

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is between the party whose name and address appears on the last page of this Agreement (“Recipient”) and Lincoln Harris, LLC (“Agent”) who has been retained by “BNP Realty, LLC” (“Seller”) as the exclusive agent for the sale of “The BNE/Hardees Portfolio” (“the Property”).

In consideration of and as a condition to Agent and/or Seller furnishing access to certain confidential information to the Recipient, Recipient agrees as follows:

1. **Confidential and Proprietary Nature of Information.** The Recipient acknowledges the confidential and proprietary nature of the Confidential Information (defined below) and agrees to hold and keep the same as provided in this Agreement.
2. **Confidential Information.** Except as provided in Section 4 below, the term “Confidential Information” means and includes any and all information, analysis, compilations, documents, and other materials regarding the Property and/or Owner and its affiliates, subsidiaries, tenants and borrowers as may be provided to Recipient from time to time, including, without limitation, the Confidential Information noted on the last page of this Agreement.
3. **Restricted Use of Confidential Information.** The Recipient agrees that the Confidential Information: (a) will be kept confidential by the Recipient and (b) without limiting the foregoing, will not be disclosed by the Recipient to any person except as expressly permitted in writing by Seller, or except as otherwise expressly permitted by the terms of this Agreement. The Recipient agrees that the Recipient will not use any of the Confidential Information in any way detrimental to Seller. The Recipient and their representatives shall be responsible to Seller and Agent for any failure by the representatives to comply with the provisions of this Agreement. In addition, Recipient agrees that it will not make any disclosure to any person (1) that Recipient or Owner are having or have had discussions, or that you have received the Confidential Information from Owner, (2) that Owner or Recipient are considering a possible transaction or (3) concerning any discussions related to a possible transaction, including the status thereof, any termination thereof, and decision on you part to no longer consider any such transaction or any of the terms, conditions or other facts with respect thereto. The term “person” as used in this Agreements shall be broadly interpreted to include, without limitation, the media and any corporation, partnership, group, individual, or other entity.
4. **Exceptions.** The foregoing obligations do not apply to that part of the Confidential Information that the Recipient demonstrates: (a) was or becomes generally available to the public (other than by acts of Recipient in violation of this Agreement) or (b) has been voluntarily disclosed to the public by the Seller or (c) otherwise enters the public domain through lawful means.
5. **Legal Proceedings.** If the Recipient is requested or becomes legally compelled (by dispositions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Recipient will provide Owner and Agent with prompt notice of such request so that Owner and Agent may seek an appropriate protective order or other remedy. Subject to the foregoing, Recipient may furnish that portion of the Confidential Information that, in the written opinion of counsel reasonably acceptable to Owner, the Recipient is legally compelled to disclose or else stand liable for contempt or suffer other material

censure or material penalty; provided, however, that Recipient must use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so disclosed.

6. **Remedies for Breach.** Because an award of money damages would be inadequate for any breach of this Agreement by the Recipient and because any such breach would cause Owner irreparable harm, the Recipient agrees that, in the event of any breach or threatened breach of this Agreement, Owner will be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity.
7. **Modification and Waivers.** The agreements set forth in the Agreement may be modified or waived only by a separate writing signed by the Recipient, Agent, and Owner. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
8. **Governing Law; Jurisdiction; Service of Process; Costs.** This Agreement will be governed by the laws of the State of North Carolina without regard to conflict of laws principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against either of the parties only in the courts of the State of North Carolina, county of Mecklenburg. The parties consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceedings referred to in the preceding sentence may be served on any party anywhere in the world. The Recipient agrees to pay all costs of enforcement of this Agreement incurred by Owner and Agent, including reasonably attorneys' fees, whether or not any action or suit has been filed by Owner or Agent.
9. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same Agreement.
10. The Property is being offered for sale in an "as-is, where is" condition and Seller and Agent make no representations or warranties as to the accuracy of the information contained in the Offering Memorandum. The Offering Memorandum materials include highly confidential information and would be furnished solely for the purpose of review by prospective purchasers of the interest described herein. Neither the Offering Memorandum nor and information contained therein is to be used for any other purpose or made available to any other person without the express written consent of Seller. The use of the Offering Memorandum and the information provided therein is subject to the terms, provisions and limitations of this Confidentiality Agreement.
11. The Offering Memorandum materials would be provided solely to facilitate the Prospective Purchaser's own due diligence for which it shall be fully and solely responsible. That material contained therein is based on information and sources deemed to be reliable, but no representation or warranty, express or implied, is being made by Agent or Seller or any of their respective representatives, affiliates, officers, employees, shareholders, partners and directors, as to the accuracy or completeness of the information contained herein. Summaries contained therein of any legal or other documents are not intended to be comprehensive statements of the terms of such documents, but rather only outlines of some of the principal provisions contained therein or any

other written or oral communication or information transmitted or made available or any action taken or decision made by the recipient with respect to the Property. Interested parties are to make their own investigators, projections, and conclusions without reliance upon the material contained herein.

BROKER

BUYER

By:
By: _____
Name: _____
Title: _____
Date: _____
Company: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____
Email: _____

By:
By: _____
Name: _____
Title: _____
Date: _____
Company: _____
Address: _____
City: _____
State: _____
Zip: _____
Phone: _____
Fax: _____
Email: _____

Please fax to James Mattox at 919-840-0240 or email to jmattox@lincolnharris.com. All information must be complete and legible. Please allow 48 hours for return information via email only.

_____ **Broker's Initial**

_____ **Buyer's Initial**

WORKING WITH REAL ESTATE AGENTS

NOTE: Effective July 1, 2001, in every real estate sales transaction, a real estate agent shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with the following information [NC Real Estate Commission Rule 21 NCAC 58A.0104(c)].

When buying or selling real estate, you may find it helpful to have a real estate agent assist you. Real estate agents can provide many useful services and work with you in different ways. In some real estate transactions, the agents work for the seller. In others, the seller and buyer may each have agents. And sometimes the same agents work for both the buyer and the seller. It is important for you to know whether an agent is working for you as **your** agent or simply working **with** you while acting as an agent of the other party.

This brochure addresses the various types of working relationships that may be available to you. It should help you decide which relationship you want to have with a real estate agent. It will also give you useful information about the various services real estate agents can provide buyers and sellers, and it will help explain how real estate agents are paid.

SELLERS

Seller's Agent

If you are selling real estate, you may want to “list” your property for sale with a real estate firm. If so, you will sign a “listing agreement” authorizing the firm and its agents to represent you in your dealings with buyers as your *seller's agent*. You may also be asked to allow agents from other firms to help find a buyer for your property.

Be sure to read and understand the listing agreement before you sign it.

Duties to Seller: The listing firm and its agents must • promote your best interests • be loyal to you • follow your lawful instructions • provide you with all material facts that could influence your decisions • use reasonable skill, care and diligence, and • account for all monies they handle for you. Once you have signed the listing agreement, the firm and its agents may not give any confidential information about you to prospective buyers or their agents without your permission so long as they represent you. But **until you sign the listing agreement, you should avoid telling the listing agent anything you would not want a buyer to know.**

Services and Compensation: To help you sell your property, the listing firm and its agents will offer to perform a number of services for you. These may include • helping you price your property • advertising and marketing your property • giving you all required property disclosure forms for you to complete • negotiating for you the best possible price and terms • reviewing all written offers with you and • otherwise promoting your interests.

For representing you and helping you sell your property, you will pay the listing firm a sales commission or fee. The listing agreement must state the amount or method for determining the commission or fee and whether you will allow the firm to share its commission with agents representing the buyer.

Dual Agent

You may even permit the listing firm and its agents to represent you **and** a buyer at the same time. This “dual agency relationship” is most likely to happen if an agent with your listing firm is working as a *buyer's agent* with someone who wants to purchase your property. If this occurs and you have not already agreed to a dual agency relationship in your listing agreement, your listing agent will ask you to sign a separate agreement or document permitting the agent to act as agent for both you and the buyer.

It may be difficult for a *dual agent* to advance the interests of both the buyer and seller. Nevertheless, a *dual agent* must treat buyers and sellers fairly and equally. Although the *dual agent* owes them the same duties, buyers and sellers can prohibit *dual agents* from divulging **certain** confidential information about them to the other party.

Some firms also offer a form of dual agency called “designated agency” where one agent in the firm represents the seller and another agent represents the buyer. This option (when available) may allow each “designated agent” to more fully represent each party.

If you choose the “dual agency” option, remember that since a dual agent's loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of • what your relationship is with the *dual agent* and • what the agent will be doing for you in the transaction.



BUYERS

When buying real estate, you may have several choices as to how you want a real estate firm and its agents to work with you. For example, you may want them to represent only you (as a **buyer's agent**). You may be willing for them to represent both you and the seller at the same time (as a **dual agent**). Or you may agree to let them represent only the seller (**seller's agent** or **subagent**). Some agents will offer you a choice of these services. Others may not.

Buyer's Agent

Duties to Buyer: If the real estate firm and its agents represent you, they must • promote your best interests • be loyal to you • follow your lawful instructions • provide you with all material facts that could influence your decisions • use reasonable skill, care and diligence, and • account for all monies they handle for you. Once you have agreed (either orally or in writing) for the firm and its agents to be your *buyer's agent*, they may not give any confidential information about you to sellers or their agents without your permission so long as they represent you. But **until you make this agreement with your buyer's agent, you should avoid telling the agent anything you would not want a seller to know.**

Unwritten Agreements: To make sure that you and the real estate firm have a clear understanding of what your relationship will be and what the firm will do for you, you may want to have a written agreement. However, some firms may be willing to represent and assist you for a time as a *buyer's agent* without a written agreement. But if you decide to make an offer to purchase a particular property, the agent must obtain a written agency agreement. If you do not sign it, the agent can no longer represent and assist you and is no longer required to keep information about you confidential. Furthermore, if you later purchase the property through an agent with another firm, the agent who first showed you the property may seek compensation from the other firm.

Be sure to read and understand any agency agreement before you sign it.

Services and Compensation: Whether you have a written or unwritten agreement, a *buyer's agent* will perform a number of services for you. These may include helping you • find a suitable property • arrange financing • learn more about the property and • otherwise promote your best interests. If you have a **written** agency agreement, the agent can also help you prepare and submit a written offer to the seller.

A *buyer's agent* can be compensated in different ways. For example, you can pay the agent out of your own pocket. Or the agent may seek compensation from the seller or listing agent first, but require you to pay if the listing agent refuses. Whatever the case, be sure your compensation arrangement with your *buyer's agent* is spelled out in a buyer agency agreement before you make an offer to purchase property and that you carefully read and understand the compensation provision.

Dual Agent

You may permit an agent or firm to represent you **and** the seller at the same time. This “dual agency relationship” is most likely to happen if you become interested in a property listed with your *buyer's agent* or the agent's firm. If this occurs and you have not already agreed to a dual agency relationship in your (written or oral) buyer agency agreement, your *buyer's agent* will ask you to sign a separate agreement or document permitting him or her to act as agent for both you and the seller. It may be difficult for a *dual agent* to advance the interests of both the buyer and seller. Nevertheless, a *dual agent* must treat buyers and sellers fairly and equally. Although the *dual agent* owes them the same duties, buyers and sellers can prohibit *dual agents* from divulging **certain** confidential information about them to the other party.

Some firms also offer a form of dual agency called “designated agency” where one agent in the firm represents the seller and another agent represents the buyer. This option (when available) may allow each “designated agent” to more fully represent each party.

If you choose the “dual agency” option, remember that since a *dual agent's* loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of • what your relationship is with the *dual agent* and • what the agent will be doing for you in the transaction. This can best be accomplished by putting the agreement in writing at the earliest possible time.

Seller's Agent Working With a Buyer

If the real estate agent or firm that you contact does not offer *buyer agency* or you do not want them to act as your *buyer agent*, you can still work with the firm and its agents. However, they will be acting as the *seller's agent* (or “subagent”). The agent can still help you find and purchase property and provide many of the same services as a *buyer's agent*. The agent must be fair with you and provide you with any “material facts” (such as a leaky roof) about properties.

But remember, the agent represents the seller - not you - and therefore must try to obtain for the seller the best possible price and terms for the seller's property. Furthermore, a *seller's agent* is required to give the seller any information about you (even personal, financial or confidential information) that would help the seller in the sale of his or her property. Agents must tell you *in writing* if they are *resellers' agents* before you say anything that can help the seller. But **until you are sure that an agent is not a seller's agent, you should avoid saying anything you do not want a seller to know.**

Sellers' agents are compensated by the sellers.

WORKING WITH REAL ESTATE AGENTS

This is not a contract

By signing, I acknowledge that the agent named below furnished a copy of this brochure and reviewed it with me.

Buyer or Seller Name (Print or Type)

Buyer or Seller Name (Print or Type)

Buyer or Seller Signature

Buyer or Seller Signature

Date

Date

Firm Name

Agent Name and License Number

Disclosure of Seller Subagency

When showing you property and assisting you in the purchase of a property, the above agent and firm will represent the SELLER. For more information, see "Seller's Agent Working with a Buyer" in the brochure.

Buyer's Initials Acknowledging Disclosure: _____

Agents must retain this acknowledgment for their files.