

**RESOLUTION AUTHORIZING RELEASE OF CERTAIN PARCEL
EAST GREENBUSH LODGING ASSOCIATES LLC PROJECT**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session, remotely by conference call or similar service pursuant to the New York State Executive Order 202.1, on May 14, 2020 at 4:00 o'clock p.m., local time.

The meeting was called to order by the (Vice) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

John H. Clinton, Jr.	Chairman
Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
Renee Powell	Member

Each of the members present participated in the meeting telephonically pursuant to Executive Order No. 202.1 issued by New York State Governor Andrew M. Cuomo, suspending provisions of Article 7 of the Public Officers Law that require public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service.

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant
Peter R. Kehoe, Esq.	Special Agency Counsel
Nadene E. Zeigler, Esq.	Special Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0520-__

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE RELEASE OF A CERTAIN PARCEL OF LAND LOCATED IN THE TOWN OF EAST GREENBUSH, RENSSELAER COUNTY, NEW YORK FROM THE LEASE AGREEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE EAST GREENBUSH LODGING ASSOCIATES LLC PROJECT.

WHEREAS, Rensselaer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title 1 of

Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 128 of the 1974 Laws of New York, as amended, constituting Section 903-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on August 25, 2015 (the "Closing"), the Agency entered into a lease agreement dated as of August 1, 2015 (the "Lease Agreement") by and between the Agency and East Greenbush Lodging Associates LLC (the "Company") for the purpose of undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 3.742 acre portion of two (2) parcels of land containing in the aggregate approximately 159 acres generally located on Tempel Lane and New York State Route 4 (formerly being Tax Map Nos. 155.-3-2.12 and 155.-3-2.11, now currently tax map no. 155.-3-12) in the Town of East Greenbush, Rensselaer County, New York (collectively, the "Land"), (2) the construction on the Land of an approximately 53,250 square foot building (the "Facility") and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment"); all of the foregoing to constitute an approximately 101 room hotel facility and any other directly or indirectly related activities (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of August 1, 2015 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2026; (2) a certain license agreement dated as of August 1, 2015 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a bill of sale dated as of August 1, 2015 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered (1) a payment in lieu of tax agreement dated as of August 1, 2015 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency filed with the

assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of \$10,800,000 (the “Loan”) from Berkshire Bank (the “Lender”), which Loan was be secured by a mortgage and security agreement dated as of December 1, 2015 (the “Mortgage”) from the Agency and the Company to the Lender; and

WHEREAS, the Company will be refinancing the Loan pursuant to a mortgage with modification and consolidation provisions dated May 15, 2020 (the “Refinanced Mortgage”) from the Agency and the Company to the Lender to secure the Loan in the amount of \$9,900,000 (the “Refinanced Loan”); and

WHEREAS, by request dated April 17, 2020 (the “Request”), which Request is attached hereto to Exhibit A, the Agency was notified by the Company that the Company is donating an approximately 0.09 acre parcel of the Land (the “Parcel”) adjoining NYS Route 4 to NYS DOT so that the highway can be widened to allow for Regeneron's expansion at its facility adjoining the Land; and

WHEREAS, pursuant to Section 9.3 of the Lease Agreement, the consent of the Agency is required prior to the release of the Parcel from the Project Facility (the “Release”); and

WHEREAS, pursuant to the Refinanced Mortgage, the Release is subject to the release by the Lender (the “Lender Release”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), it appears that the Release is not an “Action” under SEQRA and therefore is not subject to a SEQRA review by the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Pursuant to SEQRA, the Release is not an “Action” under SEQRA and therefore is not subject to SEQRA review by the Agency.

Section 2. At the request of the Company, the Agency hereby consents to the Release and the execution of any documents necessary to effectuate the Release and the modification of the Basic Documents in connection therewith (collectively, the “Release Documents”); provided, however, that such consent is contingent upon (A) approval by Special Agency Counsel to the forms of the Release Documents (including, if required, the inclusion of any other land to the Mortgage to replace the Parcel),

(B) compliance with the terms and conditions contained in the Basic Documents (as defined in the Lease Agreement), (C) executed copy of the Lender Release, (D) evidence satisfactory to the Agency that all taxes and other local fees and assessments relating to the Parcel, if any, have been paid by the Company, and (E) the payment by the Company of the administrative fee of the Agency, if any, and all other fees and expenses of the Agency in connection with the delivery of the Release Documents, including the fees of Agency Counsel.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the Release Documents and the modified Basic Documents to reflect the Release, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Release, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Release.

Section 5. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

John H. Clinton, Jr.	VOTING	_____
Michael Della Rocco	VOTING	_____
Cynthia A. Henninger	VOTING	_____
Ronald Bounds	VOTING	_____
Douglas Baldrey	VOTING	_____
Renee Powell	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned, (Assistant) Secretary of the Rensselaer County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on May 14, 2020 with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such Resolution set forth therein and insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law") except as modified by Executive Order 202.1, said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present, either in-person or appearing telephonically in accordance with Executive Order 202.1, throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this _____ day of May, 2020.



(Assistant) Secretary

(S E A L)

EXHIBIT A

REQUEST

- SEE ATTACHED -

Brown-Bruette, Nicole

From: Zeigler, Nadene
Sent: Tuesday, May 12, 2020 10:42 AM
To: Brown-Bruette, Nicole
Subject: FW: Rensselaer Co. IDA - East Greenbush Lodging Associates LLC - Request - 4/17/20

Nadene E. Zeigler
Partner
Hodgson Russ LLP
Tel: 518.433.2420
Fax: 866.505.9238



[Twitter](#) | [LinkedIn](#) | [website](#) | [Bio](#) | [e-mail](#) | [vCard](#)

677 Broadway, Suite 301 | Albany, NY 12207
Tel: 518.465.2333 | [map](#)

From: Robert Halpin <rhalpin@thehalpinfirm.com>
Sent: Friday, April 17, 2020 9:27 AM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Subject: Rensselaer Co. IDA - East Greenbush Lodging Associates LLC

External Email - Use Caution

Nadene-
East Greenbush Lodging Associates LLC ("EGLA") is in the process of refinancing its existing mortgage loan. The lender, Berkshire Bank, is the same, and there is no new money. EGLA is requesting that the IDA sign the mortgage to capture its leasehold interest in the property. A draft of the mortgage is attached. Please let me know if you have any comments, and the timing for getting the mortgage signed.

On another matter, EGLA has been asked to donate a very small piece of its property adjoining NYS Route 4 to NYS DOT so that the highway can be widened. This is apparently a requirement of Regeneron's expansion at its facility next door. We are in the process of working with the DOT on this, and will ultimately need to have this piece released from the lease and leaseback. I should have a map and description of this piece by Monday to share with you. Please advise as to the IDA's preferred process with respect to this matter.

Thanks.

--
Robert L. Halpin
The Halpin Firm
4588 Route 224

Montour Falls, NY 14865

P: 607.594.3786

F: 607.594.3788

C: 585.281.5652

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DEFREESTVILLE - COUSE
S.H. 981

MAP OF LANDS
TO BE ACQUIRED BY
THE STATE OF NEW YORK

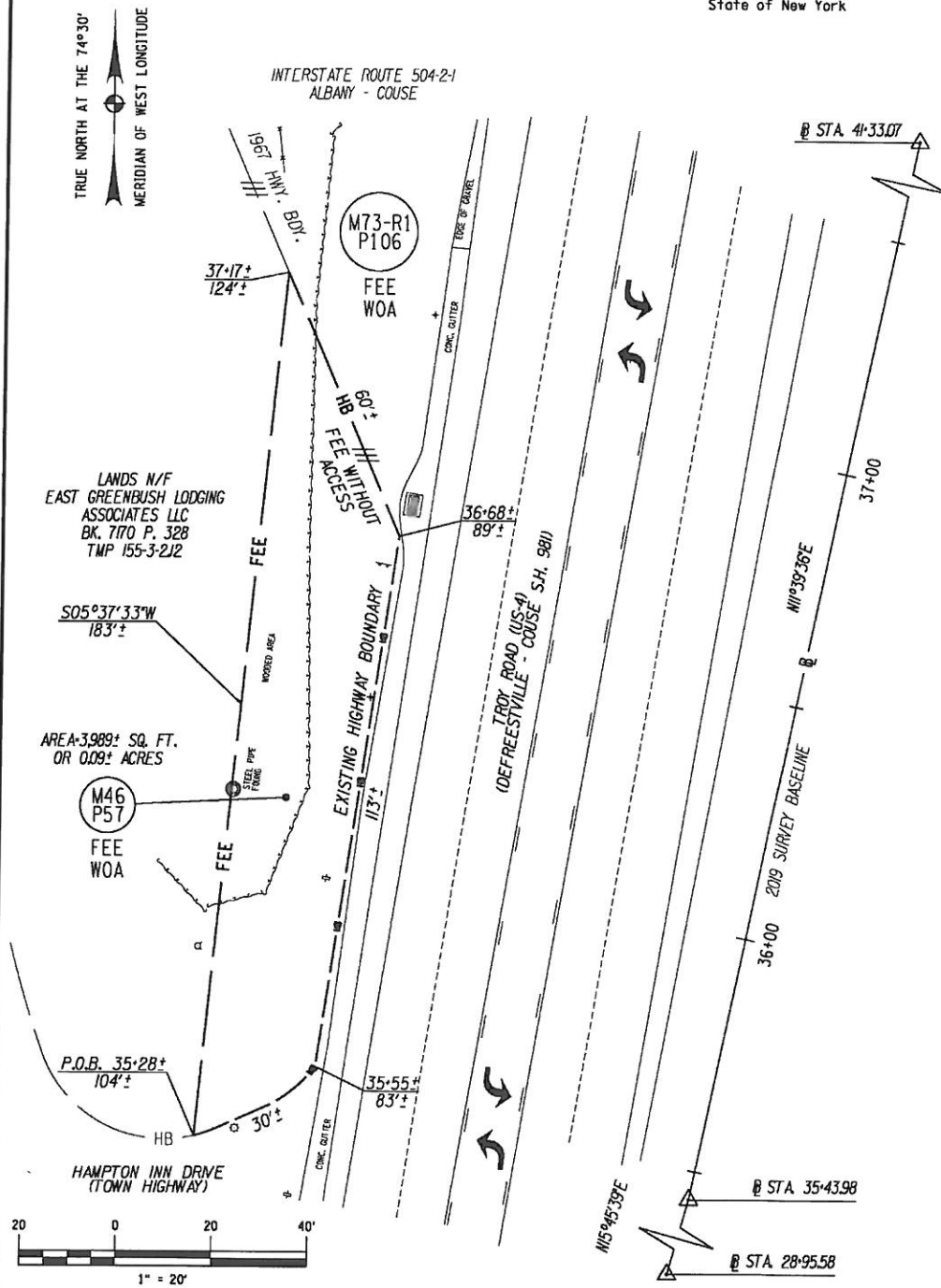
MAP NO. 46
PARCEL NO. 57
SHEET 1 OF 2 SHEETS

MAP REFERENCE INFORMATION:

Parcel Locator Points:
Parcel No: 57
N: 1381639.1661
E: 707053.3202

EAST GREENBUSH LODGING
ASSOCIATES LLC
(REPUTED OWNER)
Deed Ref. L.7170 P.328

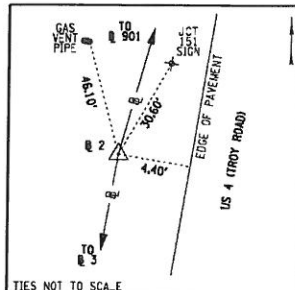
PARCEL SUMMARY:
Type: P*57; FEE
Portion of Rensselaer County Tax
Map Ref. No. 155-3-2.12
Town of East Greenbush
County of Rensselaer
State of New York



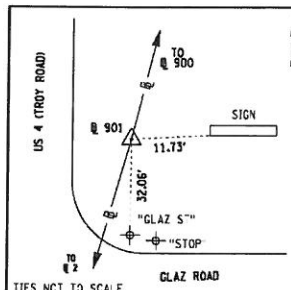
DEFREESTVILLE - COUSE
S.H. 981

MAP OF LANDS
TO BE ACQUIRED BY
THE STATE OF NEW YORK

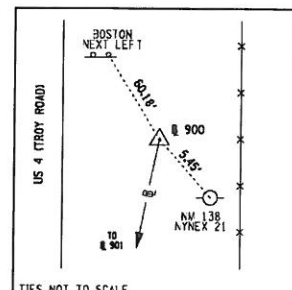
MAP NO. 46
PARCEL NO. 57
SHEET 2 OF 2 SHEETS



TIES NOT TO SCALE
STA. 28+95.58
PK SET IN ASPHALT 2.8'
NORTHERLY OF CONC. CURB
NYSPCS EAST ZONE NAD 83/11
N: 1381007.0770
E: 706981.2460



TIES NOT TO SCALE
STA. 35+43.98
CAPPED DOCK SPIKE SET IN
GRASS EASTERLY OF PAVEMENT EDGE
NYSPCS EAST ZONE NAD 83/11
N: 1381626.1070
E: 707157.3670



TIES NOT TO SCALE
STA. 41+33.07
CAPPED DOCK SPIKE SET IN
GRASS EASTERLY OF PAVEMENT EDGE
NYSPCS EAST ZONE NAD 83/11
N: 1382703.0290
E: 707276.4230

PARCEL 57

All that piece or parcel or property hereinafter designated as Parcel No. 57, situate in the Town of East Greenbush, County of Rensselaer, State of New York, as shown on the accompanying map and described as follows.

Beginning at a point on the westerly highway boundary of Troy Road (US-4) (Defreestville - Couse S.H. 981), an existing US Route, at its intersection with the northerly highway boundary of Hampton Inn Drive, said point being 104± feet distant westerly measured at right angles from Station 35+28± of the hereinafter described survey baseline for the proposed intersection improvements of a portion of Temple Lane; thence easterly along said westerly highway boundary a distance of 30± feet to a point on the westerly highway boundary, said point being 83± feet distant westerly measured at right angles from Station 35+55± from said baseline; thence northerly along said westerly highway boundary a distance of 113± feet to a point on the westerly highway boundary, said point being 89± feet distant westerly measured at right angles from Station 36+68± from said baseline; thence northwesterly along said westerly highway boundary a distance of 60± feet to a point on the westerly highway boundary, said point being 124± feet distant westerly measured at right angles from Station 37+17± of said baseline; thence south 05° 37' 33" West, running through the lands of East Greenbush Lodging Associates LLC (reputed owner), a distance of 183± feet to the point of beginning, being 3,989± square feet or 0.09± acres, more or less.

The above mentioned baseline is a portion of the Survey Baseline for the proposed intersection improvements of a portion of Temple Lane, as shown on a map and plan on the file at the Rensselaer County Clerk's Office and described as follows;

Beginning at Station 28+95.58, thence North 15° 45' 39" East to Station 35+43.98; thence North 11° 39' 36" East to Station 41+33.07.

All bearings referred to True North at the 74° 30' Meridian of West Longitude.

I hereby certify that the property mapped above is necessary for this project, and the acquisition thereof is recommended.

Date 2020

Regional Design Engineer
for the Regional Director of
Transportation Region No.

EAST GREENBUSH LODGING
ASSOCIATES LLC
(Reputed Owner)

"Unauthorized alteration of a survey map bearing a licensed land surveyor's seal is a violation of the New York State Education Law."

I hereby certify that this map was prepared in accordance with current NYSDOT policies, standards and procedures.

Date 2020

JODY J. LOUNSBURY Land Surveyor
P.L.S. License No. 50715
Control Point Associates Inc., P.C.

TOTAL AREA= 3,989± SQ. FT. OR 0.09± ACRES

Map of a portion of the existing highway boundary over which the Commissioner of Transportation deems necessary that the right of access to and from abutting property shall be fully prohibited by appropriation for purposes connected with the highway system of the State of New York pursuant to Section 30 of the Highway Law and the Eminent Domain Procedure Law.

There is excepted from this appropriation all the right, title and interest, if any, of the United States of America in or to said property.

Pursuant to the statute(s) set forth above and the authority delegated to me by Official Order of the Commissioner of Transportation, this acquisition map is hereby approved and filed in the main office of the New York State Department of Transportation.

I have compared the foregoing copy of the map with the original thereof, as filed in the Office of the State Department of Transportation, and I do hereby certify the same to be true and correct copy of the original and of the whole thereof.

Date 2020

Real Estate Division

Real Estate Division

PREPARED BY D. DELUXE CHECKED BY J. LOUNSBURY FINAL CHECK BY