



CONSENT AGENDA ITEM NO. 7 *7F*

FOR COUNCIL: June 8, 2015

SUBJECT: Consideration of approving a Fourth Tolling Agreement with McLean County Land Trust CC-1 to extend the period until December 15, 2015, and to waive any defense by way of any statute of limitations which would otherwise arise during such period.

RECOMMENDATION/MOTION: That the Fourth Tolling Agreement with McLean County Land Trust CC-1 be approved to extend the period until December 15, 2015, to waive any defense by way of any statute of limitations which would otherwise arise during such period, and authorize the Mayor and City Clerk to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities, and Goal 5. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 2a. Better quality roads and sidewalks, and Objective 5b. City decisions consistent with plans and policies.

BACKGROUND: The City and McLean County Land Trust CC-1 are parties to several annexation agreements from the 1990s related to the development of the Fox Creek Subdivision area. The Third Amendment is the final amendment to the Fox Creek Annexation Agreement, and effectively replaced the original annexation agreement and the first two amendments, and became the parties' agreement. The City contends that pursuant to the parties' agreements, the owner owes the City development fees and additional work on a detention basin and on sidewalks in the 12th addition of the Fox Creek Subdivision. Paragraph 18 of the Third amendment provided that: "This Agreement shall be enforceable for a period of 20 years from the date of passage of the annexation ordinance contemplated by this agreement." Ordinance No. 1994-41, which ratified the Third Amendment, was passed on April 25, 1994 and approved on April 26, 1994. The effective term of the parties' annexation agreement arguably ends on April 24, 2014. Section 11-15.1-4 of the Illinois Municipal Code provides that a "lawsuit to enforce and compel performance of the [annexation] agreement must be filed within the effective term of the agreement or within 5 years from the date the cause of action accrued, whichever is later".

On April 14, 2014, the City approved a tolling agreement to waive a right to claim that litigation should be dismissed due to the expiration of a statute of limitations. This agreement gave the parties an additional six-month period during which the parties were able to work together in good faith to resolve their differences and reach resolution. During the tolling period, the parties also waive any defense by way of any statute of limitations which would otherwise arise during such period. The term of that tolling agreement expired on April 14, 2014. A Second Tolling Agreement was entered into at that time which is set to expire on January 13, 2015, and a Third Tolling Agreement was approved on January 12, 2015, set to expire on June 13, 2015.

Although the parties have resolved nearly all of the outstanding issues, additional time is needed to draft the necessary amendments to the annexation agreements and to finalize certain details. Accordingly, the parties desire to enter into a third tolling agreement to extend the period until December 15, 2015, to waive any defense by way of any statute of limitations which would otherwise arise during such period.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Snyder Development, A. Clay Cox.

FINANCIAL IMPACT: It is estimated McLean County Land Trust CC-1 currently owes the City \$562,194.78 in development fees. There are other "punch list" items that are covered by this agreement that have not yet been estimated.

Respectfully submitted for Council consideration.

Prepared by: Jeffrey R. Jurgens, Corporation Counsel

Recommended by:



David A. Hales
City Manager

Attachments: Attachment 1. Fourth Tolling Agreement

Motion: That the Fourth Tolling Agreement with McLean County Land Trust CC-1 be approved to extend the period until December 15, 2015, to waive any defense by way of any statute of limitations which would otherwise arise during such period, and authorize the Mayor and City Clerk to execute the necessary documents.

Motion: Seconded by:

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Painter			
Alderman Hauman				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Buragas			
Alderman Mwilambwe							
				Mayor Renner			

FOURTH TOLLING AGREEMENT

This Fourth Tolling Agreement is made and entered into on this 8th day of June, 2015, by and between the City of Bloomington, McLean County, Illinois, herein referred to as "City" and David Fedor, as Trustee of McLean County Land Trust CC-1 dated September 1, 1993, herein referred to as "Owner".

WHEREAS, David Fedor is the successor in interest to Mercer Turner, as Trustee of McLean County Land Trust CC-1 dated September 1, 1993 and to both First of America Trust Company, as trustee of the land trust The Peoples Bank, as trustee of land trust 21-040000 and PBB-232, dated January 25, 1991;

WHEREAS, the parties entered into an original annexation agreement dated December 10 and 11, 1990, which was amended on February 25, 1991, August 24, 1992 and February 25, 1994;

WHEREAS, the third amendment to the original annexation agreement effectively replaced the original annexation agreement and the first two amendments, and became the parties' agreement;

WHEREAS, sole beneficiary of the Owner is Fox Creek, Inc.;

WHEREAS, the annexation ordinance contemplated by the annexation agreement was passed by the Bloomington City Council on April 25, 1994;

WHEREAS, the City contends that pursuant to the parties' agreements the Owner owes the City development fees and additional work on a detention basin and on sidewalks in the 12th addition of the Fox Creek Subdivision;

WHEREAS, the effective term of the parties' annexation agreement arguably ends on April 24, 2014;

WHEREAS, section 11-15.1-4 of the Illinois Municipal Code provides that a “lawsuit to enforce and compel performance of the [annexation] agreement must be filed within the effective term of the agreement or within 5 years from the date the cause of action accrued, whichever is later”; and

WHEREAS, the parties previously entered into three different Tolling Agreements to allow additional time to negotiate a resolution to the outstanding issues; and

WHEREAS, the parties are working together in good faith to resolve their differences, and believe that they should be able to resolve some or all of their differences shortly and believe that it would not be in either parties’ interest to engage immediately in litigation; and

WHEREAS, to allow the parties time to finalize a resolution to the pending issues, including the adoption of any necessary amendments to the annexation agreement, the parties desire and find it in their best interests to enter into this Fourth Tolling Agreement to allow an additional six months of negotiation and finalize and approve any necessary documents.

THEREFORE, IT IS AGREED BY THE CITY AND OWNER AS FOLLOWS:


1. The “Effective Date” shall mean the date of April 14, 2014.
2. The “Termination Date” shall mean the date of December 15, 2015.
3. With respect to any claims arising out of the annexation agreement, as amended, that the Parties may have against each other, the Parties agree that any applicable statute(s) of limitations, statute(s) of repose, laches, or any other defense(s) applicable are tolled during the period of time from the Effective Date to the Termination Date. The period of time from the Effective Date until the Termination Date shall not be taken into account in calculating the period of any applicable statute(s) of limitations, statute(s) of repose, or laches.

4. Any claims instituted before or on the Termination Date will be deemed to have been filed on the Effective Date for purposes of any statute(s) of limitations, statute(s) of repose, laches, or any other defense(s) applicable to the time within which the claims arising out of the annexation agreement, as amended, are filed between the Parties.

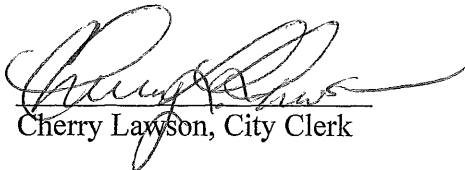
5. The parties acknowledge that it is the desire and intention of both parties to execute a full amendment of the Annexation Agreement for the sole purpose extending the enforcement date of the Annexation Agreement but that there is insufficient time meet all statutory requirements for approval of such amendment before April 25, 2014 and/or the extension dates within any previous Tolling Agreements executed between the parties.

6. All parties will cooperate to meet the statutory requirements for approval of an amendment of the annexation agreement and as soon as all statutory requirements for approval of an amendment to the annexation agreement have been met, the parties will execute a fourth amendment to the annexation agreement on terms identical to those set forth on the attached Exhibit A. Adoption of the Exhibit A attached hereto, and the requirements for same, shall replace the requirements in paragraph 6 of the Tolling Agreement dated April 14, 2014 and Second Tolling Agreement dated October 13, 2014.

City of Bloomington, Illinois,
A Municipal Corporation

By: 
Tari Renner, Mayor

ATTEST:


Cherry Lawson, City Clerk

McLean County Land Trust CC-1 Dated
September 1, 1993

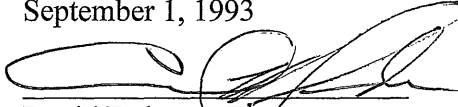

David Fedor, as Trustee

EXHIBIT A

FOURTH AMENDMENT TO ANNEXATION AGREEMENT

This Agreement is made and entered into on this 8th day of June, 201⁵, by and between the City of Bloomington, McLean County, Illinois, herein referred to as "City" and David Fedor, as Trustee of McLean County Land Trust CC-1 dated September 1, 1993, herein referred to as "**Owner**".

WHEREAS, David Fedor is the successor in interest to Mercer Turner, as Trustee of McLean County Land Trust CC-I dated September I, 1993 and to both First of America Trust Company, as trustee of the land trust The Peoples Bank, as trustee of land trust 21-040000 and PBB-232, dated January 25,1991;

WHEREAS, this is the fourth amendment to the original annexation agreement dated December 10 and 11, 1990, which was previously amended on February 25, 1991, August 24, 1992 and February 25, 1994;

WHEREAS, the third amendment to the original annexation agreement effectively replaced the original annexation agreement and the first two amendments, and became the parties' agreement;

WHEREAS, sole beneficiary of the Owner is Fox Creek, Inc.; and

WHEREAS, the parties desire to amend their agreement to extend the period of time during which their agreement may be enforced to provide an additional period of time as set forth herein to try and reach agreement with respect to outstanding issues concerning fees owed, a detention basin and completion of the punch list for the 12th addition of the Fox Creek Subdivision.

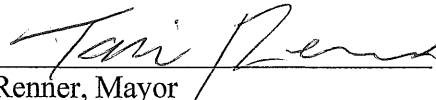
THEREFORE, IT IS AGREED BY THE CITY AND OWNER AS FOLLOWS:

7. Paragraph 18 of the April 25, 1994 third amendment to the original annexation agreement dated December 10 and 11 is amended by eliminating the current language and replacing it in its entirety with the following language:

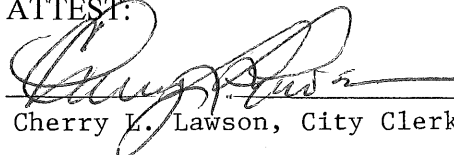
18. This Agreement shall be enforceable up through and including December 15, 2015. This Agreement is binding upon the parties hereto, and their heirs, successors and assigns.


8. Except as amended as set forth above, all of the provisions of the April 25, 1994 third amendment to the original annexation agreement dated December 10 and 11, 1991 are unchanged and remain enforceable.

City of Bloomington, Illinois,
A Municipal Corporation

By: 
Tari Renner, Mayor

ATTEST:


Cherry L. Lawson, City Clerk


David Fedor, as Trustee of McLean County
Land Trust CC-1 dated September 1, 1993