

5/24/06

Town of Riverhead  
Community Development Agency

Adopted

Resolution # 4

**AUTHORIZES THE CHAIRMAN TO EXECUTE AN AGREEMENT BETWEEN  
THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY AND  
NEWMARK KNIGHT FRANK**

COUNCILMAN BARTUNEK offered the following resolution, was seconded by

COUNCILWOMAN BLASS :

**WHEREAS**, the Exclusive Agency Agreement by and between the Town of Riverhead and Newmark of Long Island LLC for the sale of the property known as Enterprise Park at Calverton (EPCAL) expired on December 31, 2005; and

**WHEREAS**, the Town of Riverhead Community Development Agency and Newmark Knight Frank wish to enter into an Exclusive Agency Agreement;

**NOW THEREFORE BE IT HEREBY RESOLVED**, that the Chairman is hereby authorized to execute the attached Exclusive Agency Agreement by and between the Town of Riverhead Community Development Agency and Newmark Knight Frank; and be it further

**RESOLVED**, that the Town Clerk is hereby directed to forward a copy of this resolution to Newmark Knight Frank; Community Development Agency, Office of the Town Attorney and the Office of Accounting.

**THE VOTE:**

Member Dunleavy	<del>Yes</del>	No
Member Blass	<del>Yes</del>	No
Member Densieski	<del>Yes</del>	No
Member Bartunek	<del>Yes</del>	No
Chairman Cardinale	<del>Yes</del>	No

## EXCLUSIVE AGENCY AGREEMENT

**AGREEMENT** made the        day of May , 2006, by and between THE TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY (hereinafter referred to as the "Principal") with its principal office located at 200 Howell Avenue, Riverhead, New York 11901 and NEWMARK KNIGHT FRANK (hereinafter referred to as the "Agent") with its principal office located at 201 North Service Road, Suite 100, Melville, New York 11747.

### WITNESSETH

WHEREAS, Principal is the owner of the remaining land of approximately 1500 acres known as Enterprise Park (EPCAL), Calverton, New York (hereinafter referred to as the "Property").

WHEREAS, Agent is a real estate broker duly licensed by the State of New York.

WHEREAS, Principal desires to grant Agent the sole and exclusive agency to procure the sale of the Property and Agent desires to accept such exclusive right subject to and conditioned upon the terms and provisions contained herein.

NOW, THEREFORE, in consideration of mutual covenants herein contained, Principal and Agent agree as follows:

1. APPOINTMENT OF AGENT:

Principal hereby grants Agent the exclusive agency to procure a sale ("Sale") of the Property for a price on the terms and conditions as may be agreed upon by the Principal and purchaser.

2. TERM:

This Agreement shall commence on the date hereof and shall expire on December 31, 2006.

3. PRINCIPAL'S AND AGENT'S DUTIES:

Principal agrees during the term of this Agreement to refer to Agent all offers and inquiries with respect to Sale of the Property and Agent agrees to make diligent investigations and develop such offers or inquiries, and to canvas, solicit, advertise and otherwise employ its services at its own expense to bring about a Sale of the Property. Negotiations conducted by Agent shall be subject to the

review and final approval of Principal. Principal shall maintain the condition of the Property during the term hereof. In the event the Principal is apprised of any information or conditions that materially adversely affect the marketability of the Property, Principal shall promptly disclose such information or conditions to Agent.

4. OUTSIDE BROKER:

Agent is hereby authorized by Principal to utilize the services of other real estate brokers licensed by the State of New York who are not in the employ of the Agent (hereinafter referred to as the "Outside Broker").

5. ADVERTISING AND PROMOTION;

Upon Principal's approval, Agent shall conduct open house inspections for Outside Brokers. Agent shall furnish monthly status reports of its marketing activities to Principal. At its sole cost and expense, Agent shall create and distribute new promotional flyers and shall advertise appropriately the availability of the Property. Agent, at Agent's sole cost, shall be permitted to install signs at the Property indicating the availability of the Property. Principal shall cooperate with Agent in providing necessary information to market the Property.

6. COMPENSATION:

Sale of Property

Agent shall be entitled to a commission of 2% of the sales price on the happening of any one of the following events: (i) any Sale of the Property within the term of this Agreement by Agent, or (ii) any sale of the Property which occurs with an entity listed on the Pending List within time period as defined in Article 7 below. In the event that Agent shall be entitled to a commission hereunder, then the Purchaser of the Property, or any portion thereof, shall pay Agent a commission as set forth herein. The commission shall be paid to Agent on the date of closing of title. If an Outside Broker is involved in the Sale, Agent shall pay any Outside Broker fifty percent (50%) of the commission actually received by Agent hereunder. If Agent shall negotiate for the Purchaser of the Property or any portion thereof to pay the commission earned and an Outside Broker is involved in the transaction, then in that event the Agent may negotiate a 3% commission that will be shared with the Outside Broker.

Principal shall be free to reject any proposed transaction for any reason; and, if Principal does not enter into a contract for the sale or other disposition of the Property, Agent shall not be entitled to any compensation for any services provided hereunder.

Notwithstanding anything to the contrary contained herein or at law, the Agent shall not be entitled to any compensation or commission nor shall any compensation or commission be due to the Agent if Principal shall lease, sell or transfer title to the Property or any portion thereof to the United States, New York State, Suffolk County, Federal Bureau of Investigation, United States Navy, Army, Air Force, Marines Corps, Federal Aviation Administration, National Transportation Safety Board, Town of Riverhead, Town of Riverhead Community Development Agency, Riverhead Development Corp, Riverhead Central School District, or to any department, instrumentality, public corporation, bureau agency board or subdivision of any of the foregoing entities.

7. PENDING NEGOTIATIONS:

Within thirty (30) days after the Termination Date, Agent shall deliver to Principal a complete list of any pending and incomplete transactions in connection with the sale of all or part of the Property then under negotiation by Agent on Principal's behalf (hereinafter referred to as the "Pending List"). The Pending List shall contain sufficient information to identify the transaction. In the event any pending transaction on the Pending List is closed within six (6) months after the Termination Date, Principal shall recognize Agent as the exclusive broker and shall pay to Agent a commission in accordance with the terms set forth herein provided the Agent is the procuring cause of the Sale.

8. MISCELLANEOUS:

- a. The parties acknowledge that Agent is not responsible to determine whether toxic or hazardous wastes or substances or other undesirable materials are present at the Property.
- b. The parties acknowledge that the signatories are vested with the authority to execute this Agreement on behalf of their respective parties.
- c. This Agreement shall be governed by the laws of the State of New York and contains the entire understanding of the parties with respect to the subject matter thereof. This Agreement may not be changed or modified orally but only by written instrument signed by the parties. This Agreement shall not be assignable by Agent. This Agreement may not be strictly construed against either Principal or Agent, each party agreeing that it has participated fully and equally in the preparation of this Agreement.
- d. Excluded from this Agreement is current negotiation of Principal with Bob Jessup, or his designated entity, and any sale resulting therefrom.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

NEWMARK KNIGHT FRANK, AGENT

Dated: May\_\_\_\_, 2006

BY: \_\_\_\_\_  
John T. O'Connor, Principal

TOWN OF RIVERHEAD COMMUNITY  
DEVELOPMENT AGENCY, PRINCIPAL

Dated: May\_\_\_\_, 2006

BY: \_\_\_\_\_  
Philip J. Cardinale, Chairman

05/24/06

TOWN OF RIVERHEAD

Adopted

Resolution # 5

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

COUNCILMAN BARTUNEK offered the following resolution, was seconded by COUNCILMAN DENSIESKI:

WHEREAS, the Eastern Long Island Audubon Society, Inc. wishes to utilize Town of Riverhead CDA property known as EPCAL, located at Calverton, New York, for a period of five (5) years for the purpose of monitoring, counting and documenting birds between the hours of 8:00 a.m. and 12:30 p.m., and

WHEREAS, the Town wishes to allow the use of said facility for the requested purpose, and

NOW, THEREFORE, be it

RESOLVED, that the Supervisor is hereby authorized to execute the attached License Agreement as Chairman of Town of Riverhead Community Development Agency, and be it further

RESOLVED that the Town Clerk is hereby directed to forward a certified copy of this resolution to the Office of the Town Attorney, the Office of Accounting, CDA and the Eastern Long Island Audubon Society, Inc.

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 \_\_\_\_\_, 2006, 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;

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"). A portion of the Licensed Premises that is not included in this License Agreement and which the Licensee is not permitted to enter onto is the long runway.

2. Term of the License: The term of this License (the "term") shall be for a period of five (5) years commencing on January 1, 2006 and ending on December 31, 2010. 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.

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.

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: \_\_\_\_\_  
Philip J. Cardinale, Chairman

EASTERN LONG ISLAND AUDUBON SOCIETY, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_