

FRUIT HEIGHTS CITY
IMPROVEMENTS AGREEMENT
(ESCROW DEPOSIT FORM)

E 2680129 B 5585 P 36-48
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
08/15/2012 09:03 AM
FEE \$44.00 Pgs: 13

DEP ETT REC'D FOR FRUIT HEIGHTS CI

11-701-0201-0211

THIS AGREEMENT is made by and between GMN DEVELOPMENT, INC. (hereinafter "Developer"), whose address is 1572 N. Woodland Park, #505, Layton, Fruit Heights City, a municipal corporation of the State of Utah (hereinafter "City"), whose address is 910 South Mountain Road, Fruit Heights, Utah, 84037, and WELLSFARGO BANK a Utah or Federally chartered Bank or Savings and Loan Association authorized to do business in the State of Utah, whose address is 250 N. Main, Kaysville, Utah, (the "Depository").

WHEREAS, Developer desires to subdivide and/or to receive a permit to develop certain property located within the City, said development to be known as MOUNTAIN, located at approximately 75 SOUTH MOUNTAIN in Fruit Heights City, and ROAD SPLENDOR PHASE 2

WHEREAS, the City will not approve the subdivision or development or issue a permit unless Developer promises to install and warrant certain improvements as herein provided and security is provided for that promise as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Installation of Improvements. The Developer agrees to install all improvements required by the City as specified in the bond estimate prepared by the City for Developer's project which is attached hereto as Exhibit "A", (the "Improvements"), precisely as shown on the plans, specifications, and drawings previously reviewed and approved by the City in connection with the above-described project, and in accordance with the standards and specifications established by the City, within twelve (12) months from the date of this Agreement. Developer further agrees to pay the total cost of obtaining and installing the Improvements, including the cost of acquiring easements.

2. Dedication. Where dedication is required by the City, the Developer shall dedicate to the City the areas shown on the subdivision or development plat as public streets and as public easements, provided however, that Developer shall indemnify the City and its representatives from all liability, claims, costs, and expenses of every nature, including attorneys fees which may be incurred by the City in connection with such public streets and public easements until the same are accepted by the City following installation and final inspection of all of the Improvements and approval thereof by the City.

3. Escrow. The Developer and the Depository hereby acknowledge that an account (the "Account") has been established at the Depository in the amount of \$13,954.53 (the "Escrow Amount"), which the Developer and the City stipulate to be a reasonable preliminary estimate of the cost of the Improvements, together with 15% of such cost to cover contingencies and an additional ten percent (10%) to secure the warranty of this Agreement. The Account is identified by the number 29162497592. The Developer and the Depository further agree that if (1) the Improvements are not completed as required by this Agreement within the time period specified in Paragraph 1 above, or if (2) the Improvements are not installed strictly in accordance with Paragraph 1 above and written notice of the deficiency has been given to the Developer, who has failed to

remedy the deficiency within 10 days after the notice is sent, then in either event the City may withdraw from the account all or any part of the Escrow Amount, in a single or in multiple withdrawals. The Depository agrees to retain funds necessary for such a withdrawal in the Account. Withdrawals from the Account by the City may be effected by one or more sight drafts signed by the Mayor in the form attached as Exhibit "B", or by other instrument appropriate to the purpose. Interest shall accrue to the City and be payable by the Depository at the rate of 20% per annum beginning at the date on which payment of such a sight draft, properly signed, is refused by the Depository. The City shall not be liable for the payment of any fee or service charge incurred in connection with the Account. The Depository acknowledges sufficient consideration for its promises in the form of fees and fund deposits received from Developer.

4. Progress Payments. The City agrees to allow payments from the Account as the work progresses as provided herein. The City shall, when requested in writing, inspect the construction, review any necessary documents and information, and determine if the work completed complies with City construction standards and requirements, and review the bond estimate in Exhibit "A". After receiving and approving the request, the City shall, in writing, authorize disbursement to the Developer from the Account in the amount of such estimate provided that if the City does not agree with the request, the City and Developer shall meet and the Developer shall submit any additional estimate information necessary. At least 20% of the funds originally deposited shall be retained until all required improvements are installed, inspected, and accepted. Except as provided in this Paragraph or in Paragraphs 4 through 6 inclusive, the Depository shall not release or disburse any funds from the Account.

5. Refund or Withdrawal. In the event the City determines it is necessary to withdraw funds from the Account to complete construction of Improvements, the City may withdraw all or any part of the Escrow Amount and may cause the Improvements (or any part of them) to be constructed or completed using the funds received from the account. Any funds not expended in connection with the completion of said Improvements by the City shall be refunded to Developer upon completion of the Improvements, less an additional 15% of the total funds expended by the City, which shall be retained by the City as payment for its overhead and costs expended by the City's administration in completing the Improvements.

6. Preliminary Release. At the time(s) herein provided, the City may authorize the release of all funds in the Account, except 10% of the estimated cost of the Improvements, which shall be retained in the Account until final release pursuant to the next Paragraph. Said 10% shall continue as security for the performance by the Developer of all remaining obligations of this Agreement, including the warranty, and may be withdrawn by the City as provided in Paragraph 5 above for any breach of such an obligation. The release provided for in this Paragraph shall occur when the City certifies that the Improvements are complete, which shall be when the Improvements have been installed as required and fully inspected and approved by the City, and after "as-built" drawings have been supplied as required.

7. Final Release. Upon full performance of all of Developer's obligations pursuant to this Agreement, including the warranty obligations of Paragraph 26, the City shall notify the Depository and the Developer in writing of the final release of the Account. After giving such notice, the City shall relinquish claims and rights in the Account.

8. Non-Release of Developer's Obligations. It is understood and agreed between the parties that the establishment and availability to the City of the Account as herein provided, and any withdrawals from the Account by the City shall not constitute a waiver or estoppel against the City and shall not release or relieve the Developer from its obligation to install and fully pay for the Improvements as required in Paragraph 1 above, and the right of the City to withdraw from the Account shall not affect any rights and remedies of the City against the Developer for breach of any covenant herein, including the covenants of Paragraph 1 of this Agreement. Further, the Developer

agrees that if the City withdraws from the Account and performs or causes to be performed the installation or any other work required of the Developer hereunder, then any and all costs incurred by the City in so doing which are not collected by the City by withdrawing from the Account shall be paid by the Developer, including administrative, engineering, legal, and procurement fees and costs.

9. Connection and Maintenance. Upon performance by Developer of all obligations set forth in this Agreement and compliance with all applicable ordinances, resolutions, rules, and regulations of the City, whether now or hereafter in force, including payment of all connection, review, and inspection fees, the City shall permit the Developer to connect the Improvements to the City's water, sewer, secondary water and storm drainage systems and shall thereafter utilize and maintain the Improvements to the extent and in the manner now or hereafter provided in the City's regulations.

10. Inspection. The Improvements, their installation, and all other work performed by the Developer or its agents pursuant to this Agreement shall be inspected at such times as the City may reasonably require and prior to closing any trench containing such Improvements. The City shall have a reasonable time of not less than 24 hours after notice in which to send its representatives to inspect the Improvements. Any required connection and impact fees shall be paid by the Developer prior to such inspection. In addition, all inspection fees required by the ordinances and resolutions shall be paid to the City by the Developer prior to inspection.

11. Ownership. Off-site Improvements covered herein shall become the property of the City upon final inspection and approval of the Improvements by the City and the Developer shall thereafter advance no claim or right of ownership, possession, or control of the Improvements.

12. As-Built Drawings. The Developer shall furnish to the City, upon completion of the Improvements, drawings showing the Improvements, actual location of water, secondary water, and sewer laterals including survey references, and any related structures or materials as such have actually been constructed by the Developer. The City shall not be obligated to release the Account until as-built drawings have been provided to the City.

13. Amendment. Any amendment, modification, termination, or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

14. Successors. No party shall assign or transfer any rights under this Agreement without the prior written consent of the other first obtained, which consent shall not be unreasonably withheld. When validly assigned or transferred, this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

15. Notices. Any notice required or desired to be given hereunder shall be deemed sufficient if sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble.

16. Severability. Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

17. Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

18. Counterparts. The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such

counterparts, taken together, shall constitute one and the same instrument, and each such counterpart shall be deemed an original.

19. Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

20. Captions. The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

21. Integration. This Agreement, together with its exhibits and the approved plans and specifications referred to, contains the entire and integrated agreement of the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

22. Attorney's Fees. In the event either party hereto defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

23. Other Bonds. This Agreement and the Account do not alter the obligation of the Developer to provide other bonds under applicable ordinances or rules of any governmental entity having jurisdiction over the Developer. The furnishing of security in compliance with the requirements of other ordinances or rules of other jurisdictions shall not adversely affect the ability of the City to draw on the Account as provided herein.

24. Time of Essence. The parties agree that time is of the essence in the performance of all duties herein.

25. Exhibits. Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

26. Warranty. The Developer hereby warrants that the Improvements installed, and every part hereof, together with the surface of the land and any improvements thereon restored by the Developer, shall remain in good condition and free from all defects in materials, and/or workmanship during the Warranty Period, and the Developer shall promptly make all repairs, corrections, and/or replacements for all defects in workmanship, materials, or equipment during the Warranty Period, without charge or cost to the City. The City may at any time or times during the Warranty Period inspect, photograph, or televise the Improvements and notify the Developer of the condition of the Improvements. The Developer shall thereupon immediately make any repairs or corrections required by this Paragraph. For purposes of this Paragraph, "Warranty Period" means the one-year period beginning on the date on which the Improvements are certified complete by the City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives this 6 day of August, 2012

DEVELOPER:

By: David Dr. Weller

Its: President

DEPOSITORY:

By: Anne Taylor
Its: Personal Banker

CITY:

FRUIT HEIGHTS CITY CORPORATION

By: Braig A. Hill
D. Todd Stevenson, Mayor *pro temp*
Craig A. Hill

ATTEST:

Brandon Green
Brandon Green, City Recorder

DEVELOPERS ACKNOWLEDGEMENT

(Complete if Developer is an Individual)

STATE OF UTAH)
: ss.
COUNTY OF _____)

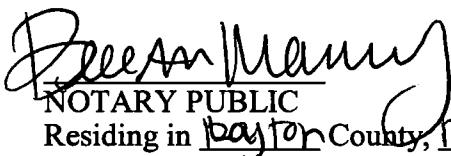
On this _____ day of _____, 20____, personally appeared before me,
_____, the signer(s) of the foregoing instrument who duly acknowledged
to me that he/she/they executed the same.

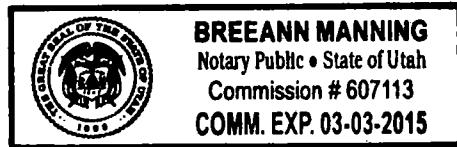
NOTARY PUBLIC
Residing in _____ County, _____

(Complete if Developer is a Corporation)

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

On this 6 day of August, 2012, personally appeared before me
Gary M. Wright, who being by me duly sworn did say that he/she is the
President of GMW Development Inc. a _____ corporation, and that the foregoing instrument was
signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged
to me that said corporation executed the same.


NOTARY PUBLIC
Residing in Bay for County, DAVIS.



(Complete if Developer is a Partnership)

STATE OF UTAH)
: ss.
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me
_____, who being by me duly sworn did say that he/she/they is/are the
____ of _____, a partnership, and that the foregoing instrument was duly
authorized by the partnership at a lawful meeting held by authority of its by-laws and signed in
behalf of said partnership.

NOTARY PUBLIC
Residing in _____ County, _____.

(Complete if Developer is a **Limited Liability Company**)

STATE OF UTAH)
: ss.
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me
_____ who being by me duly sworn did say that he or she is the
of _____, a limited liability company, and that the foregoing instrument was duly
authorized by the Members/Managers of said limited liability company.

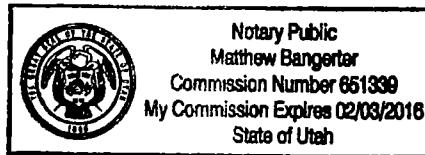
NOTARY PUBLIC
Residing in _____ County, _____.

DEPOSITORY ACKNOWLEDGEMENT

STATE OF UTAH)
: ss.
COUNTY OF Davis)

On this 6 day of August, 2012, personally appeared before me Anne Taylor, who being duly sworn did say that he/she is the Personal Banker of Wells Fargo Bank a National corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

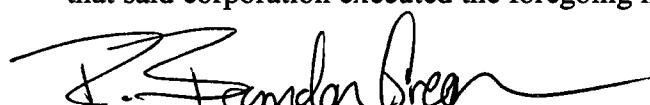

NOTARY PUBLIC
Residing in Davis County _____

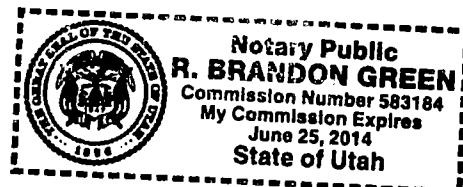


CITY ACKNOWLEDGEMENT

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On the 6 day of August, 2012, personally appeared before me D. Todd Stevenson and Brandon Green, who being by me duly sworn, did say that they are the Mayor and City Recorder, respectively, of Fruit Heights City Corporation, and said persons acknowledged to me that said corporation executed the foregoing instrument.


NOTARY PUBLIC
Residing in Utah County, Utah
Davis.



(OR AS SUPPLIED BY BANK)

EXHIBIT "B"

SIGHT DRAFT

To Drawee

_____, Utah _____

Pay To The Order Of FRUIT HEIGHTS CITY CORPORATION on sight the sum of _____

_____ Dollars (\$_____) drawn against Account No. _____

—.

FRUIT HEIGHTS CITY CORPORATION

By: _____
D. Todd Stevenson, Mayor



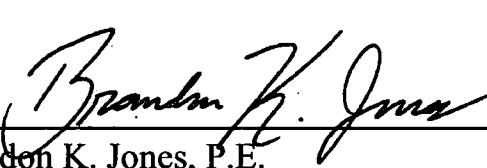
~ MOUNTAIN SPLENDOR ESTATES - PHASE 2 ~

July 31, 2012

SUMMARY

	Original Total	Remaining
SANITARY SEWER	\$18,537.88	\$750.00
CULINARY WATER	\$27,767.00	\$0.00
SECONDARY WATER	\$13,070.56	\$0.00
LAND DRAIN	\$18,425.90	\$750.00
STORM DRAIN	\$13,739.45	\$500.00
SWPPP	\$2,988.00	\$0.00
CURB, GUTTER AND SIDEWALK	\$46,299.08	\$22,057.33
GRADING AND PAVING	\$101,260.92	\$0.00
MISCELLANEOUS	\$23,500.00	\$23,500.00
TOTAL IMPROVEMENT COSTS	\$265,588.79	\$47,557.33
15% CONTINGENCY	\$39,838.32	\$39,838.32
10% GUARANTEE	\$26,558.88	\$26,558.88
TOTAL ESCROW AMOUNT	\$331,985.99	\$113,954.53

SUBDIVISION COST ESTIMATE APPROVAL


Brandon K. Jones, P.E.
Consulting City Engineer

7-31-12
Date

~ MOUNTAIN SPLENDOR ESTATES - PHASE 2 ~

COST ESTIMATE FOR IMPROVEMENTS

July 31, 2012

REMAINING QUANTITY REMAINING AMOUNT

SANITARY SEWER

1	Furnish and install 8" PVC, Including 4" of gravel under pipe and to top of pipe.	587	lf	\$17.24	\$10,119.88	0	\$0.00
2	Furnish and install 4' Manhole with concrete collar.	2	ea	\$2,159.00	\$4,318.00	0	\$0.00
3	Furnish and install 4" PVC service to 10' beyond property, including 4" of gravel under pipe.	10	ea	\$335.00	\$3,350.00	0	\$0.00
4	Camera	1	ls	\$750.00	\$750.00	1	\$750.00

SANITARY SEWER SUBTOTAL = \$18,537.88 **\$750.00**

CULINARY WATER

1	Furnish and install 8" C-900 PVC.	782	lf	\$13.50	\$10,557.00	0	\$0.00
2	Connect to existing 8" main.	2	ea	\$321.00	\$642.00	0	\$0.00
3	Relocate Existing Fire Hydrant	1	ea	\$3,734.00	\$3,734.00	0	\$0.00
4	Furnish and install Fire Hydrant	1	ea	\$3,534.00	\$3,534.00	0	\$0.00
5	Furnish and install 1" service to 10' beyond property.	10	ea	\$930.00	\$9,300.00	0	\$0.00

CULINARY WATER SUBTOTAL = \$27,767.00 **\$0.00**

SECONDARY WATER

1	Furnish and install 6" C-900 PVC.	781	lf	\$9.76	\$7,622.56	0	\$0.00
2	Connect to existing 6" main.	2	ea	\$206.00	\$412.00	0	\$0.00
3	Furnish and install 6" Gate Valve and box with concrete collar.	1	ea	\$831.00	\$831.00	0	\$0.00
4	Furnish and install dual turnout secondary water lateral	5	ea	\$841.00	\$4,205.00	0	\$0.00

SECONDARY WATER SUBTOTAL = \$13,070.56 **\$0.00**

LAND DRAIN

1	Furnish and install 8" PVC, including 4" of gravel under pipe and to top of pipe.	590	lf	\$16.81	\$9,917.90	0	\$0.00
2	Furnish and install 4' Manhole with concrete collar.	2	ea	\$2,204.00	\$4,408.00	0	\$0.00
3	Furnish and install 4" PVC service to 10' beyond property, including 4" of gravel under pipe.	10	ea	\$335.00	\$3,350.00	0	\$0.00
4	Camera	1	ls	\$750.00	\$750.00	1	\$750.00

LAND DRAIN SUBTOTAL = \$18,425.90 **\$750.00**

STORM DRAIN

1	Furnish and install 18" RCP, including 6" of gravel under and to springline of pipe.	353	lf	\$25.65	\$9,054.45	0	\$0.00
2	Construct inlet box.	3	ea	\$1,395.00	\$4,185.00	0	\$0.00
3	Camera	1	ls	\$500.00	\$500.00	1	\$500.00

STORM DRAIN SUBTOTAL = \$13,739.45 **\$500.00**

SWPPP

1	Furnish and install silt fence.	450	lf	\$2.10	\$945.00	0	\$0.00
2	Furnish and install inlet protection.	7	ea	\$76.00	\$532.00	0	\$0.00
3	Construct concrete washout.	1	ls	\$185.00	\$185.00	0	\$0.00
4	Furnish and install construction entrance.	1	ea	\$934.00	\$934.00	0	\$0.00
5	Construct temporary sedimentation basin.	1	ls	\$392.00	\$392.00	0	\$0.00

SWPPP SUBTOTAL = \$2,988.00 **\$0.00**

~ MOUNTAIN SPLENDOR ESTATES - PHASE 2 ~

COST ESTIMATE FOR IMPROVEMENTS

July 31, 2012

REMAINING QUANTITY **REMAINING AMOUNT**

CURB, GUTTER AND SIDEWALK

1	Construct 30" curb and gutter with 6" gravel base.	1613	lf	\$14.75	\$23,791.75	0	\$0.00
2	Construct 6' wide X 4" thick abutting sidewalk with 6" gravel base.	1249	lf	\$17.17	\$21,445.33	1249	\$21,445.33
3	Furnish and install ADA dome in handicap ramp.	2	ea	\$306.00	\$612.00	2	\$612.00
4	Remove existing curb and gutter	90	lf	\$5.00	\$450.00	0	\$0.00
CURB, GUTTER AND SIDEWALK SUBTOTAL =						\$46,299.08	\$22,057.33

GRADING AND PAVING

1	Rough cut streets to sub-base grade.	1	ls	\$8,556.00	\$8,556.00	0	\$0.00
2	Saw cut edge of existing asphalt.	132	lf	\$2.31	\$304.92	0	\$0.00
3	Furnish and install 8" roadbase.	3520	sy	\$6.37	\$22,422.40	0	\$0.00
4	Furnish and install 3" asphalt.	3520	sy	\$11.35	\$39,952.00	0	\$0.00
5	Furnish and install 18" thick pit run.	3520	sy	\$8.53	\$30,025.60	0	\$0.00
GRADING AND PAVING SUBTOTAL =						\$101,260.92	\$0.00

MISCELLANEOUS

1	Survey Monument	3	ea	\$1,000.00	\$3,000.00	3	\$3,000.00
2	Street Light	2	ea	\$2,000.00	\$4,000.00	2	\$4,000.00
3	Construct segmented block wall	500	sf	\$32.00	\$16,000.00	500	\$16,000.00
4	Street Signs	1	ea	\$500.00	\$500.00	1	\$500.00
MISCELLANEOUS SUBTOTAL =						\$23,500.00	\$23,500.00

TOTAL IMPROVEMENTS COST = \$265,588.79

\$47,557.33

BOUNDARY DESCRIPTION

Beginning at the intersection of a Boundary Line Agreement recorded in the office of the Davis County Recorder as Entry no. 2501353, in Book 4926 at Page 1189, and the west line of Mountain Road defined on a Road Dedication Plat recorded in the office of the Davis County Recorder as Entry no. 2592588, in Book 5245 at Page 210, said point being South 89°59'50" West 543.64 feet along the section line and North 1056.46 feet from the Southeast Corner of the Southwest Quarter of Section 36, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and running;

Thence South 26°18'07" East 163.77 feet along the west line of said Mountain Road, Road Dedication Plat;
Thence northwesterly 16.42 feet along the arc of a 25.00 foot radius curve to the left, (center bears South 11°43'26" West and long chord bears South 82°54'13" West 16.13 feet, with a central angle of 37°38'26");
Thence South 64°05'00" West 30.98 feet;
Thence southwesterly 276.73 feet along the arc of a 1020.50 foot radius curve to the right, (center bears North 25°55'50" West and long chord bears South 71°51'07" West 275.89 feet, with a central angle of 15°32'14");
Thence South 10°22'46" East 9.50 feet;
Thence southwesterly 17.03 feet along the arc of a 970.00 foot radius curve to the left, (center bears South 10°22'46" East and long chord bears South 79°07'04" West 17.03 feet, with a central angle of 1°00'20");
Thence South 19°17'00" East 149.19 feet;
Thence South 65°34'59" West 87.82 feet;
Thence North 26°46'10" West 69.99 feet to the extension of a fence line;
Thence South 71°13'43" West 213.88 feet to and along said fence line;
Thence South 71°05'12" West 128.34 feet along said fence line to the Southeast Corner of Mountain Splendor Subdivision Phase 1;
Thence North 19°17'00" West 251.87 feet along the east line to the Northeast Corner of Mountain Splendor Subdivision Phase 1, said point also being on the line described in the aforementioned Boundary Line Agreement;
Thence North 70°56'00" East 620.14 feet along the line described in the aforementioned Boundary Line Agreement;
Thence North 70°54'20" East 139.34 feet along the line described in the aforementioned Boundary Line Agreement to the point of beginning.

Contains 171,796 square feet, 3.944 acres, 11 lots.