

Adopted

07/17/07

TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY
Resolution # 10

**AUTHORIZES THE SUPERVISOR TO EXECUTE AN LICENSE AGREEMENT WITH
EASTERN LONG ISLAND AUDUBON SOCIETY, INC.**

COUNCILWOMAN BLASS offered the following resolution, was seconded by

COUNCILMAN BARTUNEK :

WHEREAS, the Eastern Long Island Audubon Society, Inc. wishes to enter onto the EPCAL property for the purposes of observing bird populations at the site in a location not previously authorized and the Town wishes to allow the activity proposed by the Audubon Society,

NOW, THEREFORE BE IT HEREBY RESOLVED, that the Chairman is hereby authorized to execute a license agreement which is substantially in the form attached hereto, and be it further

RESOLVED, that the Town Clerk is hereby directed to forward a certified copy of this resolution to the Eastern Long Island Audubon Society, P.O. Box 206, East Quogue, New York, 11942; the Office of Accounting; the Community Development Agency and the Office of the Town Attorney.

THE VOTE
Dunleavy yes ___ no Bartunek yes ___ no
Blass yes ___ no Densieski yes ___ no
Cardinale yes ___ no
THE RESOLUTION WAS ___ WAS NOT
THEREFORE DULY ADOPTED

LICENSE AGREEMENT

This License Agreement ("hereinafter License"), made as of the day of _____, 2007, by and between the Town of Riverhead Community Development Agency ("Licensor") with offices located at 200 Howell Avenue, Riverhead, New York and the Eastern Long Island Audubon Society, Inc. ("Licensee"), a not-for-profit corporation, having an address of Post Office Box 206, East Quogue, NY 11942.

WITNESSETH

WHEREAS, the Licensee wishes to utilize a portion of the Town of Riverhead Community Development Agency property known as EPCAL, located at Calverton, New York, for the purposes of monitoring, counting and documenting birds; and

WHEREAS, the Town of Riverhead Community Development Agency wishes to grant the Licensee the right to utilize a portion of said property as described in Schedule A attached hereto; and

WHEREAS, it is agreed and understood that access granted herein is limited to that described in Schedule A; and

NOW, THEREFORE, in consideration of the mutual agreements herein contained, Licensor and Licensee, for themselves and their successors, hereby agree as follows:

1. Licensing. Upon the terms and conditions hereinafter set forth, Licensor hereby licenses to Licensee the right to use the property

owned by the Town of Riverhead Community Development Agency, known as EPCAL, located in Calverton, New York (hereinafter referred to as the "Licensed Premises").

2. Term of the License. The term of this License (the "term") shall be for a period of two weeks commencing on July 18, 2007 and ending on July 31, 2007. However, said term may be terminated at any time at the option of the Licensor upon thirty (30) days notice in writing to the Licensee.

4. Condition of the Licensed Premises. The Licensee is familiar with the Licensed Premises, has examined same, and except as explicitly hereinafter provided, the Licensee agrees to accept the Licensed Premises in its "as is" condition without reliance upon any representations or warranties of or made by the Licensor. Specifically, licensee is familiar with the fact that the subject premises is adjacent to an active runway which is utilized by aircraft on a regular basis by individuals holding runway use agreements with the Town of Riverhead Community Development Agency. It is the responsibility of the licensee to obtain information on incoming or outgoing flights so as to minimize the potential for accidents.

5. Insurance and Indemnification: The Licensee will be responsible for providing comprehensive general liability insurance in the amount of not less than \$2,000,000 with a company or companies reasonably satisfactory to the Licensor for the term of this License

Agreement. The Licensee will provide certificates of the foregoing insurance, showing the Town of Riverhead and the Riverhead Community Development Agency as "Additional Insured" to the extent of their interest. Finally, Licensee agrees to indemnify and hold the Riverhead Community Development Agency, the Town of Riverhead and their respective officers, employees, agents, representatives and officials harmless from any and all loss or liability associated with its use of the Licensed Premises and related activities described herein, including liability for damages to property or for injuries or death to persons which may arise from, or be attributable or incident to the use by the Licensee and its employees, agents, representatives and concessionaires of the Licensed Premises, excepting liability solely caused by the gross negligence of the Riverhead Community Development Agency, the Town of Riverhead or its employees, agents or representatives. Without limiting the generality of the foregoing, the Licensee agrees to indemnify and hold the Riverhead Community Development Agency, and the Town of Riverhead harmless from any lien claimed or asserted for labor, materials or services furnished to the Licensee in connection with the use of the Licensed Premises. With respect to any suit or claim by the Riverhead Community Development Agency or the Town of Riverhead, whether under this indemnification provision or otherwise, the Licensee, for itself, its agents, employees and representatives, hereby expressly waives any defense which might preclude or limit either enforcement of

this indemnification clause or any reasonable attorney's fees incurred by the Riverhead Community Development Agency or the Town of Riverhead securing compliance with the provision of this indemnification agreement. The Licensee will work with the Town of Riverhead to ensure adequate coverage of all property and liability with all concerned entities being named as "Additional Insured".

6. License Fee. In consideration of the type of work the Licensee intends to conduct at the Licensed Premises, the Licensor agrees to waive the license fee for the use of the Licensed Premises.

7. Use of Licensed Premises. Licensee agrees to utilize the Licensed Premises between the hours of 8:00 a.m. and 12:30 p.m. for the purposes of observing, monitoring and documenting birds in the licensed area.

8. Repair, Maintenance and Inventory of License Premises.

a) The Licensee, at its sole expense, agrees to maintain the Licensed Premises free of trash and debris and to return the premises back to its original condition following completion of the license term.

b) The Licensee shall not alter the Licensed Premises without the prior permission of the Licensor.

9. Assignment. Notwithstanding anything to the contrary contained in this License Agreement, the Licensee shall not assign this license, the use of the Licensed Premises, in whole or in part, or permit the Licensee's interest to be vested in any other party other than the

Licensee by operation of law or otherwise without the expressed written consent of the Licensor. A transfer of more than fifty (50%) percent at any one time, or in the aggregate from time to time, of the stock, partnership or other ownership interests of the Licensee, directly or indirectly, shall be deemed to be an assignment of this License Agreement.

10. Indemnity: The Licensee shall indemnify and hold the Licensor harmless from and against any and all claims, actions, liabilities, losses (including, without limitation, consequential and special damages), costs and expenses (including, without limitation, court costs and reasonable attorney fees and expenses), arising from or in connection with the use of the Licensed Premises.

11. Notices: Any notices to be given under this License Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested. If such notice is directed to the Licensor, it shall be addressed to the attention of the Riverhead Town Supervisor and the Office of the Riverhead Town Attorney located at 200 Howell Avenue, Riverhead, New York. If such notice is directed to the Licensee, it shall be addressed to Eileen Schwinn at Post Office Box 206 East Quogue, New York 11942.

12. Merger: All prior understandings and agreements between the parties with respect to the subject matter hereof are merged within this License Agreement, which alone, fully and completely sets forth the

understanding of the parties with respect to the subject matter hereof. This License Agreement may not be changed or terminated orally, or in any manner, other than in writing signed by the party against whom enforcement is sought.

13. Cross Default: To the extent that the Licensor and Licensee are parties to related agreements, any default under the related agreements shall be deemed to be a default under this License Agreement, and any default under this license shall be deemed a default under such similar agreements.

IN WITNESS WHEREOF, the Licensor and Licensee do hereby execute this License Agreement as of the date and year first above written.

TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

By: _____

EASTERN LONG ISLAND AUDUBON SOCIETY, INC.

By: _____

