

**TROY CITY COUNCIL
FINANCE MEETING AGENDA
February 4, 2021
6:00 P.M.**

Pledge of Allegiance
Roll Call
Approval of Minutes
Presentation of Agenda
Public Forum (*see end of agenda for instructions)

LOCAL LAWS

ORDINANCES

8. Ordinance Authorizing Settlement Of Claim, To Wit: Allstate Fire And Casualty Insurance Company A/S/O Albert E. Passineau, Plaintiff, V. City Of Troy, Defendant (Council President Mantello) (At The Request Of The Administration)

RESOLUTIONS

9. Resolution Of The City Council Of The City Of Troy Authorizing The Execution Of A Payment In-Lieu Of Tax (“Pilot”) Agreement By And Among The City Of Troy, Diamond Rock Terrace I LLC, And DRT I Housing Development Fund Corporation (Council Member Zalewski) (At The Request Of The Administration)

10. Resolution Of The City Council Of The City Of Troy Authorizing The Execution Of A Payment In-Lieu Of Tax (“Pilot”) Agreement By And Among The City Of Troy, Diamond Rock Terrace II LLC, And DRT II Housing Development Fund Corporation (Council Member Zalewski) (At The Request Of The Administration)

***PUBLIC FORUM**

Due to the current COVID-19 crisis and pursuant to Governor Andrew Cuomo’s Executive Order No. 202.1, this meeting shall be held remotely via videoconference and live-streamed on the City Council’s [YouTube channel](#). Troy residents who wish to comment during the public forum at the beginning of the meeting must have the ability to join the Zoom meeting via computer or phone and will be required to pre-register for the meeting. The link to register for

the meeting will be posted at least 24 hours before the meeting on the Council [Agenda and Minutes](#) page. You must register for the meeting by 3 pm on the day of the meeting.

Per the City Council, written comments will not be read aloud at this meeting but will be added to the meeting minutes. Written comments to be added to the meeting minutes should be sent to mara.drogan@troyny.gov and must be received by 3 pm on the day of the meeting. You must include your full name and residential address, as required by Council rules. Written comments received after 3 pm shall be treated as correspondence and forwarded to the Council for their review.

**ORDINANCE AUTHORIZING SETTLEMENT OF CLAIM, TO WIT:
ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY a/s/o ALBERT E.
PASSINEAU, PLAINTIFF, V. CITY OF TROY, DEFENDANT,
TROY CITY COURT CASE INDEX NO. CV-4035-18**

The City of Troy, in City Council, convened, ordains as follows:

- Section 1.** The above named Plaintiff commenced an action in Troy City Court against the City of Troy, alleging that a City employee driving a City owned vehicle collided with its insured's automobile causing property damage.
- Section 2.** The Corporation Counsel is authorized to settle the above litigation in a manner that conforms in all material respects with and in the amount identified in the attached Exhibit "A" (Draft of the Release). The Corporation Counsel shall obtain a duly executed Stipulation of Discontinuance and Release in full satisfaction of the claims prior to payment.
- Section 3.** The Comptroller is authorized and directed to make, issue, and countersign the required drafts as outlined in the Settlement Release, said sums to be payable out of the Judgments and Claims Account.
- Section 4.** This Ordinance shall take effect immediately.

Approved as to form, _____, 2021

Richard T. Morrissey, Corporation Counsel

MEMORANDUM IN SUPPORT

Plaintiff alleges that a City vehicle driven by a City employee struck its insured's lawfully parked automobile on or about August 6, 2018, at or near 532 2nd Street (south of the intersection of Tyler and 2nd Street), in the City of Troy. A notice of claim was timely served, and on December 14, 2018, the Plaintiff commenced this action sounding in negligence in Troy City Court against the City of Troy and the City's driver Ronald Chaplin, Jr. Plaintiff alleged property damage to its insured's vehicle and rental charges in the total amount of \$3541.16.

Discovery and informal court mediation have concluded in this case. Settlement is advisable as a practical business decision. There is no substantive defense to the collision with a lawfully parked vehicle. The City driver admitted that he struck the parked car when he veered too close to it in an attempt to avoid entering the bike lane. The pleadings are not defective. If the case goes to a jury, a finding of liability for the full amount of damages claimed seems very likely.

Under the terms of the proposed Release and Stipulation of Discontinuance, this action will be dismissed. In return, the City shall pay Plaintiff \$1800.00 in full satisfaction of all claims, approximately a 50% discount. There will be no admission of liability or fault on the part of the defendants. Additionally, each party will be responsible for its own costs and attorney's fees. The case will be discontinued in its entirety with prejudice and the City and its employee will be released from all further liability. The recommendation to settle is strictly a business decision taken in full consideration of the available defenses to the claim and to avoid the potential for a significantly higher award of damages, as well as the expenditures of further litigation and trial. Plaintiff understands that the proposed settlement is conditioned upon approval of both the City Council and the Mayor. If the terms of the settlement are not approved and fully executed, then this case will be returned to the trial calendar.

RELEASE

Know All Men and Women by These Presents:

That for and in consideration of the sum of One Thousand Eight Hundred & 00 /100ths Dollars (\$1800.00), lawful money of the United States of America and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Releasor herein - namely, **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY**, an insurance corporation doing business in the State of New York, and acting in this matter as Subrogee of its insured, Albert E. Passineau, and represented herein by its attorney Robert Adamo, Esq., Law Office of John Trop, 120 White Plains Road, Suite 200, Tarrytown, New York 10591, for itself and for Releasor's subrogors, employees, members, shareholders, officers, directors, successors, attorneys, agents, heirs and assigns - does hereby remise, release, and forever discharge the Releasees herein - namely, the **CITY OF TROY**, its officers, agents, employees, attorneys, subsidiaries, affiliates, divisions, bureaus, departments (including but not limited to the **City of Troy Department of General Services**), successors, heirs and assigns - of and from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, demands, rights, and causes, of whatsoever kind and nature, in law, admiralty, or equity, which Releasor, Releasor's subrogors, employees, members, shareholders, officers, directors, successors, attorneys, agents, heirs, and assigns ever had, now have, or hereafter can, shall, or may have against the Releasees, for, upon, or by reason of any matter, cause, thing, or negligence whatsoever from the beginning of the world to the day of the date of these presents, including any and all claims arising out of or related to a motor vehicle accident that allegedly occurred on or about June 29, 2017, at or near 15 108th Street. in the City of Troy, New York, and thereafter subrogated and sued by the Releasor herein (AllState Fire and Casualty Insurance Company a/s/o Albert E. Passineau v. City of Troy, Troy City Court Case Index No. CV-4035-18), and any and all other matters for which the Releasees could be claimed to be legally liable, which liability is hereby expressly denied, disclaimed, and discharged, now and forever.

This Release may not be changed orally.

The intent of this Release is to release all claims, past, present, and future, known and unknown, arising out of or related to the motor vehicle accident described above. This Release does not apply to any other claim of the Releasor arising out of a different motor vehicle accident or out of another wholly different transaction unrelated to the motor vehicle accident described above.

This Release and the consideration therefor represent a negotiated compromise of disputed claims and shall not be construed as an admission of liability or wrongdoing on the part of any party, and shall not be used as evidence in any proceeding except to enforce the terms of the Release.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____ in the year Two Thousand and Twenty-One.

**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY**

by: _____

Print Name & Title: _____

Authorized Agent for AllState Fire and
Casualty Insurance Company

ACKNOWLEDGMENT

**STATE OF _____)
COUNTY OF _____) ss.:**

On this _____ day of _____ 2021, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, authorized agent for the Releasor herein, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person, or the entity upon behalf of which the individual subscriber acted, executed the instrument.

Notary Public - State of _____

Co. Comm. Exp. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TROY
AUTHORIZING THE EXECUTION OF A PAYMENT IN-LIEU OF TAX (“PILOT”)
AGREEMENT BY AND AMONG THE CITY OF TROY, DIAMOND ROCK
TERRACE I LLC, AND DRT I HOUSING DEVELOPMENT FUND CORPORATION**

WHEREAS, the City of Troy (the “City”) desires to encourage a sufficient supply of adequate, safe, and sanitary dwelling accommodations properly planned for low income senior citizens; and

WHEREAS, DRT I Housing Development Fund Corporation, a New York not-for-profit corporation formed under Article XI of the New York State Private Housing Finance Law (the “HDFC”), and Diamond Rock Terrace I LLC, a New York limited liability company (the “LLC”), have identified property located at 9-11 Gurley Avenue (Tax Parcel # 80.-3-18.2), City of Troy, County of Rensselaer, State of New York, as shown in Exhibit A attached hereto and made a part hereof (the “Land”), for the purpose of maintaining and improving buildings on the land to be continued for use as a housing project for senior citizens of low income, said project to consist of: (i) renovation and maintenance of 9-11 Gurley Avenue with (81) units of housing for seniors of low income; and (ii) the acquisition and/or installation therein and thereon of certain machinery, equipment, furniture, fixtures and other tangible personal property (the “Equipment”, and collectively with the Land and the Improvements, the “Project”); and

WHEREAS, the LLC and the HDFC have been formed for the purpose of providing residential rental accommodations for families and persons of low-income; and

WHEREAS, the HDFC will acquire fee title to the Land, as nominee for the LLC, and will convey its equitable and beneficial interests in the Land to the LLC in furtherance of the development of the Project; and

WHEREAS, the HDFC’s and the LLC’s plan for the use of the Land constitutes a “housing project” as that term is defined in the Private Housing Finance Law of the State of New York (“PHFL”); and

WHEREAS, the HDFC is a “housing development fund company” as the term is defined in Section 572 of the PHFL and Section 577 of the PHFL authorizes the City Council to exempt the Project from real property taxes; and

WHEREAS, the LLC and the HDFC will be willing to enter into a PILOT Agreement whereby the LLC will make annual payments in lieu of taxes to the City as set forth in the PILOT Agreement presented to the City Council for approval;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby exempts the Project from real property taxes to the extent authorized by Section 577 of the PHFL and approves the proposed PILOT Agreement by and among the City, the LLC, and the HDFC, in substantially the form presented at this meeting, providing for annual payments as set forth in such agreement; and

BE IT FURTHER RESOLVED, that the Mayor of the City is hereby authorized to execute and deliver the aforesaid PILOT Agreement on behalf of the City; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

Approved as to form, _____, 2021

Richard Morrissey, Corporation Counsel

EXHIBIT A





Wm. Patrick Madden
Mayor

Steven Strichman
*Commissioner of Planning &
 Economic Development*

Monica Kurzejeski
Deputy Mayor

**Department of
 Planning & Economic Development**
 City Hall
 433 River Street
 Troy, New York 12180

Phone: (518) 279-7166
 Fax: (518) 268-1690
 Steven.Strichman@troyny.gov

To: City Council
 From: Steven Strichman
 Date: January 7, 2020
 Re: Diamond Rock 1 & 2 PILOTs

Michael Ucellini is under contract to sell the Diamond Rock to Vesta Corp. to close up the estate of his father. Initially the request from Vesta came in to extend Diamond Rock I and the provide the 5 year options on both at the existing PILOT rate. Based on what other projects are paying, I asked them to increase the PILOT from 7.35% of Net Operating Income after utilities to 10%.

The agreements are in place as listed below:

	Current PILOT Expiration	HCR Affordability Agreement Expires	Ask
Diamond Rock 1	2024	2031	Extend to 2028 at same PILOT Then option to 2033 PILOT goes from 7.35% NOI after utilities to 10%
Diamond Rock 2	2028	2033	Option to 2033 with PILOT Increase to 10%

Since this is an affordable housing project that is subject to HCR income restrictions, and it provides a quality affordable housing option not readily available in Troy, I would recommend making the requested changes, with the increase from 7.35% to 10%.

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES (PILOT)
BY AND AMONG THE CITY OF TROY,**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the “Agreement”), dated _____, 2021, by and between the **CITY OF TROY, NEW YORK**, a New York incorporated municipality, having its principal office located at 433 River Street, Troy, New York 12180 (the “City”) and **DRT I HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation formed pursuant to Article XI of the Private Housing Finance Law (the “PHFL”), having its principal office located at, [175 Powder Forest Drive, Weatogue, Connecticut 06089] (the “HDFC”), which HDFC will hold title to the Property (as hereinafter defined) for the benefit of **DIAMOND ROCK TERRACE I LLC**, a New York limited liability company, having its principal office located at 175 Powder Forest Drive, Weatogue, Connecticut 06089 (the “LLC”).

WHEREAS, that certain real property located in the City of Troy, County of Rensselaer, State of New York, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Property”) is currently subject to that certain Agreement for Payment in Lieu of Taxes, entered into as of May 13, 1998, by and between the City and Gurley Housing Associates, L.P. (the “Existing PILOT”), which, as extended, will expire on December 31, 2024; and

WHEREAS, on or about the date hereof, the HDFC is, or will become, the legal owner, and the LLC will become, the beneficial owner, of the Property; and

WHEREAS, the HDFC is a corporation established pursuant to Section 402 of the Not-For-Profit Corporation Law and Article XI of the PHFL; and

WHEREAS, the HDFC and the LLC have each been formed for the purpose of providing residential rental accommodations for persons of low-income; and

WHEREAS, the LLC will develop, own, rehabilitate, construct, maintain and operate a housing project on the Property consisting of eighty-one (81) units for persons of low income commonly known as Diamond Rock Terrace I (the “Project”); and

WHEREAS, the HDFC’s and the LLC’s plan for the use of the Property constitutes a “housing project” as that term is defined in the PHFL; and

WHEREAS, the HDFC is a “housing development fund company” as the term is defined in Section 572 of the PHFL; and

WHEREAS, pursuant to PHFL Section 577, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed project; and

WHEREAS, the City Council of the City of Troy, New York, by Resolution No. [*****] adopted _____, 2021, approved and authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good

and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL, the City hereby exempts from local and municipal taxes including without limitation school taxes, but specifically excluding assessments for local improvements, one hundred percent (100%) of the value of the real property, both the land and the improvements, included in the Project. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by Rensselaer County ("County"), the City of Troy ("City"), the Troy City School District ("School District") or other affected taxing jurisdiction (as defined in Subdivision 1(b) of Section 577 of the PHFL) which has jurisdiction over the Property (collectively, the "Taxing Jurisdictions"), and intending to bind the applicable Taxing Jurisdictions to the fullest extent provided under Section 577 of the PHFL.

2. This tax exemption will commence on the date of the HDFC's acquisition of the fee title interest in the Property and shall continue through, and include, December 31, 2028 (the "Initial Term"). Such tax exemption shall be extended for an additional five year period, at the option of the City, if the Project continues to be regulated under Section 42 of the Internal Revenue Code of 1986 (the "Extension Term"). This Agreement shall not limit or restrict the HDFC's or the LLC's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement. The parties understand that the exemption extended pursuant to Section 577 of the PHFL and this Agreement does not include exemption from special assessments and special ad valorem levies. During the period of this Agreement, the LLC shall pay any service charges, special ad valorem levies, special assessments and improvement district charges or similar tax equivalents which are or would be levied upon or with respect to the Project by the Taxing Jurisdictions or any other taxing authority.

3. For so long as the exemption provided hereunder shall continue in full force and effect, the LLC shall make annual payments in lieu of taxes ("PILOT") in the amount set forth in this section, which payments shall cover all Local and Municipal Taxes owed in connection with the Property and the Project, and which payments shall be shared by the Taxing Jurisdictions on the same basis as property taxes would be shared if the Property and the Project were fully taxed. During the Initial Term, the PILOT shall be in the annual amount equal to the greater of (a) \$32,400; or (b) 7.35% of the "Net Collected Rents" from the Project, in either case, plus property taxes otherwise payable with respect to the land under section 1 hereof, for each such fiscal year. During the Extension Term, the PILOT shall be in the annual amount equal to the greater of (a) \$32,400; or (b) 10% of the "Net Collected Rents" from the Project, in either case, plus property taxes otherwise payable with respect to the land under section 1 hereof, for each such fiscal year. Net Collected Rents shall equal total collected rents for the fiscal year less the expenses of Project utilities. The sums due and payable pursuant to this Section 3 with respect to any fiscal year shall be due and payable on or before March 1 of the immediately following fiscal year and are deemed to be and become a lien against the property as of the first day of January of the fiscal year for which such sums are due and shall remain a lien against the property until paid. The failure to make the required payment when the same shall be due and payable shall be treated for all purposes as a failure to make payment of real property taxes pursuant to the Real Property Tax Law and the City Charter of the City of Troy, and shall be governed by the same provisions of law as shall apply to failure to make payment of real property taxes.

4. The tax exemption provided by this Agreement will continue for the term described above provided that the Property and the Project continue to be used as housing facilities for persons of low income and (i) the HDFC and the LLC own and operate the Property

and the Project in conformance with Article XI of the PHFL; or (ii) the HDFC assumes sole legal and beneficial ownership of the Property and the Project and operates the Property and the Project in conformance with Article XI of the PHFL; or (iii) in the event an action is brought to foreclose a mortgage upon the Property, and the legal and beneficial interest in the Property and the Project shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale, by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the supervision of the superintendent of banks or the superintendent of insurance, and such successor in interest operates the Property and the Project in conformance with Article XI of the PHFL.

5. The failure to make the required payment will be treated as failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes, including but not limited to enforcement and collection of taxes to the extent permitted by law.

6. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the applicable address stated above (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery.

7. This Agreement shall inure to the benefit of and shall be binding upon the City, the LLC, the HDFC and their respective successors and assigns, including the successors in interest of the LLC and the HDFC. There shall be no assignment of this Agreement except with consent of the other party, which consent shall not be unreasonably withheld.

8. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

9. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.

10. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the Property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.

11. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized and does not require any other consent or approval, (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which any of them is a party. Each party represents that this Agreement shall constitute the legal, valid and binding agreement of the parties enforceable in accordance with its terms.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

13. Any litigation arising out of this agreement shall be venued in Rensselaer County Supreme Court or the appropriate federal district court exercising jurisdiction over Rensselaer County.

[Signature page follows]

IN WITNESS WHEREOF, the City, the HDFC and the LLC have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

CITY OF TROY, NEW YORK

By: _____
Name: Patrick Madden
Title: Mayor

DATED: _____, 2021

STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

On the ____ day of _____ in the year 2021, before me personally appeared Patrick Madden, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

DRT I HOUSING DEVELOPMENT FUND CORPORATION

By: _____

Name:

Title:

DATED: _____, 2021

STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

On the ____ day of _____ in the year 2021, before me personally appeared[*****], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

DIAMOND ROCK TERRACE I LLC

By: _____
Name:
Title:

DATED: _____, 2021

STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

On the ____ day of _____ in the year 2021, before me personally appeared [*****], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A



January 5, 2021

VIA E-Mail

City of Troy
City Hall
433 River Street, Suite 5001
Troy, NY 12180

Attention: Monica Kurzejeski, Deputy Mayor
Steven Strichman, Commissioner of Planning & Economic Development

Re: Diamond Rock Terrace I, 9-11 Gurley Avenue, Troy, New York, and Diamond Rock Terrace II, 13 Gurley Avenue, Troy, New York.

Dear Ms. Kurzejeski and Mr. Strichman:

Vesta Corporation (“Vesta”) has entered into a Purchase and Sale Agreement to acquire Diamond Rock Terrace I and Diamond Rock Terrace II from Gurley Housing Associates, L.P. and DRT II Associates, L.P., respectively.

The purpose of this letter is to request the consent and approval of the City of Troy (“Troy”) to: (1) transfer the existing PILOT Agreement to the newly formed Article XI HDFC entity, extend the Agreement by 4 years so that it is coterminous with the Agreement for Diamond Rock Terrace II, and provide a 5-year extension option benefitting Diamond Rock Terrace I as detailed below; (2) transfer the existing PILOT Agreement to the newly formed Article XI HDFC entity and provide a 5-year extension option benefitting Diamond Rock Terrace II as detailed below.

BACKGROUND

Diamond Rock Terrace I and Diamond Rock Terrace II were constructed in 1998 and 2002, respectively. The City of Troy provided Diamond Rock Terrace I with a 15-year PILOT Agreement in 1998 and provided a 10-year extension of the PILOT Agreement in 2014. The City of Troy provided Diamond Rock Terrace II with a 15-year PILOT Agreement in 2002 and provided a 10-year extension of the PILOT Agreement in 2018.

Gurley Housing Associates, L.P. and DRT II Associates, L.P. wish to transfer ownership of Diamond Rock Terrace I and Diamond Rock Terrace II to Vesta Corporation (or an affiliated entity). Vesta specializes in the creation, ownership, and operation of well-managed and high quality affordable rental housing communities. Vesta’s mission is to establish and maintain strong communities where all residents, regardless of their income or background, have the opportunity to reach their full potential. Vesta currently owns and/or operates 55 affordable housing communities, including over 9,500 apartment

homes in Connecticut, Maryland, New Jersey, New York, Ohio, Texas, Virginia, and the District of Columbia.

Vesta recently acquired Carman Senior Living Community in Guilderland, New York, which offers affordable apartment homes for seniors. The Town of Guilderland approved, as part of the ownership transfer, an extension of the existing PILOT Agreements for the property. Carman Senior Living Community is one of the only affordable housing communities for seniors in Guilderland, similar to Diamond Rock Terrace I and Diamond Rock Terrace II being part of a small number of affordable housing communities for seniors in Troy. The Town of Guilderland, as evidenced by the extended PILOT Agreements, recognizes the vital importance of providing affordable housing for seniors, and wants to ensure that this type of housing is preserved for the long term, in line with Vesta's core values and mission.

REQUEST

Vesta is requesting that the City of Troy approve transfer of the existing PILOT Agreements to the new owning entities formed under Article XI (detailed below), extend the Agreement for Diamond Rock Terrace I by 4 years so that it is coterminous with the Agreement for Diamond Rock Terrace II, and provide a 5-year extension option of each upon expiration in 2028. The current PILOT Agreements are set to expire in 2024 and 2028, respectively. When the extensions are implemented in 2028, the annual payment under each PILOT Agreement will increase from 7.35% to 10%. The PILOT Agreements will require that Diamond Rock Terrace I and Diamond Rock Terrace II continue to operate as affordable communities for the duration of the PILOT Agreements.

LEGAL AUTHORITY

Gurley Housing Associates, L.P. and DRT II Associates, L.P. have entered into a purchase and sale agreement with Vesta to acquire Diamond Rock Terrace I and Diamond Rock Terrace II. Vesta intends to form affiliated entities (the proposed new owners) to take title to Diamond Rock Terrace I and Diamond Rock Terrace II. These entities will be New York not-for-profit corporations formed pursuant to Article XI of the NYS Private Housing Finance Law.

Section 577(1) of Article XI of the New York State Private Housing Finance Law provides the legal authority for Troy to approve the requested transfer and extension of the existing PILOT Agreements. This section permits Troy to provide a real property tax exemption to a project located in the municipality and owned by a housing development fund company. Section 577(1) also permits Troy to provide a tax exemption for a term of up to forty (40) years. The relevant provision is copied below for reference:

“The local legislative body of any municipality in which a project of a housing development fund company is or is to be located may exempt the real property in such project from local and municipal taxes including school taxes, other than assessments for local improvements, to the extent of all or part of the value of the property included in the completed project. The tax exemption shall operate and continue for such period as may be provided by such local legislative body, but in no event for a period of more than forty years, commencing in each instance from the date on which the benefits of such exemption first became available and effective.” NY CLS Priv Hous Fin Section 577(1)(a)

We look forward to discussing this proposal with you at your earliest convenience. Please let me know if there is any additional information we can provide in connection with your review. Thank you in advance for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Brown', with a stylized flourish at the end.

Lewis Brown
Executive Vice President

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TROY
AUTHORIZING THE EXECUTION OF A PAYMENT IN-LIEU OF TAX (“PILOT”)
AGREEMENT BY AND AMONG THE CITY OF TROY, DIAMOND ROCK
TERRACE II LLC, AND DRT II HOUSING DEVELOPMENT FUND CORPORATION**

WHEREAS, the City of Troy (the “City”) desires to encourage a sufficient supply of adequate, safe, and sanitary dwelling accommodations properly planned for low income senior citizens; and

WHEREAS, DRT II Housing Development Fund Corporation, a New York not-for-profit corporation formed under Article XI of the New York State Private Housing Finance Law (the “HDFC”), and Diamond Rock Terrace II LLC, a New York limited liability company (the “LLC”), have identified property located at 13 Gurley Avenue (Tax Parcel # 80.-3-18.1/2), City of Troy, County of Rensselaer, State of New York, as shown in Exhibit A attached hereto and made a part hereof (the “Land”), for the purpose of maintaining and improving buildings on the land to be continued for use as a housing project for senior citizens of low income, said project to consist of: (i) renovation and maintenance of 13 Gurley Avenue with 36 units of housing for seniors of low income; and (ii) the acquisition and/or installation therein and thereon of certain machinery, equipment, furniture, fixtures and other tangible personal property (the “Equipment”, and collectively with the Land and the Improvements, the “Project”); and

WHEREAS, the LLC and the HDFC have been formed for the purpose of providing residential rental accommodations for families and persons of low-income; and

WHEREAS, the HDFC will acquire fee title to the Land, as nominee for the LLC, and will convey its equitable and beneficial interests in the Land to the LLC in furtherance of the development of the Project; and

WHEREAS, the HDFC’s and the LLC’s plan for the use of the Land constitutes a “housing project” as that term is defined in the Private Housing Finance Law of the State of New York (“PHFL”); and

WHEREAS, the HDFC is a “housing development fund company” as the term is defined in Section 572 of the PHFL and Section 577 of the PHFL authorizes the City Council to exempt the Project from real property taxes; and

WHEREAS, the LLC and the HDFC will be willing to enter into a PILOT Agreement whereby the LLC will make annual payments in lieu of taxes to the City as set forth in the PILOT Agreement presented to the City Council for approval;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby exempts the Project from real property taxes to the extent authorized by Section 577 of the PHFL and approves the proposed PILOT Agreement by and among the City, the LLC, and the HDFC, in substantially the form presented at this meeting, providing for annual payments as set forth in such agreement; and

BE IT FURTHER RESOLVED, that the Mayor of the City is hereby authorized to execute and deliver the aforesaid PILOT Agreement on behalf of the City; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

Approved as to form, _____, 2021

Richard T. Morrissey, Corporation Counsel

EXHIBIT A





Wm. Patrick Madden
Mayor

Steven Strichman
Commissioner of Planning &
Economic Development

Monica Kurzejeski
Deputy Mayor

**Department of
Planning & Economic Development**
City Hall
433 River Street
Troy, New York 12180

Phone: (518) 279-7166
Fax: (518) 268-1690
Steven.Strichman@troyny.gov

To: City Council
From: Steven Strichman
Date: January 7, 2020
Re: Diamond Rock 1 & 2 PILOTs

Michael Ucellini is under contract to sell the Diamond Rock to Vesta Corp. to close up the estate of his father. Initially the request from Vesta came in to extend Diamond Rock I and the provide the 5 year options on both at the existing PILOT rate. Based on what other projects are paying, I asked them to increase the PILOT from 7.35% of Net Operating Income after utilities to 10%.

The agreements are in place as listed below:

	Current PILOT Expiration	HCR Affordability Agreement Expires	Ask
Diamond Rock 1	2024	2031	Extend to 2028 at same PILOT Then option to 2033 PILOT goes from 7.35% NOI after utilities to 10%
Diamond Rock 2	2028	2033	Option to 2033 with PILOT Increase to 10%

Since this is an affordable housing project that is subject to HCR income restrictions, and it provides a quality affordable housing option not readily available in Troy, I would recommend making the requested changes, with the increase from 7.35% to 10%.

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES (PILOT)
BY AND AMONG THE CITY OF TROY,**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the “Agreement”), dated _____, 2021, by and between the **CITY OF TROY, NEW YORK**, a New York incorporated municipality, having its principal office located at 433 River Street, Troy, New York 12180 (the “City”) and **DRT II HOUSING DEVELOPMENT FUND CORPORATION**, a New York not-for-profit corporation formed pursuant to Article XI of the Private Housing Finance Law (the “PHFL”), having its principal office located at, [175 Powder Forest Drive, Weatogue, Connecticut 06089] (the “HDFC”), which HDFC will hold title to the Property (as hereinafter defined) for the benefit of **DIAMOND ROCK TERRACE II LLC**, a New York limited liability company, having its principal office located at 175 Powder Forest Drive, Weatogue, Connecticut 06089 (the “LLC”).

WHEREAS, that certain real property located in the City of Troy, County of Rensselaer, State of New York, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “Property”) is currently subject to that certain Agreement for Payment in Lieu of Taxes, entered into as of May 8, 2002, by and between the City and Gurley Housing Associates, L.P. (the “Existing PILOT”), which, as extended, will expire on December 31, 2028; and

WHEREAS, on or about the date hereof, the HDFC is, or will become, the legal owner, and the LLC will become, the beneficial owner, of the Property; and

WHEREAS, the HDFC is a corporation established pursuant to Section 402 of the Not-For-Profit Corporation Law and Article XI of the PHFL; and

WHEREAS, the HDFC and the LLC have each been formed for the purpose of providing residential rental accommodations for persons of low-income; and

WHEREAS, the LLC will develop, own, rehabilitate, construct, maintain and operate a housing project on the Property consisting of thirty-six (36) units for persons of low income commonly known as Diamond Rock Terrace II (the “Project”); and

WHEREAS, the HDFC’s and the LLC’s plan for the use of the Property constitutes a “housing project” as that term is defined in the PHFL; and

WHEREAS, the HDFC is a “housing development fund company” as the term is defined in Section 572 of the PHFL; and

WHEREAS, pursuant to PHFL Section 577, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed project; and

WHEREAS, the City Council of the City of Troy, New York, by Resolution No. [*****] adopted _____, 2021, approved and authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good

and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL, the City hereby exempts from local and municipal taxes including without limitation school taxes, but specifically excluding assessments for local improvements, one hundred percent (100%) of the value of the real property, both the land and the improvements, included in the Project. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by Rensselaer County ("County"), the City of Troy ("City"), the Troy City School District ("School District") or other affected taxing jurisdiction (as defined in Subdivision 1(b) of Section 577 of the PHFL) which has jurisdiction over the Property (collectively, the "Taxing Jurisdictions"), and intending to bind the applicable Taxing Jurisdictions to the fullest extent provided under Section 577 of the PHFL.

2. This tax exemption will commence on the date of the HDFC's acquisition of the fee title interest in the Property and shall continue through, and include, December 31, 2028 (the "Initial Term"). Such tax exemption shall be extended for an additional five year period, at the option of the City, if the Project continues to be regulated under Section 42 of the Internal Revenue Code of 1986 (the "Extension Term"). This Agreement shall not limit or restrict the HDFC's or the LLC's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement. The parties understand that the exemption extended pursuant to Section 577 of the PHFL and this Agreement does not include exemption from special assessments and special ad valorem levies. During the period of this Agreement, the LLC shall pay any service charges, special ad valorem levies, special assessments and improvement district charges or similar tax equivalents which are or would be levied upon or with respect to the Project by the Taxing Jurisdictions or any other taxing authority.

3. For so long as the exemption provided hereunder shall continue in full force and effect, the LLC shall make annual payments in lieu of taxes ("PILOT") in the amount set forth in this section, which payments shall cover all Local and Municipal Taxes owed in connection with the Property and the Project, and which payments shall be shared by the Taxing Jurisdictions on the same basis as property taxes would be shared if the Property and the Project were fully taxed. During the Initial Term, the PILOT shall be in the annual amount equal to the greater of (a) \$16,800; or (b) 7.35% of the "Gross Collected Rents" from the Project, in either case, plus property taxes otherwise payable with respect to the land under section 1 hereof, for each such fiscal year. During the Extension Term, the PILOT shall be in the annual amount equal to the greater of (a) \$16,800; or (b) 10% of the "Gross Collected Rents" from the Project, in either case, plus property taxes otherwise payable with respect to the land under section 1 hereof, for each such fiscal year. Gross Collected Rents shall equal total collected rents for the fiscal year. The sums due and payable pursuant to this Section 3 with respect to any fiscal year shall be due and payable on or before March 1 of the immediately following fiscal year and are deemed to be and become a lien against the property as of the first day of January of the fiscal year for which such sums are due and shall remain a lien against the property until paid. The failure to make the required payment when the same shall be due and payable shall be treated for all purposes as a failure to make payment of real property taxes pursuant to the Real Property Tax Law and the City Charter of the City of Troy, and shall be governed by the same provisions of law as shall apply to failure to make payment of real property taxes.

4. The tax exemption provided by this Agreement will continue for the term described above provided that the Property and the Project continue to be used as housing facilities for persons of low income and (i) the HDFC and the LLC own and operate the Property

and the Project in conformance with Article XI of the PHFL; or (ii) the HDFC assumes sole legal and beneficial ownership of the Property and the Project and operates the Property and the Project in conformance with Article XI of the PHFL; or (iii) in the event an action is brought to foreclose a mortgage upon the Property, and the legal and beneficial interest in the Property and the Project shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale, by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the supervision of the superintendent of banks or the superintendent of insurance, and such successor in interest operates the Property and the Project in conformance with Article XI of the PHFL.

5. The failure to make the required payment will be treated as failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes, including but not limited to enforcement and collection of taxes to the extent permitted by law.

6. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the applicable address stated above (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery.

7. This Agreement shall inure to the benefit of and shall be binding upon the City, the LLC, the HDFC and their respective successors and assigns, including the successors in interest of the LLC and the HDFC. There shall be no assignment of this Agreement except with consent of the other party, which consent shall not be unreasonably withheld.

8. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

9. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.

10. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the Property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.

11. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized and does not require any other consent or approval, (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which any of them is a party. Each party represents that this Agreement shall constitute the legal, valid and binding agreement of the parties enforceable in accordance with its terms.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

13. Any litigation arising out of this agreement shall be venued in Rensselaer County Supreme Court or the appropriate federal district court exercising jurisdiction over Rensselaer County.

[Signature page follows]

IN WITNESS WHEREOF, the City, the HDFC and the LLC have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

CITY OF TROY, NEW YORK

By: _____
Name: Patrick Madden
Title: Mayor

DATED: _____, 2021

STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

On the ____ day of _____ in the year 2021, before me personally appeared Patrick Madden, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

DRT II HOUSING DEVELOPMENT FUND CORPORATION

By: _____
Name:
Title:

DATED: _____, 2021

STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

On the ____ day of _____ in the year 2021, before me personally appeared[*****], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A



January 5, 2021

VIA E-Mail

City of Troy
City Hall
433 River Street, Suite 5001
Troy, NY 12180

Attention: Monica Kurzejeski, Deputy Mayor
Steven Strichman, Commissioner of Planning & Economic Development

Re: Diamond Rock Terrace I, 9-11 Gurley Avenue, Troy, New York, and Diamond Rock Terrace II,
13 Gurley Avenue, Troy, New York.

Dear Ms. Kurzejeski and Mr. Strichman:

Vesta Corporation (“Vesta”) has entered into a Purchase and Sale Agreement to acquire Diamond Rock Terrace I and Diamond Rock Terrace II from Gurley Housing Associates, L.P. and DRT II Associates, L.P., respectively.

The purpose of this letter is to request the consent and approval of the City of Troy (“Troy”) to: (1) transfer the existing PILOT Agreement to the newly formed Article XI HDFC entity, extend the Agreement by 4 years so that it is coterminous with the Agreement for Diamond Rock Terrace II, and provide a 5-year extension option benefitting Diamond Rock Terrace I as detailed below; (2) transfer the existing PILOT Agreement to the newly formed Article XI HDFC entity and provide a 5-year extension option benefitting Diamond Rock Terrace II as detailed below.

BACKGROUND

Diamond Rock Terrace I and Diamond Rock Terrace II were constructed in 1998 and 2002, respectively. The City of Troy provided Diamond Rock Terrace I with a 15-year PILOT Agreement in 1998 and provided a 10-year extension of the PILOT Agreement in 2014. The City of Troy provided Diamond Rock Terrace II with a 15-year PILOT Agreement in 2002 and provided a 10-year extension of the PILOT Agreement in 2018.

Gurley Housing Associates, L.P. and DRT II Associates, L.P. wish to transfer ownership of Diamond Rock Terrace I and Diamond Rock Terrace II to Vesta Corporation (or an affiliated entity). Vesta specializes in the creation, ownership, and operation of well-managed and high quality affordable rental housing communities. Vesta’s mission is to establish and maintain strong communities where all residents, regardless of their income or background, have the opportunity to reach their full potential. Vesta currently owns and/or operates 55 affordable housing communities, including over 9,500 apartment

homes in Connecticut, Maryland, New Jersey, New York, Ohio, Texas, Virginia, and the District of Columbia.

Vesta recently acquired Carman Senior Living Community in Guilderland, New York, which offers affordable apartment homes for seniors. The Town of Guilderland approved, as part of the ownership transfer, an extension of the existing PILOT Agreements for the property. Carman Senior Living Community is one of the only affordable housing communities for seniors in Guilderland, similar to Diamond Rock Terrace I and Diamond Rock Terrace II being part of a small number of affordable housing communities for seniors in Troy. The Town of Guilderland, as evidenced by the extended PILOT Agreements, recognizes the vital importance of providing affordable housing for seniors, and wants to ensure that this type of housing is preserved for the long term, in line with Vesta's core values and mission.

REQUEST

Vesta is requesting that the City of Troy approve transfer of the existing PILOT Agreements to the new owning entities formed under Article XI (detailed below), extend the Agreement for Diamond Rock Terrace I by 4 years so that it is coterminous with the Agreement for Diamond Rock Terrace II, and provide a 5-year extension option of each upon expiration in 2028. The current PILOT Agreements are set to expire in 2024 and 2028, respectively. When the extensions are implemented in 2028, the annual payment under each PILOT Agreement will increase from 7.35% to 10%. The PILOT Agreements will require that Diamond Rock Terrace I and Diamond Rock Terrace II continue to operate as affordable communities for the duration of the PILOT Agreements.

LEGAL AUTHORITY

Gurley Housing Associates, L.P. and DRT II Associates, L.P. have entered into a purchase and sale agreement with Vesta to acquire Diamond Rock Terrace I and Diamond Rock Terrace II. Vesta intends to form affiliated entities (the proposed new owners) to take title to Diamond Rock Terrace I and Diamond Rock Terrace II. These entities will be New York not-for-profit corporations formed pursuant to Article XI of the NYS Private Housing Finance Law.

Section 577(1) of Article XI of the New York State Private Housing Finance Law provides the legal authority for Troy to approve the requested transfer and extension of the existing PILOT Agreements. This section permits Troy to provide a real property tax exemption to a project located in the municipality and owned by a housing development fund company. Section 577(1) also permits Troy to provide a tax exemption for a term of up to forty (40) years. The relevant provision is copied below for reference:

“The local legislative body of any municipality in which a project of a housing development fund company is or is to be located may exempt the real property in such project from local and municipal taxes including school taxes, other than assessments for local improvements, to the extent of all or part of the value of the property included in the completed project. The tax exemption shall operate and continue for such period as may be provided by such local legislative body, but in no event for a period of more than forty years, commencing in each instance from the date on which the benefits of such exemption first became available and effective.” NY CLS Priv Hous Fin Section 577(1)(a)

We look forward to discussing this proposal with you at your earliest convenience. Please let me know if there is any additional information we can provide in connection with your review. Thank you in advance for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Brown', written in a cursive style.

Lewis Brown
Executive Vice President