

RESOLUTION

Approving a Settlement Agreement and Release between the Omni Charlottesville Virginia Corporation and the City of Charlottesville, made as of July 1, 2022

WHEREAS the Omni Charlottesville Virginia Corporation (“Omni”) and the City of Charlottesville (“City”) are parties to an action pending in the Circuit Court of the City of Charlottesville styled Omni Charlottesville Virginia Corporation v. City of Charlottesville, Virginia, Case No. CL21-116 (the “Action”), addressing the real estate tax assessments for the Omni property for tax years 2020 and 2021; and

WHEREAS Omni currently has an appeal of the City’s assessment of the Omni property for tax year 2022 pending before the City’s Board of Equalization (the “BOE Appeal”); and

WHEREAS Omni and the City wish to settle the disputes between them and dismiss the Action and the BOE Appeal on the terms and conditions stated below; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia THAT a Settlement Agreement and Release made between Omni and the City as of July 1, 2022 is hereby ratified and approved, upon the following terms and conditions:

1. Settlement Payment. In consideration of the release set forth in this Agreement, the City shall refund to Omni, and agrees to accept, a payment in the principal amount of \$135,304.57, plus accrued interest in the amount of \$14,794.62 as of June 20, 2022, with interest accruing thereafter at the rate of \$37.07 per diem (collectively the “Settlement Payment”), as a refund of a portion of the real property taxes imposed on real property owned by Omni, known as 212 Ridge McIntire Road, Charlottesville, Virginia, bearing Parcel No. 330155L00 (the “Property”). The Settlement Payment amount includes the refunds of taxes and interest due to Omni based on the revised assessments set forth in Paragraph No. 3 of this Agreement.

2. Dismissal. Upon receipt of the Settlement Payment, counsel for Omni shall endorse and deliver to counsel for the City an Agreed Order dismissing the Actions, with prejudice.

3. Compromise Assessments for Tax Years 2020, 2021, and 2022. For purposes of this settlement, the City shall set the assessment of the Property for tax years 2020-2022 as follows: \$40.0 million for tax year 2020, \$30.0 million for tax year 2021, and \$30.6 million for tax year 2022. Due to the compromise assessment for tax year 2022, the real estate tax installment due on the Property to the City no later than December 5, 2022, shall be \$146,880.00.

4. No Admissions. The parties acknowledge that the City’s assessments of the Property for tax years 2020-2022 remain in dispute. Omni maintains that the City’s assessments are erroneous and significantly exceed the fair market value of the Property. The City maintains that its assessments are not erroneous and are at the fair market value of the Property. Accordingly, the parties agree that nothing in this Agreement or the performance hereof shall be taken as an admission or concession of any type or kind regarding or relating to the Property’s actual fair market value for tax years 2020-2022.

5. Mutual Releases. In consideration of the promises and rights granted in this Agreement, the sufficiency of which is expressly acknowledged, Omni discharges and releases the City and its officers, employees, agents, attorneys, and representatives, from all claims, debts, suits, actions, charges, demands, judgments, costs, executions, liabilities and all other obligations, whether in contract, tort, or other, known and unknown, both legal and equitable, which have been brought or could have been brought, relating to the subject matter of the Actions or related in any way to the City's real property tax assessments of the Property for the tax years 2020, 2021, and/or 2022.

In consideration of the promises and rights granted in this Agreement, the sufficiency of which is expressly acknowledged, the City discharges and releases Omni and its shareholders, officers, employees, agents, attorneys, and representatives, from all claims, debts, suits, actions, charges, demands, judgments, costs, executions, liabilities and all other obligations, whether in contract, tort, or other, known and unknown, both legal and equitable, which have been brought or could have been brought, relating to the subject matter of the Actions or related in any way to the City's real property tax assessments for the Property for the tax years 2020, 2021, and/or 2022.

6. Fees and Costs. Each party shall bear its own attorney's fees and costs.

7. Merger. No promise or agreement not herein expressed has been made by, between or among the parties, and in executing this Agreement, the parties are not relying upon any statement or oral representations made to them by each other or by anyone else who has not acted for them or on their own behalf but are each relying solely upon their own judgment. No consideration has been given, or is or has been offered, promised, expected, or held out other than as provided herein, and no conditions precedent to the effectiveness of this Agreement exist other than as expressly provided herein. This Agreement creates no new rights other than as expressly provided herein.

8. Full and Final Settlement. The parties understand that this is a full and final disposition of the claims and disputes between them, both as to the existence, and the nature and extent of, liability by any party except as specified herein. The parties understand and agree fully that this Agreement constitutes a compromise settlement and is mutual, final, and binding upon the parties.

9. Compromised Claims. The parties understand and agree that this Agreement constitutes the settlement of disputed claims, that liability has been denied by all parties, and that this Agreement, the consideration therefor, and all negotiations relating thereto, are for settlement purposes only and shall not be construed as an admission of liability or responsibility for any wrongful act or omission at any time on the part of any party. Accordingly, the parties agree to this compromise in lieu of litigation and in consideration of the avoidance of litigation, its expenses, and the potential risk of loss, and for no other reason. The parties further agree that this Agreement shall not be admissible or usable in any future lawsuit or tax controversies between the parties relating to the City's assessments of the Property for ad valorem tax purposes for tax year 2023 and/or any subsequent tax years.

10. Modifications. No modification of this Agreement shall be valid unless it is in writing and signed by all parties, with the approval of the Charlottesville City Council as may be required by Virginia law.

11. Successors and Assigns. This Agreement shall bind and inure to the benefit of all parties, their successors, and permitted assigns, and each of them.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

13. Authority. Each signor warrants that he/she has full legal authority to execute this Settlement Agreement on behalf of the parties.

14. Governing Law. This Agreement shall be governed and construed in accordance with Virginia law. In the event any litigation arises concerning enforcement of this Agreement, venue shall be a court of competent jurisdiction in the City of Charlottesville, Virginia. This Agreement has been read by the parties hereto, and where appropriate, by the attorneys for all of the parties hereto, and the parties understand its content and are satisfied with its terms.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute a written Settlement Agreement and Release, upon the terms stated above within this Resolution, upon the approval of the City Attorney as to the form of such written Settlement Agreement and Release.