each of the Lot Owners in writing of their proportionate share of financial liability for the cost of such additional repairs or maintenance.

<u>Section 4.</u> All Lot Owners will participate in an annual driveway assessment to be conducted every spring, beginning in 2020. The assessment will determine if driveway maintenance and repairs are needed to return it to its original state (i.e., chuckholes need to be filled, resurfacing or grading needs to be done, etc...); and if so, the repairs are to be completed in a timely manner. Additional assessments throughout the year may be warranted, and should be handled on a case by case basis.

<u>Section 5.</u> This grant of driveway and utility easement shall run with the land and shall be binding on and shall inure to the benefit of the owners of each of the Lots above described, their respective heirs, successors, or assigns.

Section 6. The forgoing covenants and restrictions are to run with the land and shall be binding on all persons and parties claiming under them until January 1, 2029, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners is recorded in the office of the Payne County Clerk agreeing to change said covenants in whole or part. At any time and from time to time subsequent to December 30, 2020, a majority vote of the then Lot owners of Lots subject to these covenants may agree to change or abrogate said covenants in part or in whole, which change shall become effective when signed by the owners of a majority of the lots subject to these covenants and filed in the office of the County Clerk of Payne County, Oklahoma. It being the intent that said majority shall be determined on a percentage of total ownership of the said real property first herein above described. Should an owner, his/her heirs or assigns violate or attempt to violate any of the covenants herein, it shall be lawful for any tract owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants either to prevent such person or persons from so doing or to recover damages or other dues for such violation. The owner of the tract or tracts permitting the violation of such restrictions shall pay all attorney fees, court cost, and other expenses necessarily incurred in said legal proceeding.

<u>Section 7.</u> Invalidation of any of these provisions by judgment or by court order shall in no way nullify any of the provisions, which shall remain in full force and effect.

<u>Section 8.</u> It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Oklahoma.

<u>Section 9</u>. The failure of any owner of a Lot to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed this \_\_\_\_\_\_day of \_\_\_\_\_\_, 2019.

BRUSH CREEK VIEW, LLC an Oklahoma Limited Liability Company

By: \_

Jim Ward, Manager

STATE OF OKLAHOMA	)
	)SS:
COUNTY OF PAYNE	)

Before me, the undersigned Notary Public in and for said County and State on this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2019 personally appeared Jim Ward, as Manager of Brush Creek View, LLC, an Oklahoma Limited Liability Company, who acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company.

Given under my hand and seal the day and year last above written.

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

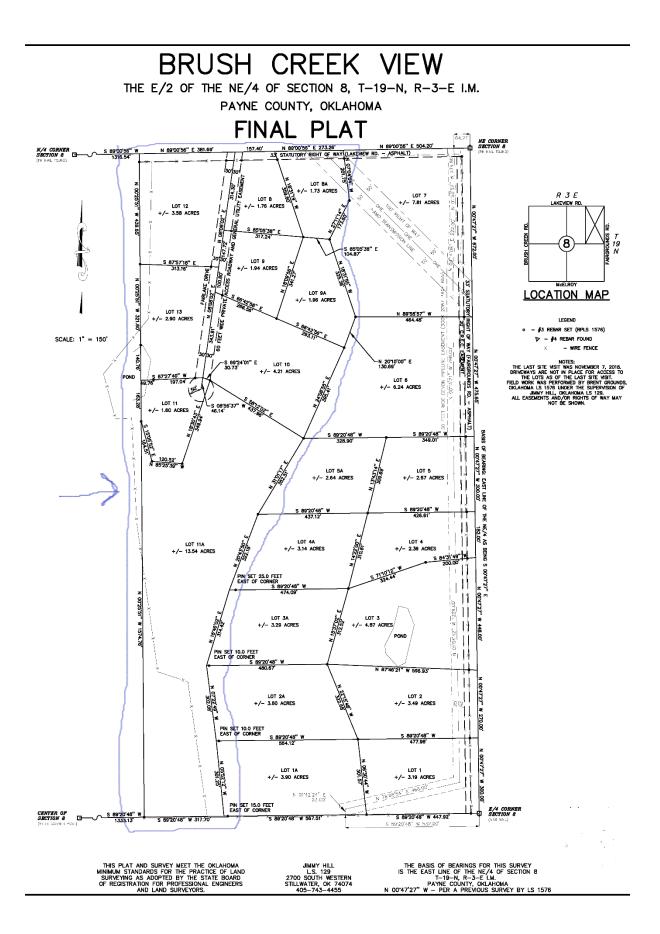
My Commission Number: \_\_\_\_\_

## Exhibit A

## LEGAL DESCRIPTION FOR TRACT (LOTS) 8, 9, 10, 11, 12, and 13

A TRACT OF LAND IN THE EAST HALF (E/2) OF THE NORTHEAST QUARTER (NE/4) OF SECTION EIGHT (8), TOWNSHIP NINETEEN (19) NORTH, RANGE THREE (3) EAST OF THE INDIAN MERIDIAN, PAYNE COUNTY OKLAHOMA more particularly described as:

Lots EIGHT (8) through Thirteen (13), inclusive, Brush Creek View a subdivision of part of the East Half (E/2) of the Northeast Quarter (NE/4) of Section Eight (8), Township Nineteen (19) North, Range Three (3) East of the Indian Meridian, Payne County, Oklahoma, according to the recorded plat thereof, where the number defines a Lot and any letter following the lot designation defines a component of the numbered Lot.



## Exhibit **B**

#### LEGAL DESCRIPTION FOR ROAD AND UTILITY EASEMENT FAIRLAKE DRIVE

A tract of land known as Fairlake Drive, located in Brush Creek View, a recorded subdivision in the East Half (E1/2) of the Northeast Quarter (NE1/4) of Section Eight (8), Township Nineteen (19) North, Range Three (3) East, Indian Meridian, Payne County, Oklahoma, being more particularly described as follows:

A tract or strip of land lying along and Thirty Feet either side of a line described as follows: Commencing at the Northwest Corner of said East Half of the Northeast Quarter of Section Eight, thence North 89d 00' 56" East along the section boundary a distance of 381.69 feet to the POINT OF BEGINNING; thence South 08d 08' 02" West a distance of 952.87 feet to the Point of Termination, and; A circle having a radius of 50.00 feet, and a center at the above described Point of Termination.