



## DISCUSSION

ITEM NO. 24

**DATE OF MEETING:** July 27, 2015

**REQUESTED BY:** Kyle M. Breuer, Director, Planning and Community Development

**SHORT TITLE:** Discussion on Reinstating a Lease Program for Flood Buyout Properties

**BACKGROUND:** Due to ongoing flood risks and past events, Pender County, through assistance with State and Federal programs, has acquired properties that are severely flood prone and have experienced loss. These properties are deeded to Pender County with various restrictions on use and reporting requirements (see FEMA deed restrictions attached).

Historically, Pender County has issued a “license” for an adjacent property owner to lease the buyout property. The license is accompanied with an agreement (see Limited License Agreement attached) further restricting the property to maintenance use only and indemnifies the County from any claims or causes throughout the term of the license. According to records available, the license was issued following payment to recover administrative costs to issue said license.

Due to an increased desire from various property owners across the County, Staff is requesting discussion and direction from the Board as to the future of this program.

SAMPLE

## LIMITED LICENSE AGREEMENT

This LIMITED LICENSE AGREEMENT is entered into between Pender County  
HOLLY SAULTER ESTATES  
("County") and PROPERTY OWNERS ASSN. INC. ("Licensee") with regard to the  
real property located at 965 HSE RD and more particularly described at Book  
1759 Page 258 of the Pender County Registry ("Property").

1. County grants to Licensee a limited license with regard to the property for the purpose of keeping the property mowed, landscaped and maintained. Licensee may not use the property for any commercial purpose, but may use the property as a garden so long as any produce is not sold.
2. Licensee agrees and acknowledges that he has no ownership interest in the property and shall not use the Property for any purpose not expressly listed above without the written permission of the Pender County Manager and that his uses shall be limited to those uses. Without restricting the above, the Property may not be used for camping, parking or storage.
3. This License is non-transferable, but Licensee may permit members of his immediate family to use the Property for the limited purposes described above.
4. Licensee agrees to accept the property "as is" and Pender County makes no representation regarding the condition of the property.
5. Licensee shall pay an initial processing fee of thirty-five dollars (\$35.00) to County, to cover County's administrative costs.
6. Licensee shall cooperate with the County in preparing any documentation requested or required by any State or Federal Agency, including providing a

certification under oath that the Property is being used in accordance with applicable regulations and this License.

7. Licensee shall provide a mailing address which he shall keep current and to which he agrees that all notices from the County may be sent. Licensee shall bear all consequences of the failure to keep his mailing address current, including termination of this License.
8. Licensee agrees that County may revoke this license at any time, without cause, and that he shall not be entitled to any refund of any fees paid to County, nor to harvest any produce or recover any costs incurred in the exercise of the License. Licensee understands that he must immediately cease using the property within the shortest time of (1) being given verbal notice, (2) actual receipt of written notice, or (3) three days from the date the County mails written notice to the mailing address provided by Licensee. Should Licensee fail to cease use of the property after termination, he acknowledges that he will be liable for criminal and civil trespass. Licensee may abandon this License by sending written notice to the Pender County Manager of his intent to do so and such shall be effective upon receipt by the County Manager. Such notice of termination shall not absolve or release Licensee from his indemnity obligation set forth below with regard to any known or suspected claims or for any damages or claims which arise from events which have occurred prior to receipt of the notice of termination.
9. Licensee agrees to indemnify County from any claims or causes of action arising out the Property during the existence of this License, including without limitation claims, costs, legal fees, expenses, fines or damages for personal injury, property

**SAMPLE**

damage, environmental clean up or other cause. Licensee further agrees and stipulates that he shall be responsible for any legal fees incurred by County as a result of any action to terminate this License.

LICENSEE:  
HOLLY SHELTER LESTATES  
PROPERTY OWNERS ASSN, INC

O B Baett (SEAL)

COUNTY:

Cy Harold  
3/18/04

ATTEST:

Melinda Kraeger

(SEAL)

STATE OF NORTH CAROLINA

COUNTY OF PENDER

I, Jerry Lewis a Notary Public for said County and State do hereby certify that O B BATTUE personally appeared before me this day and acknowledged the execution of the foregoing instrument.

This the 10 day of MARCH 2004.

Jerry Lewis  
Notary Public

My Commission Expires: 1-30-2009

STATE OF NORTH CAROLINA

COUNTY OF PENDER

I, Glenda Pridgen, a Notary Public for said County and State do hereby certify that Andy Hedrick personally appeared before me this day and acknowledged the execution of the foregoing instrument.

This the 18<sup>th</sup> day of March 2004.

Glenda Pridgen  
Notary Public

My Commission Expires: 5/23/06

Deed Restrictions and Covenants

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WHEREAS, this Property is being purchased under the Hazard Mitigation Acquisition Program conducted with FEMA (404) Funds (Appropriated pursuant to Section 404 of the Stafford Act); and

WHEREAS, the State of North Carolina's Division of Emergency Management has entered into a Contract Agreement with FIELD1 County, North Carolina (hereinafter referred to as the "County"), and herein incorporated by reference, in which the County will use the Property described hereafter under the terms and conditions thereunder; and

NOW, THEREFORE, this conveyance is made upon the express conditions that:

1. **LAND USE:** The land must be dedicated and maintained in perpetuity for uses compatible with open space, recreational purposes or wetlands management practices.
2. **STRUCTURES:** No new structure(s) will be built on the property except for the following:
  - a. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
  - b. A public restroom; or
  - c. A structure that is compatible with open space, recreational, or wetlands management usage and proper flood plain management policies and practices, which the FEMA Director approves in writing before the construction of the structure begins.
3. **ASSISTANCE:** After completing the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.
4. **CONVEYANCE:** The properties so acquired or any interest therein may be conveyed only to another public entity or non-profit organization created to enhance and promote the purposes set forth in Paragraph 1 above with prior approval of the State of North Carolina and the Regional Director of FEMA and subject to this Declaration.
5. **TERM AND BINDING EFFECT:** The foregoing covenants, conditions and restrictions shall run with the land and be binding upon all parties having any right, title or interest in the described properties or any part thereof, their successors and assigns, but is not intended to restrict the rights of third parties in existing easements for public roads, highways, public utilities, railroads and pipelines.
6. **APPLICATION:** Nothing herein contained shall be construed as to impose any covenant, condition or restriction on any other property than that conveyed to Declarant pursuant to the Grant Agreement and any amendments thereto, to which these specific covenants, conditions and restrictions apply.

- 7. FLOOD PROOF STRUCTURES: Any structures built on the property must be located to minimize the potential for flood damage, be flood proofed, or be elevated to the Base Flood Elevation plus one foot of freeboard.
- 8. CERTIFICATION REQUIREMENTS: Every two years on October 1<sup>st</sup>, the RECIPIENT/SUBGRANTEE will report to the AGENCY/GRANTEE certifying that the property continues to be maintained consistent with the provisions of these restrictions.
- 9. ALLOWABLE USES: Allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time it not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, permeable parking lots, and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, or other uses that obstruct the natural and beneficial functions of the flood plain.

Any breach or threatened breach of the above conditions may be enjoined upon application by the State of North Carolina. In addition, the State of North Carolina shall have the option to repurchase the above described premises for the sum of One Dollar (\$1.00), if the County, its successors or assigns shall have failed to remove or correct any violation of the above conditions within thirty (30) days after the mailing of written notice thereof by said State of North Carolina or its successor, to the County, its successors or assigns.

The above conditions and restrictions, along with the right to enforce the same are deemed to be covenants running with the land in perpetuity and are binding on subsequent successors, recipients, or assigns.

The Seller releases and deeds unto the County and its assigns, all rights, title, and interest which the Seller may have in the banks, bed and waters opposite to or fronting upon said land, and in any alley, road, street, ways strips, gorges and railroad right-of-way abutting or adjoining said lands, and in any means of ingress and egress appurtenant thereto.

TO HAVE AND HOLD the said premises with all and singular the rights and privileges belonging unto the said County and its assigns forever.

THIS conveyance is expressly subject to rights outstanding in third parties for existing easements for public road and highways, public utilities, railroads, and pipelines.

[Signature]  
 For the County (authorized agent for the County of Pender)

9/10/02  
 Date

Witness my hand and official seal this 10<sup>th</sup> day of September, 2002.

[Signature]  
 Notary Public

My Commission Expires: 10-11-2005

