

**A G E N D A   R E P O R T**

**DATE** January 17, 2006

**ITEM**    Accept Deed of American Avenue, Sec. 10 & 11, T20N, R3E & Approve Revised Improvements Agreement for Emerald Green PUD

**INITIATED BY**    Public Works Department & Planning Department

**ACTION REQUESTED**    Accept American Avenue as Right-of-way & Approve Revised Agreement

**PREPARED & PRESENTED BY**    Jim Rearden, Public Works Director

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**RECOMMENDATION:**

Staff recommends the City Commission approve the following motion:

**MOTION:**

I move the City Commission accept the deed of right-of-way of the existing roadway, known as American Avenue, depicted on Exhibit A, from Jerry and Julie Bass and approve the attached revised Improvements Agreement for the Emerald Green PUD, authorizing the Mayor and/or City Manager and staff to execute the necessary documents.

**SYNOPSIS:**

The City has been trying for many years to obtain American Avenue as dedicated right-of-way. Jerry Bass and Julie Bass, as part of the conditions of the Jewel Addition Amended Plat and rezoning, negotiated a purchase of the right-of-way from Burlington Northern Santa Fe (BNSF). That purchase was completed on October 13, 2005. The Real Estate Purchase and Sales Agreement executed between BNSF and Jerry and Julie Bass specifies that: ‘Buyer (Bass) shall transfer, assign and dedicate this Property unto the City of Great Falls for its continued use as a public street and for utility purposes.’ By executing this warranty deed, the transfer of American Avenue to the City will be completed. The revised Improvements Agreement for the Emerald Green PUD has been revised to delete reference to a utility easement that no longer is necessary as a result of the deed for American Avenue.

**BACKGROUND:**

Jerry Bass and Julie Bass, owners of the Emerald Green Golf Course, initiated Ordinance No. 2903 which rezoned Lot 1, Block 1, Jewel Addition, from 1<sup>st</sup> Industrial, “D” Area District, to “PUD” Planned Unit Development District. At the same time (April 5, 2005), an amended plat of Lot 1 was approved. Lot 1 is 90 acres in area and is presently occupied by the Emerald Green Golf Course. The Amended Plat subdivided subject Lot 1 into three lots: one lot to accommodate 32 residential condominium units, a second lot for a proposed 64 unit assisted living facility and a third lot to accommodate the existing golf course and accessory uses.

One of the conditions of approval of the Emerald Green PUD was that, short of a dedication or deed to the City for sufficient right of way for American Avenue, the City be provided an easement for the right-of-way corridor. American Avenue, between 6<sup>th</sup> and 14<sup>th</sup> Streets Southwest, is the sole

source of access to the subdivision. The roadway, except for the far easterly segment was, as of recently, on property owned by Burlington Northern Santa Fe Railway Company (BNSF) and the City possessed neither an easement nor deed for the roadway. One of the primary criteria that is a basis for a governing body approving a subdivision is that legal (public right-of-way) and physical access are provided to each parcel within the subdivision. A planned private roadway system connected to American Avenue will provide access to the development from American Avenue.

American Avenue also is in need of repair or reconstruction in the near future. As part of the Improvements Agreement, the owner/developer:

‘agrees to waive its right to protest any future special improvement or lighting district for installation of standard City roadway improvements, roadway lighting and railroad crossing facilities in American Avenue between 6<sup>th</sup> and 14<sup>th</sup> Streets Southwest and further agrees to pay its proportionate share of said roadway improvements, roadway lighting and railroad crossing facilities that may be installed with or without special improvement or lighting districts.’

Attached: Exhibit A  
Improvements Agreement (Revised)



EXHIBIT "A"

A road right-of-way in the NE1/4 Section 10 and the NW1/4 Section 11, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, said right-of-way being a 60 feet wide strip of land lying along the northerly (left) side of the following described line, more fully described as follows:

Beginning at a point on the easterly right-of-way line of 14th Street S.W. the northwest corner of Certificate of Survey No. 3018, the northerly line of the described strip to be lengthened or shortened to begin at the east right-of-way line of 14th Street S.W.; thence South  $80^{\circ}40'00''$  East, 740.8 feet; thence easterly 363.7 feet along a curve to the right ( $R=1607.0$  feet, chord=South  $74^{\circ}11'$  East, 362.9 feet); thence South  $67^{\circ}42'00''$  East, 376.0 feet; thence easterly, 461.0 feet along a curve to the left ( $R=1667.0$  feet, chord=South  $75^{\circ}37'20''$  East, 459.5 feet); thence South  $83^{\circ}32'44''$  East, 255.0 feet, the last five courses being along the northerly lines of Certificate of Survey No. 3018, Lot 1, Block 1, Jewel Addition and Certificate of Survey No. 3923; thence South  $79^{\circ}18'$  East, 290.65 feet; thence easterly, 168.4 feet along a curve to the left ( $R=1637.0$  feet, chord=South  $82^{\circ}14'50''$  East, 168.35 feet) to a point of reverse curve; thence easterly, 91.2 feet along a curve to the right ( $R=208.7$  feet, chord=South  $72^{\circ}40'15''$  East, 90.5 feet), the last three courses do not follow the north property lines shown on Certificates of Survey No. 3923, 2558 and 2794 but are located so that the north line of the described strip is a minimum of 50 feet from the centerline of a spur track of the BNSF Railway; thence South  $60^{\circ}08'50''$  East, 6.3 feet; thence easterly, 160.4 feet along a curve to the left ( $R=357.4$  feet, chord=South  $73^{\circ}00'25''$  East, 159.1 feet); thence South  $85^{\circ}52'00''$  East, 386.2 feet to the end of the right-of-way, the northerly line of the described strip to be lengthened or shortened to terminate at the extended westerly line of Certificate of Survey No. 495, the last three courses being along the northerly lines of Certificate of Survey No. 2794 and Lot 1, Block 1, Jewel Addition.

EXCLUDING from the above described right-of-way that portion of said land owned by Thomas Heisler lying inside of Certificates of Survey No. 2558 and 3923.

CS# 5-0004322

(REVISED)  
IMPROVEMENTS AGREEMENT  
FOR  
1<sup>ST</sup> AMENDED PLAT OF  
LOT 1, BLOCK 1,  
JEWEL ADDITION

1. PREFACE

The following is a binding Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005, between J. L. BASS and JULIE M. BASS, individuals residing in Great Falls, Montana, hereinafter referred to as “Owner”, and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as “City”, regarding the requirements associated with approval of the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition, Cascade County, Montana, and rezoning the property therein to Planned Unit Development (PUD) District.

2. SUPPORTING DOCUMENTS

- A. 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition to Great Falls, Cascade County, Montana, filed July 27, 2005, in the Clerk and Recorder’s Office of Cascade County, Montana.
- B. Site Plan for the Emerald Greens Planned Unit Development proposed to be constructed upon Lot 3 of the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition to Great Falls, dated September 23, 2005, prepared by L’Heureux Page Werner PC Architects Engineers, filed in the office of the Great Falls City-County Planning Board.
- C. Legal documents, including articles of incorporation, bylaws and covenants, establishing and outlining responsibilities of the Emerald Greens Homeowner’s Association, shall be filed in the Clerk and Recorder’s Office of Cascade County, Montana.

3. AMENDMENTS TO AGREEMENT

All amendments to this Agreement shall be in writing and approved by City and Owner.

4. FEES AND CHARGE

A. Owner shall, in addition to the rezoning fee of \$400.00 and minor plat fee of \$300.00, which have been paid previously, pay the following required fees and charges as provided by City policy, ordinances and resolutions:

a)	Improvements Agreement Fee	\$200.00
b)	Filing Fee for Agreement (\$6 per page)	60.00
	Total	\$260.00

B. Owner or its successors or assigns shall reimburse City for its expenses incurred in testing and acceptance of public utilities to serve the Emerald Greens PUD at the rates charged by City for said work at the time performed.

C. Water tapping, water connection, sewer service tapping, and sewer connection fees will be assessed at the time of installation.

5. PUBLIC IMPROVEMENT OBLIGATION

Owner hereby agrees to install the public utilities necessary to serve the planned dwelling units within Lot 3 of the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition, within two years of the date of this Agreement in accordance with plans and specifications approved by the City Public Works Department. Building permits for planned dwelling units in said Lot 3 shall not be issued until the contracts for installation of the public utilities to serve said dwelling units have been executed. Owner acknowledges that City will not permit the occupancy of said dwelling units until said public utilities have been installed, tested and accepted by City.

6. ADHERENCE TO SITE PLAN

Owner hereby agrees development of the Emerald Greens PUD shall be substantially in accordance with the site plan referenced in Paragraph 2.B. hereinabove. Major changes as defined by the City's PUD Code shall only occur after reconsideration and approval by the Great Falls City-County Planning Board and the City Commission of the City of Great Falls. Minor changes may be approved by the City's Zoning Administrator or Director of the Great Falls City-County Planning Board following approval of such change by the Emerald Greens Homeowner's Association if applicable.

7. FENCE (WALL) ALONG WEST AND NORTH BOUNDARIES OF LOT 3

Owner intends to construct a minimum six (6) foot high solid fence or wall along the west and north boundaries of Lot 3 of the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition. Prior to initiating construction of said fence or wall, Owner hereby agrees to have design features of the fence or wall, including height, texture, color, alignment and any appropriate openings and accompanying landscaping to be reviewed and approved by the City Public Works Department, City Community Development Department, the staff of the Great Falls City-County Planning Department and the City Forester. Owner intends to construct the dwelling units on said Lot 3, in four phases as depicted in the site plan referenced in Paragraph 2.B. hereinabove. Owner further agrees to complete the construction of said fence or wall in each particular phase prior to occupancy of any dwelling unit within subject phase.

8. AMERICAN AVENUE IMPROVEMENTS

Owner hereby agrees to waive its right to protest any future special improvement or lighting district for installation of standard City roadway improvements, roadway lighting and railroad crossing facilities in American Avenue between 6<sup>th</sup> and 14<sup>th</sup> Streets Southwest and further agrees to pay its proportionate share of said roadway improvements, roadway lighting and railroad crossing facilities that may be installed with or without special improvement or lighting districts.

9. INTERNATIONAL AIRPORT HOLD HARMLESS STATEMENT

Owner and their assigns hereby agree to hold the City and the Great Falls Airport Authority harmless for any damages caused by noise and vibrations from normal and anticipated normal operations associated with Great Falls International Airport.

10. INDEMNIFICATION OF BNSF RAILROAD

Owner and their assigns hereby indemnify the Burlington Northern Santa Fe Railroad and its assigns regarding any negative impact resulting from the operation of a switchyard immediately north of the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition.

11. WARRANTY, OWNERSHIP AND INSPECTION OF UTILITIES

A. After the public utilities necessary to serve the planned dwelling units in Lot 3 of the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition, have been installed and accepted by City, the same shall be in all respects treated, owned and maintained as though the same had been constructed and installed by City. However, to the extent installed by Owner, Owner or its contractor shall guarantee said improvements against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.

B. Installation of the public utilities referenced in Paragraph 11.A. hereinabove, shall be subject to City's infrastructure inspection policy in place at the time of said installation.

12. CITY ACCEPTANCE AND ZONING

City hereby accepts and approves:

a) the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition, referenced in Paragraph 2.A herein;

b) the site plan for the Emeralds Greens PUD referenced in Paragraph 2.B. herein; and,

c) the rezoning of the area contained within the 1<sup>st</sup> Amended Plat of Lot 1, Block 1, Jewel Addition, from 1<sup>st</sup> Industrial District, "D" Area District, to "PUD" Planned Unit Development District.

13. BINDING EFFECT

The provisions covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns;

and any and all parties claiming by, through, or under them, shall be taken to  
agree and covenant with each of the parties to the Agreement, their devisees,  
heirs, successors and assigns, to conform to the provisions, covenants and terms of this  
Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day, month and year  
first hereinabove written.

THE CITY OF GREAT FALLS, MONTANA  
A Municipal Corporation of the State of Montana

\_\_\_\_\_  
City Manager

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
City Attorney

State of Montana )  
                                  :ss.  
County of Cascade)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year A. D. Two thousand and five, before me, the  
undersigned, a Notary Public for the State of Montana, personally appeared John W. Lawton  
known to me to be the City Manager of the City of Great Falls, Montana, is the person whose  
name is subscribed to the instrument within and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and  
year first above written.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_, 20\_\_\_\_

