

12/20/05

Adopted

TOWN OF RIVERHEAD
COMMUNITY DEVELOPMENT AGENCY
Resolution # 25

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

COUNCILWOMAN SANDERS offered the following resolution, was seconded by
COUNCILWOMAN BLASS :

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 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 the attached license agreement, 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

Bartunek yes ___ no Sanders 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 December, 2005, by and between the Town of Riverhead Community Development Agency ("Licensor") with offices at 200 Howell Avenue, Riverhead, New York and 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; 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 Licensed Premises owned by Town of Riverhead Community Development Agency, known as EPCAL, located in Calverton. A portion of the EPCAL property

that is not included in this license agreement and which licensee is not permitted to enter onto, is the long runway.

2. Term of the License. The term of this License (the "term") shall commence on December 26, 2005 and shall end on December 29, 2005.

4. Condition of the Licensed Premises. The Licensee is familiar with the Licensed Premises, has examined same, and, except as explicitly hereinafter provided, Licensee agrees to accept the licensed premises in its "as is" condition without reliance upon any representations or warranties of or made by 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. 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 CDA, 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 property 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 licensee and its employees, agents,

representatives and concessionaires of the Property, excepting liability solely caused by the gross negligence of CDA, the Town or its employees, agents or representatives. Without limiting the generality of the foregoing, Licensee agrees to indemnify and hold CDA and the Town of Riverhead harmless from any lien claimed or asserted for labor, materials or services furnished to Licensee in connection with the use of the property. With respect to any suit or claim by CDA or the Town, whether under this indemnification provision or otherwise, 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 attorneys fees incurred by CDA or the Town of Riverhead securing compliance with the provision of this indemnification agreement. 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 premises, the Licensor agrees to waive the license fee for the use of the 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) 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) Licensee shall not alter the Licensed Premises without the prior permission of the Licensor.

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

10. Indemnity: 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 shall be in writing and shall be sent by registered or certified mail, return receipt

requested. If such notice is directed to Licensor, it shall be addressed to the attention of the Riverhead Town Supervisor and the Office of the Riverheads Town Attorney at 200 Howell Avenue, Riverhead, New York. If such notice is directed to the Licensee, it shall be addressed to Evelyn Voulgarelis at Post Office Box 206 East Quogue, New York 11942.

12. Miscellaneous:

a) Merger. All prior understandings and agreements between the parties with respect to the subject matter hereof are merged within this agreement, which alone, fully and completely sets forth the understanding of the parties with respect to the subject matter hereof. This license may not be changed or terminated orally, or in any manner, other than in writing signed by the party against whom enforcement is sought.

b) Nothing contained in this Agreement either expressly or impliedly shall invalidate any pre-existing non-conforming use upon the real property owned by the Licensee or constitute any admission by the Licensee that any violation exists now or shall exist in the future.

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, and any default under this license shall be deemed a default under such similar agreements.

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

TOWN OF RIVERHEAD COMMUNITY DEVELOPMENT AGENCY

By: _____

EASTERN LONG ISLAND AUDUBON SOCIETY, INC.

By: _____