

TOLLING AGREEMENT

This tolling agreement ("Agreement") is made and entered into this 21st day of February, 2012, by and between Charles E. Holcombe, Jr., Sandra Gillam, James Gillam, Amy Holcombe and Timothy R. Holcombe, as individuals (collectively "Holcombes"), and the City of Redlands ("City"). City and Holcombe are sometimes individually referred to herein as a "Party" and, together, as the "Parties." In consideration of the mutual promises contained herein, the Parties agree as follows:

RECITALS

WHEREAS, Holcombes represent they own, or have a legal or equitable interest in, certain developed real property having the address of 624 West State Street (the "Property") in the city of Redlands; and

WHEREAS, on February 7, 2011, Holcombes filed a claim against City for damages to the Property allegedly caused by the failure of the City's storm drain which underlies the Property; and

WHEREAS, on June 20, 2011, Holcombes filed an action in the San Bernardino Superior Court, designated as Case No. CIVDS 1107627, framed as a Complaint for Inverse Condemnation against the City (the "Complaint"); and

WHEREAS, at the February 7, 2012, Redlands City Council meeting, staff apprised the Redlands City Council of the facts and circumstances of Holcombes' claim during closed session and the city Council has directed staff to discuss settlement of Holcombes' claim and Complaint; and

WHEREAS, City and Holcombes desire to continue discussions in an attempt to reach a settlement before additional legal action is taken and expenses are incurred by the Parties; and

WHEREAS, City and Holcombes now desire to enter into this Agreement to provide for an extension of time to allow such settlement discussions to continue without prejudice to the Parties;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. Tolling Date: This Agreement shall be effective February 21, 2012 (the "Tolling Date").

2. Dismissal of Complaint: Promptly after mutual execution of the Agreement, Holcombes should dismiss the Complaint, without prejudice. Nothing herein shall be construed to preclude Holcombes from re-filing an action against the City at any time they determine settlement negotiations are no longer productive.

3. Tolling: City and Holcombes hereby agree that the running of any and all statutes of limitation and any other defenses based on the passage of time on any and all claims and

causes of action that Holcombes and City have against each other based upon the claim filed by Holcombes, or based upon the Complaint, which were not already barred by the statute of limitations or passage of time, as of the Tolling Date shall be tolled through October 31, 2012.

4. Lapsed Claims: This Agreement has no effect on Holcombes' claims or causes of action that, prior to the Tolling Date, were already barred by the statute of limitations or otherwise barred by the passage of time, and this Agreement shall not be construed to revive any such time-barred claims or causes of action.

5. No Admission of Liability: This Agreement does not constitute an admission by either of the Parties of the existence of any claim, cause of action or defense, or liability, and this Agreement shall not be used or referred to in any proceeding for any purpose other than to establish the Tolling Date.

6. Applicable Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7. Equitable Doctrines. Any defense which any Party may have, including those based on laches or related equitable doctrines shall not be based upon or supported in any way by the postponement of any claim or defense during the tolling period.

8. Successors and Assigns. The terms, conditions, covenants and agreements set forth in this Agreement shall apply to and bind the assigns and successors in interest of the Parties.

9. Entire Agreement. The undersigned all acknowledge and represent that they have read this Agreement and consulted with their respective legal counsel concerning its contents and consequences, that this Agreement is being executed solely in reliance on their respective judgment, belief and knowledge of the matters set forth herein and on the advice of their counsel. This Agreement, negotiated by the Parties, integrates all the subject terms and conditions and supersedes all negotiations of previous agreements between the Parties concerning the specific subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties through their duly authorized representatives, entered into this Agreement. The Parties having read and understanding the foregoing terms and conditions do by their respective signatures adhere to the same.



Pete Aguilar, Mayor



Charles E. Holcombe

Attest:



Sandra Gillam



Sam Irwin, City Clerk



James Gillam

PARTIAL RELEASE OF CLAIM

This Partial Release of Claim is being presented to the City of Redlands (hereinafter "City") by Charles E. Holcombe, Jr. Sandra Gillam, James Gillam, Amy Holcombe and Timothy Holcombe (hereinafter the "Holcombes") in consideration for the partial payment of their claim against City as set forth in detail below:

RECITALS

Whereas, the Holcombes represent that they own certain developed real property having the address of 624 West State Street in the city of Redlands (the "Property"); and

Whereas, on February 7, 2011 the Holcombes filed a claim (the "Claim") against City for damages to the Property allegedly caused by the failure of the City's storm drain which underlies the Property; and

Whereas, on June 20, 2011 the Holcombes filed an action in the San Bernardino Superior Court, designated as Case No. CIVDS 1107627, framed as a Complaint for Inverse Condemnation against the City (the "Complaint"); and

Whereas, at the February 7, 2012 Redlands City Council Meeting, staff apprised the Redlands City Council of the facts and circumstances of the Holcombes' Claim during closed session and the City Council has directed staff to discuss settlement of Holcombes' Claim and the Complaint; and

Whereas, the City and the Holcombes desire to continue discussion in an attempt to reach a settlement before additional legal action is taken and expenses are incurred by the parties, in furtherance of which the Holcombes have tendered a Tolling Agreement to the City; and

Whereas, without acknowledging any liability on the Claim filed by the Holcombes, the City wishes to exhibit its good faith in this process by making a payment toward rental income claimed to have been lost by the Holcombes from the damage to the Property, for which payment the Holcombes wish to provide a release;

RELEASE

Section 1. In consideration of payment by the City to the Holcombes in the amount of \$35,000, receipt of which is hereby acknowledged, the Holcombes, and each of them and for their agents, successors and assigns, do hereby release the City, and its elected officials, officers and employees, from that portion of the Claim asserting a loss of rent for the period January 2011 through February 2012.

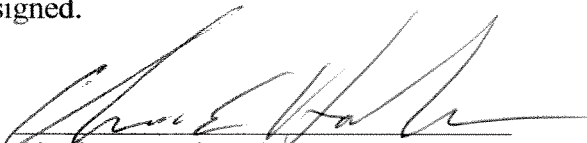
Section 2. In all other respects, the Holcombes do hereby release the City from any and all demands, whether covered by the Claim or otherwise, for lost rent for the Property for the period January 2011 through February 2012.

Section 3. It is further understood and agreed by the Holcombes that all rights the Holcombes may have under Section 1542 of the California Civil Code with respect to the Holcombes' claim for a loss of rent for the period of January 2011 through February 2012 are hereby expressly waived. Said section reads as follows:

"1542, Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Section 4. The Holcombes, in executing this Partial Release of Claim, warrant that no part of their claim for lost rent has been assigned or transferred in any manner to anyone, and the Holcombes shall defend, indemnify and hold the City harmless for any demand, claims, damages, costs and liabilities incurred by the City as a result of any person or entity asserting such assignment or transfer.

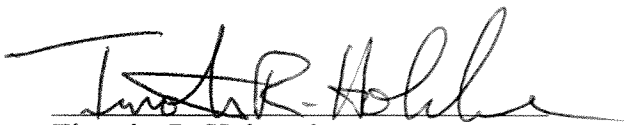
This Partial Release of Claim is executed this _____ day of February 2012 by the undersigned.


Charles E. Holcombe, Jr.


Amy Holcombe

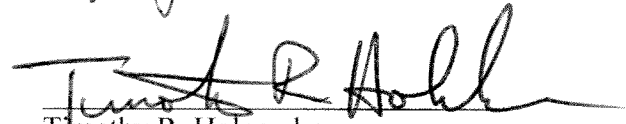

Sandra Gillam


James Gillam


Timothy R. Holcombe



Amy Holcombe



Timothy R. Holcombe