

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 7, 2014 AGENDA**

Subject:	Type:	Submitted By:
TOLLING AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared to approve an agreement related to security for conference center financing.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

The City of La Vista in 2007 provided financing for the La Vista conference center, to be repaid in interest installments and a single lump sum principal payment in 10 years, as guaranteed by Mr. and Mrs. Hammons and related trust. A tolling agreement between La Vista and the estate and trust of John Q. Hammons is proposed to extend the time for La Vista to assert claims it may have with respect to the estate and trust, considering Mr. Hammons died last year. The purpose of the agreement is to preserve the status quo while La Vista follows up with the estate and trust.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN AGREEMENT RELATED TO SECURITY FOR CONFERENCE CENTER FINANCING.

WHEREAS, an agreement has been presented to extend the time until December 1, 2014 or thereafter with respect to certain claims and security for La Vista conference center financing and related performance; specifically as related to personal guarantees of John Q. Hammons, individually and as trustee ("Guarantees").

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of La Vista, Nebraska, that the agreement is hereby approved in form and content presented at this meeting, subject to any modifications the City Administrator determines necessary or advisable ("Agreement").

BE IT FURTHER RESOLVED, that the Mayor, City Administrator or his or her designee shall be authorized to execute said Agreement and to take any further actions on behalf of the City as he or she determines necessary or appropriate to carry out said Agreement, or as he or she otherwise determines necessary or appropriate with respect to the Guarantees, conference center financing or other security.

PASSED AND APPROVED THIS 7TH DAY OF OCTOBER, 2014.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

TOLLING AGREEMENT

This Tolling Agreement (the "Agreement") is entered into as of the 24th day of May, 2014 (the "Effective Date"), between Jacqueline A. Dowdy, as Personal Representative the Estate of John Q. Hammons, Deceased (the "Estate"), and Jacqueline A. Dowdy and Gregory D. Groves, as the successor trustees of the John Q. Hammons Revocable Trust dated December 28, 1989 (the "Hammons Revocable Trust") (collectively referred to herein as the "Hammons Parties"), on the one hand, and the City of La Vista, Nebraska, a municipal corporation ("La Vista"), and John P. Mullen, Special Administrator for the Estate of John Q. Hammons, ("Special Administrator") on the other hand.

* * *

WHEREAS, John Q. Hammons (the "Decedent") passed away May 26, 2013, and was domiciled at Greene County, Missouri on said date; and

WHEREAS, a probate administration proceeding for the Estate has been commenced in the Circuit Court of Greene County, Missouri, Probate Division (Case No. 1331-PR00455), and Ms. Jacqueline A. Dowdy has been appointed as Personal Representative of the Estate; and

WHEREAS, Jacqueline A. Dowdy and Gregory D. Groves are the successor trustees of the Hammons Revocable Trust; and

WHEREAS, on October 18, 2013, the Personal Representative filed an Inventory with the Circuit Court of Greene County, Probate Division, showing assets of the Estate totaling \$1,577.00, and claims filed against the Estate exceeding \$1,577.00; and

WHEREAS, La Vista, as a creditor, has filed a claim against the Estate; and

WHEREAS, on May 23, 2014, La Vista sent counsel for the Personal Representative a written "Demand that Personal Representative Commence Action for Accounting" under Mo. Rev. Stat. § 461.300 and, to the extent applicable, under Nebraska law; and

WHEREAS, La Vista has obtained the appointment of the Special Administrator in the State of Nebraska to commence a proceeding against the trustees of the Hammons Revocable Trust under Neb. Rev. Stat. § 30-3850; and

WHEREAS La Vista has commenced proceedings against the Trustees of the Hammons Revocable Trust under Neb. Rev. Stat. §30-3850 in *In the Matter of the Estate of John Q. Hammons, Deceased*, County Court of Sarpy County, Nebraska, Case No. PR 14-168, and *John P. Mullen, Special Administrator of the Estate of John Q. Hammons, Deceased v. Jacqueline A. Dowdy, and Gregory D. Groves, Trustees of the John Q. Hammons Revocable Trust Dated December 28, 1989*, District Court of Sarpy County, Nebraska, Case No. CI 14-792; and

WHEREAS, the Hammons Parties do not admit that any valid claims exist against the Estate or the Hammons Revocable Trust or that La Vista is a qualified claimant under § 461.300.

NOW, THEREFORE, and in consideration of the recitals above, the mutual agreements of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, all parties hereto agree as follows:

1. The Hammons Parties on or before October 10, 2014, agree to enter a voluntary appearance in the *In the Matter of the Estate of John Q. Hammons, Deceased*, Sarpy County Court, Case No. PR 14-168 and *John P. Mullen v. Jacqueline A. Dowdy, et al*, Sarpy County District Court, Case No. CI 14-792. The parties agree that, by filing the voluntary appearance, the Hammons Parties will not waive any defense (including but not limited to a defense asserting a lack of personal jurisdiction over the Hammons Parties, lack of subject matter jurisdiction, or improper venue or forum) and that neither La Vista nor the Special Administrator will argue that the filing of the voluntary appearance waived, forfeited, or otherwise affected the Hammons Parties' ability to raise or assert any such defense. Furthermore, the parties agree that the voluntary appearance will contain a joint stipulation, signed by counsel for the Hammons Parties, La Vista, and the Special Administrator, that provides that the Hammons Parties have not waived any defense (including but not limited to a defense asserting a lack of personal jurisdiction over the Hammons Parties, lack of subject matter jurisdiction, or improper venue or forum) by filing the voluntary appearance and that neither La Vista nor the Special Administrator will argue that the filing of the voluntary appearance waived, forfeited, or otherwise affected the Hammons Parties' ability to raise or assert any such defense.
2. La Vista and the Special Administrator agree the Hammons Parties need not file responsive pleadings in *In the Matter of the Estate of John Q. Hammons, Deceased*, Sarpy County Court, Case No. PR 14-168 and *John P. Mullen v. Jacqueline A. Dowdy, et al*, Sarpy County District Court, Case No. CI 14-792 until December 1, 2014. The deadline to file a responsive pleading may be extended by written agreement of the parties.
3. The Hammons Parties each agree that the statutes of limitations, statutes of repose, laches periods, and all other periods or time limitations related to La Vista or the Special Administrator bringing any action in a Nebraska court or other court pursuant to Neb. Rev. Stat. § 30-3850 shall be tolled and suspended so that they expire on January 15, 2015. The term may be extended by written agreement of the parties.
4. The Hammons Parties each agree that the statutes of limitations, statutes of repose, laches periods, and all other periods or time limitations related to La Vista commencing an action under Mo. Rev. Stat § 461.300 shall be tolled and suspended so that they expire on January 15, 2015. The term may be extended by written agreement of the parties.
5. La Vista and the Special Administrator agree the time period in Mo. Rev. Stat § 461.300, under Nebraska law or elsewhere for the Hammons Parties to act in response to La Vista's May 23, 2014, demand shall be tolled and suspended so that it expires on December 1, 2014, unless another creditor of the Estate files an action prior to December 1, 2014, for an accounting. In that event, La Vista may commence an action under Mo. Rev. Stat. §461.300, Nebraska law or elsewhere at any time prior to December 1, 2014.

The term may be extended by written agreement of the parties.

6. La Vista and the Special Administrator agree that the time period for the Hammons Parties to answer or otherwise respond to any action initiated pursuant to Neb. Rev. Stat. § 30-3850 shall be tolled and suspended until the later of December 1, 2014, or the deadline prescribed by applicable law. The term may be extended by written agreement of the parties.
7. The Hammons Parties waive and agree not to assert the defenses of statute of limitations, statute of repose, laches, estoppel, or any other defense based on any delay of La Vista in bringing any action pursuant to Neb. Rev. Stat. § 30-3850 prior to January 15, 2015.
8. The Hammons Parties further waive and agree not to assert the defenses of statute of limitations, statute of repose, laches, estoppel, or any other defense based on any delay of La Vista in bringing any action pursuant to Mo. Rev. Stat § 461.300 prior to January 15, 2015.
9. The term of this Agreement shall be from the Effective Date, regardless of the date of execution of the last signatory to this Agreement.
10. Nothing in this Agreement shall operate to revive or extend the time for filing any claims that were already time-barred as of the Effective Date of this Agreement.
11. This Agreement does not bar or limit any defenses that may be asserted relating to La Vista's claims, except for those defenses that are specifically tolled pursuant to this Agreement.
12. This Agreement is not an admission or acknowledgement by any party that either a valid claim or defense exists. All discussions leading to the execution of this Agreement are covered by a compromise privilege that shall prevent any of the parties from offering any testimony or evidence of such discussions except solely to enforce the provisions of this Agreement.
13. All parties hereto represent and warrant that the terms, extent and duration of this Agreement are reasonable and that they will not challenge or contest the authority of the parties to agree to any of the terms set forth in this Agreement.
14. This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.
15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but also, which together shall constitute one and the same instrument. A facsimile copy or electronic copy shall also serve as an original.
16. This Agreement shall be governed by the laws of the State of Missouri.
17. The undersigned represent that they are fully authorized to enter into this Agreement and

to bind the parties they represent.

18. This Agreement may not be altered or amended except by a writing signed as this Agreement is signed by each and all of the parties.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, each of the parties have executed this Tolling Agreement on or as of the date first set forth above.

Jacqueline A. Dowdy, as Personal Representative of
the Estate and as Trustee of the Hammons
Revocable Trust

Greggory D. Groves, as Trustee of the Hammons
Revocable Trust

Brenda Gunn, as City Administrator for the City of
La Vista, Nebraska

John P. Mullen, as Special Administrator for the
Estate of John Q. Hammons