**STANDARD ESTATE AGENCY TERMS, OCTOBER 2015, FOR THE SALE AND PURCHASE OF REAL ESTATE,** **WITH AND WITHOUT CLOSING AGENT.**

**Draft A [date] from [the Estate Agency] by [author]. [The Estate Agency] has examined neither issues relating to direct or indirect taxes, nor accounting issues. It is recommended that these be evaluated by the advisors of the parties or by their auditors. The agreement is concluded when signed by the seller and the purchaser.**

**SALE AND PURCHASE AGREEMENT**

**between**

**[the Seller]**

**and**

**[the Purchaser]**

**relating to the sale and purchase of**

**[specify property]**

1. THE PARTIES AND THE PROPERTY[[1]](#footnote-1)

[The Seller], business registration no. [business registration no. of the Seller], (the **Seller**) is the owner of land no. [●], title no. [●], with its existing buildings and facilities in the municipality of [●] (the **Property**).

The Seller and [the Purchaser], business registration no. [business registration no. of the Purchaser], (the **Purchaser**) agree that the Property shall be transferred from the Seller to the Purchaser on the terms set out in this agreement.

1. THE PURCHASE PRICE AND PROPERTY INCOME AND COSTS
   1. The Purchase Price and purchase costs

The Purchase Price for the Property is NOK [●] (the **Purchase Price**).

In addition, the Purchaser shall pay stamp duty and registration fees in respect of the title deed and any mortgage deeds in favour of the Purchaser’s lender.

Consequently, the Purchaser shall pay a total of NOK [●] (the **Consideration**).

* 1. Income and costs associated with the property

The Seller shall be entitled to any income generated by the Property until and including the date on which the Purchaser takes delivery of the Property. The Seller shall pay any costs associated with the Property until the same date.

The Seller and the Purchaser shall, no later than [30] days after Closing, settle any income and costs relating to the Property as per Closing directly between themselves. If the parties fail to reach agreement on such settlement by this time limit, each of the parties may require that an independent chartered accountant, jointly appointed and paid for by the parties, shall determine how such settlement shall be effected with final and binding effect for the parties. This decision shall be submitted no later than 14 days after the chartered accountant has been appointed.

* 1. Late payment

If the Consideration or any other amount outstanding under this agreement is not paid by the due date, the debtor shall pay late payment interest pursuant to the Late Payment Interest Act from the due date until payment is made.

1. CLOSING, RISK TRANSFER AND SETTLEMENT

The Purchaser shall take delivery of the Property at 12:00 noon on [Closing date] (**Closing**).[[2]](#footnote-2)The Purchaser shall, from that point in time, assume the risk that any circumstances may arise that would amount to defects or breaches of the warranties made as per Closing.

Closing of this agreement shall take place in accordance with the closing agreement in Appendix 6, and the Seller and the Purchaser hereby undertake to perform their respective duties under the closing agreement.

1. CONDITIONS PRECEDENT TO closing
   1. Conditions on the part of the Purchaser

The obligation of the Purchaser to close shall be conditional upon the following conditions having been satisfied or waived by the Purchaser:[[3]](#footnote-3)

* + - 1. No circumstances, including new circumstances arising after signing of this agreement, that constitute material breach of the obligations of the Seller has occurred under this agreement.
      2. [To be deleted if the Board of Directors has approved the agreement prior to signing or if Closing is not conditional upon the approval of the Board of Directors] The Board of Directors of the Purchaser has approved the acquisition of the Property by the Purchaser on the terms set out in this agreement (including the Purchase Price). If the Purchaser fails to send written notice to the effect that such approval has not been granted to the Seller no later than 12:00 noon on [●], the agreement shall be binding on the Purchaser.
      3. [To be retained only if the Purchaser is going to conduct a due diligence investigation after signing of the agreement] The Purchaser has in its technical, financial and legal due diligence investigation not uncovered anything believed by it to deviate from the information disclosed by the Seller with regard to the Property. If the Purchaser uncovers any such deviation and wishes to withdraw from this agreement, the Purchaser shall send written notice to such effect to the Seller no later than 12:00 noon on [●]. Failure to do so shall render the agreement binding on the Purchaser.
      4. [To be retained only if a lease pertaining to the Property features a change of control provision, and Closing shall be conditional upon consent to the continuation of such lease without any amendment to the terms thereof] *[Specify name of lessee]* has confirmed in writing that it will not rescind, terminate or demand amendments to the lease dated [●] as the result of the acquisition of the Property by the Purchaser.
      5. [To be retained only if the property sale triggers a pre-emptive right] [specify contracting party] having confirmed in writing that it will not exercise its pre-emptive right in respect of the Property as the result of the acquisition thereof by the Purchaser.
  1. Conditions on the part of the Seller

The obligation of the Seller to close shall be conditional upon the following conditions having been satisfied or waived by the Seller:

* + - 1. No circumstances, including new circumstances arising after signing of this agreement, that constitute material breach of the obligations of the Purchaser has occurred under this agreement.[[4]](#footnote-4)
      2. [To be deleted if the Board of Directors has approved the agreement prior to signing or if Closing is not conditional upon the approval of the Board of Directors] The Board of Directors of the Seller has approved the acquisition of the Property by the Purchaser on the terms set out in this agreement (including the Purchase Price). If the Seller fails to send written notice to the effect that such approval has not been granted to the Purchaser no later than 12:00 noon on [●], the agreement is binding on the Seller.
  1. Compliance with the conditions

The Seller and the Purchaser shall do all such things as can reasonably be expected from them to ensure compliance with the conditions precedent without undue delay[, provided, however, that the Purchaser [and the Seller] may invoke the conditions in Clauses 4.1(b), (c) or 4.2(b) at its[/their] unfettered discretion.]

* 1. Implications of the lapsing of the agreement

If this agreement lapses as the result of the conditions of either the Seller or the Purchaser failing to be satisfied or waived, neither of the parties shall have any claim for reimbursement or any other claim against the other party. If Closing does not occur due to a party being in breach of its obligations under this agreement, the other party may claim damages on the basis of such breach of contract.

1. the SELLER’s duties PRIOR TO CLOSING

Until Closing, the Seller shall ensure:

* + - 1. That the Property is operated in the ordinary course during the period from signing of this agreement until Closing, including that the Property is maintained in a proper manner and to an extent no less than before the signing of this agreement.
      2. That the Seller refrains from concluding any new agreements of material importance to the Property, and that no agreements of material importance to the Property are rescinded, amended or terminated without the written consent of the Purchaser.
      3. That it refrains from instigating or doing anything that would be in breach of the warranties of the Seller in Clause 7.
      4. That the Property is insured for its full reinstatement value.
      5. That any vacant parts of the Property are cleared and cleaned in the customary manner prior to Closing.
      6. [To be retained only if the Seller shall arrange for certain works to be carried out before Closing] That the works outlined in Appendix [●] are completed prior to Closing for the account of the Seller in a professional manner and in compliance with public law requirements.

1. THE SELLER’S LIABILITY UNDER THE sale of real estate Act, ETC.

The Property shall be acquired “as is”, cf. Section 3-9 of the Sale of Real Estate Act. There is a defect if the Seller, prior to the signing of this agreement, provides incorrect information as mentioned in Section 3-8 of the Sale of Real Estate Act or fails to disclose information as mentioned in Section 3-7 of the Sale of Real Estate Act.[[5]](#footnote-5)

The Seller shall not, in the application of Sections 3-7 and 3-8 of the Sale of Real Estate Act, be liable for any incorrect or incomplete information prepared by anyone other than the Seller, despite the Seller having made such information available to the Purchaser, unless the Seller is aware that such information is incorrect.[[6]](#footnote-6)

The Purchaser hereby waives, to the extent permitted under applicable law, any right to invoke any claim against the Seller pursuant to Section 3-9, second sentence, of the Sale of Real Estate Act and any other statutory or non-statutory basis, including any provisions on liability for incorrect and incomplete information under the Contracts Act.

This Clause 6 shall not prevent the Purchaser from invoking claims as the result of delay caused by circumstances within the control of the Seller.

1. THE SELLER’S WARRANTIES

The Seller warrants that the following will apply as per signing of this agreement and Closing, provided, however, that the warranties in letters (d) to (f), inclusive, will only be given upon signing of this agreement:

* + - 1. The Seller owns the Property and holds title thereto.
      2. The Property is not subject to any encumbrances (including any pre-emptive rights) other than those specified in Appendix 2, and that the Property is transferred free from monetary encumbrances (except for any leases being registered as an encumbrance)
      3. The Seller has not been in breach of the leases, with appurtenant addenda, specified in Appendix 2, and that the Seller is not aware of any lessee having been in breach of any lease.
      4. The Property is leased pursuant to the leases, with appurtenant addenda, as specified in Appendix 2 and that such leases are valid and include all terms that have been agreed with the lessees.
      5. The Seller is not aware of any claims or rights that limit the use or utilisation of the Property beyond what follows from the entries recorded in respect of the Property in the Register of Land Titles and Land Charges or the zoning plan and zoning regulations applicable to the Property.
      6. There exists no written order, etc., from government authorities in relation to the Property that has not been paid or otherwise complied with.

References to circumstances of which the Seller is aware means, in Clauses 6 and 7, both the circumstances of which the Seller is actually aware upon signing of this agreement, as well as the circumstances which the Seller does not have reasonable grounds for being unaware of as of such date.

The Seller makes no other warranties than those made above in this Clause 7.

1. LIMITATION OF THE SELLER’S LIABILITY
   1. The Purchaser’s knowledge

The Purchaser shall not be entitled to invoke, as breach of Clause 6 or 7, anything that the Purchaser himself was actually aware of upon signing of this agreement, or anything that is fairly disclosed in the documents made available to the Purchaser by the Seller prior to signing of this agreement.[[7]](#footnote-7) This limitation of the Seller’s liability shall not apply to any breach of Clause 7, letter (a) (*concerning ownership of the Property*).

* 1. Notification of breach

The right of the Purchaser to invoke any breach of this agreement shall lapse if the Purchaser fails to notify the Seller in writing, within 60 days after the Purchaser himself discovered, or ought to have discovered, such breach as well as of the scope of such breach. Any right of the Purchaser to invoke any breach of the agreement shall lapse if the Purchaser fails to send such notification of breach within one year of Closing.

The above time limits for the notification of breach shall not apply to any breach of Clause 7, letter (a) (*concerning ownership of the Property*). As far as such breach is concerned, the Purchaser shall send a written notification of such breach later than three years after Closing. The Purchaser shall not be entitled, in the event of such breach, to claim damages from the Seller in respect of any loss caused by its failure to notify the Seller in writing within 60 days of having discovered it.

* 1. The scope of any damages

The Seller shall not be liable for any indirect loss within the meaning of Section 7-1 (2) of the Sale of Real Estate Act, irrespective of any culpability on the part of the Seller. Any loss of rent income (including the loss of any right to the reimbursement of joint costs) shall nevertheless be considered a direct loss.

The loss of the Purchaser shall be calculated on a net basis, after deduction of i) the benefit of any tax or VAT savings to the Purchaser or the Company, and ii) any amount the Purchaser is entitled to claim from any third party, including any insurance company. If a loss is conditional, the Seller cannot be held liable for such loss unless and until such loss has to be covered by the Purchaser. The Purchaser may satisfy the time limits in Clause 8.2 by giving written notice of the conditional loss prior to the expiry of such time limits.

* 1. Financial limitation of liability

The Seller’s liability for any breach of Clauses 6 or 7 is subject to the following limitations:

* + - 1. The Purchaser cannot invoke any individual breach entailing a loss of less than NOK [●],[[8]](#footnote-8) and any such breach shall be disregarded for purposes of determining whether the financial threshold under letter (b) below has been reached.
      2. The Purchaser cannot invoke any claim unless the aggregate loss of the Purchaser exceeds NOK [●],[[9]](#footnote-9) but the Purchaser shall, if the aggregate loss of the Purchaser exceeds this threshold, be entitled to damages or price reductions from the first NOK.
      3. The aggregate liability of the Seller shall not exceed *[10% of the Purchase Price]*. However, this limitation of liability shall not apply to any breach of Clause 7, letter (a) (*concerning ownership of the Property*).

The limitations of liability set out in this Clause 8.4 are only applicable to a breach of Clauses 6 or 7, and not to any breach of other Clauses of this agreement.

* 1. Aggregate limitation of liability in respect of any breach of the agreement

The aggregate liability of the Seller in respect of any breach of this agreement (including Clause 7, letter (a) (*concerning ownership of the Property*) and Clause 5, 6, 7 or 10) shall, under any circumstance, be limited to the Consideration.

* 1. Liability in case of wilful misconduct or gross negligence

The limitations of the Seller’s liability under Clauses 8.2 to 8.5, inclusive, shall not apply if the breach of contract is caused by wilful misconduct or gross negligence on the part of any director or general manager of the Seller, or by any other person on the part of the Seller who has held overall responsibility for implementing the sale of the Property to the Purchaser.

* 1. The liability of the respective sellers [To be deleted if only one seller]

The persons defined as the Seller, shall be jointly and severally liable for any claims of the Purchaser against the Seller as a result of a breach of this agreement. *[Alternatively: The persons defined as the Seller, shall be liable for any claims of the Purchaser against the Seller as the result of a breach of this agreement, on a pro rata basis, and not jointly and severally. The liability of each individual person shall not exceed a portion of the claim equal to such person’s ownership stake in the Property.]*

* 1. The implications of the limitations of liability for the Purchase Price

The parties have taken the limitations of the Seller’s liability under Clauses 6, 7 and 8 into consideration in determining the Purchase Price.

1. REMEDIES FOR BREACH OF THE AGREEMENT

Each of the parties may, subject to the limitations in this agreement, invoke the remedies for breach available under the Sale of Real Estate Act in the event of breach of the agreement by the other party, including termination of this agreement in the event of material breach by the other party.[[10]](#footnote-10)

1. indemnification by the seller

The Seller shall indemnify the Purchaser for any loss (including reasonable legal fees) arising out of:

* + - 1. Damage to the Property in the period between signing of this agreement and 12:00 pm at the day of Closing. Such indemnification shall not apply if the loss is below the threshold amount in Clause 8.4(a), or if i) the costs associated with reconstruction/repair and any loss of rent as the result of such damage are fully covered by an insurance policy or covered by the Seller, or if the Seller furnishes adequate collateral in respect of such costs and any loss of rent, and ii) all lessees at the Property confirm that they will continue or resume their leases on the same terms following reconstruction/repair. The Purchaser shall be deemed to have waived the right to invoke this clause if the Purchaser fails to submit to the Seller, within 45 days of Closing, a written notice to the effect that it is claiming indemnification of the loss.
      2. *[To be used if the Purchaser has conducted a due diligence investigation prior to signing and has identified anything occasioning specific indemnification].*

The limitations of the Seller’s liability in Clauses 8.1, 8.2 and 8.4 do not apply for the indemnifications in this Clause 10.

1. COLLATERAL [To be deleted if the Seller is not going to furnish collateral]

NOK [●] of the Purchase Price shall be kept outside the control of both parties, in an escrow account in the name of the Seller until one year after Closing, as collateral securing claims from the Purchaser against the Seller under this agreement. Any rightful claims the Purchaser has against the Seller shall be settled by payments from the escrow account. If no rightful claim is made against the Seller during the period until and including the day that is one year after Closing, the amount deposited in the escrow account, including interest, shall be paid to the Seller. Any dispute as to what constitutes a rightful claim shall be resolved pursuant to Clause 16. The Seller and the Purchaser shall each cover one half of all costs payable to the bank in connection with such collateral.

1. VALUE ADDED TAX. ASSIGNMENT OF ADJUSTMENT/REVERSAL OBLIGATIONS AND RIGHTS

The parties agree that the adjustment/reversal obligations and rights of the Seller in relation to the Property shall be assigned to the Purchaser as per Closing. A separate agreement on the assignment of the duty/right to adjust/reverse Value Added Tax, complying with the requirements pertaining to such assignment under the applicable Value Added Tax provisions, cf. Appendix 5, shall therefore be prior to Closing.[[11]](#footnote-11)

1. ENTIRE AGREEMENT

This agreement with appendices represents the entire contractual relationship between the parties and replaces any previous agreement or understanding between them concerning the matters regulated in this agreement.

1. WAIVER OF THE RIGHT TO INVOKE CLAIMS AGAINST ANYONE OTHER THAN THE SELLER

The Purchaser hereby waives any right to invoke any claim against current or former Directors or employees of the Seller or any company belonging to the same group as the Seller, the Seller’s shareholders (direct and indirect) or the Seller’s estate agent, advisors or representatives as a result of their actions or omissions until Closing. Moreover, the Purchaser shall indemnify such persons (the **Protected Persons**) in the event that the Purchaser’s shareholders (direct and indirect) or creditors invoke any claim against them as the result of their actions or omissions in connection with entry into or closing of this agreement with appendices.

The waiver of liability and the indemnification provision in the preceding paragraph shall not apply to the extent that the claim against the Protected Persons arises out of their wilful misconduct or a specific agreement with the Protected Persons.

1. COMMUNICATIONS

Any communications in connection with this agreement shall take place by letter or   
e-mail to the following addresses:

For the Seller: [●]

For the Purchaser: [●]

A copy of all communications shall until Closing be sent to:

[the Estate Agency]

[specify business name and address of the estate agency]

1. GOVERNING LAW AND DISPUTE RESOLUTION

This agreement is governed by Norwegian law. Norwegian choice of law provisions shall under no circumstance result in the choice of the laws of any other country as governing law.

Any dispute that may arise in relation to this agreement shall be resolved by legal proceedings before the ordinary courts of law, with [●] as the exclusive venue.[[12]](#footnote-12) The group of courts having jurisdiction under the ordinary provisions on provisional measures is not limited by this clause.

1. APPENDICES

The following are appended:

1. Transcripts from the Register of Business Enterprises in respect of the Seller and the Purchaser
2. Transcripts from the Register of Land Titles and Land Charges
3. Leases, with appendices
4. Prospectus, with appendices
5. Adjustment agreement
6. Closing Agreement
7. *[Data room on DVD/memory stick]*
8. SIGNATURE

This agreement is signed on this day in three copies, of which the parties and [the Estate Agency] shall retain one each.

[Place], [signing date]

|  |  |  |
| --- | --- | --- |
| for and on behalf of [the Seller] |  | for and on behalf of [the Purchaser] |
| [the Seller’s representative] |  | [the Purchaser’s representative] |

1. Agreement for the Assignment of  
   Adjustment/reversal Obligations  
   between  
   [the Seller]  
   and  
   [the Purchaser]  
   * 1. Parties

This agreement is concluded [date] between

[the Seller], [address], [postcode and town], business registration no. [business registration no. of the Seller], (the **Assignor**)

[the Purchaser], [address], [postcode and town], business registration no. [business registration no. of the Purchaser], (the **Assignee**)

* + 1. Background

On [signing date], the Assignor and the Assignee concluded a sale and purchase agreement (the **Sale and Purchase Agreement**) relating to the sale and purchase of the property known as land no. [●], title no. [●], in the municipality of [●] (the **Property**). It is stipulated in the Sale and Purchase Agreement that the adjustment/reversal obligations of the Assignor in relation to the Property shall be assigned to the Assignee as per [the Closing date] (**Closing**).

* + 1. Assigned adjustment/reversal obligations

The following adjustment/reversal obligations are assigned from the Assignor to the Assignee as at Closing:

| [Specification of the completed construction measures] |  |
| --- | --- |
| Completion date/acquisition date | [Date] |
| Acquisition cost net of Value Added Tax | NOK [..] |
| Total Value Added Tax | NOK [..] |
| Value Added Tax deducted by the Assignor | NOK [..] |
| Right of deduction on the part of the Assignor as per the acquisition date | [..]% |
| Right of deduction on the part of the Assignor as per Closing | [..]% |
| Right of deduction on the part of the Assignee as per Closing | [..] |
| Residual adjustment amount on the part of the Assignor | NOK [..] |
| Assigned adjustment obligation | NOK [..] |

*[Insert one table for each of the construction measures if there are several of these]*

*[Specify how input Value Added Tax is distributed across the various elements of the construction measure, unless it is evenly distributed. The following wording may be used if it is evenly distributed: “Input Value Added Tax is evenly distributed across the various elements of the construction measure”.]*

* + 1. Concluding provisions

The Assignee warrants, by signing this agreement, that it is a business enterprise registered in the Value Added Tax Register, or will be thus registered no later than with effect from the Value Added Tax period during which Closing will take place, and hence has such right to deduct input Value Added Tax as is specified in the table(s) above.

If any information set out in this agreement changes subsequent to the conclusion of such agreement, the Assignor shall notify the Assignee of any such changes if such information may affect the adjustment obligations of the Assignee.

[Place], [date]

|  |  |  |
| --- | --- | --- |
| for and on behalf of[the Assignor] |  | forand on behalf of[the Assignee] |
| [the Seller’s representative] |  | [the Purchaser’s representative] |

1. Closing Agreement with Closing Agent if the Seller’s loan is to be repaid after registration of the title deed in favour of the purchaser[[13]](#footnote-13) [This appendix shall be deleted if the Seller’s loan is to be repaid at Closing, or if closing is to take place without a closing agent.]
2. The Closing Agent and the Closing Account

[The Seller], business registration no. [business registration no. of the Seller], [the **Seller**) and [the Purchaser], business registration no. [business registration no. of the Purchaser], [the **Purchaser**), have on this day concluded an agreement (the **Agreement**) for the sale and purchase of the property known as land no. [●], title no. [●], with its existing buildings and facilities in the municipality of [●] (the **Property**).

Words capitalised in this agreement (the **Closing Agreement**) shall have the same meaning as in the Agreement.

The Seller and the Purchaser have for the account of the Seller appointed [the Estate Agency], business registration no. [business registration no. of the estate agency], (the **Closing Agent**) to assist with the closing of the closing as described below. The Closing Agent shall not assist with any post-closing settlement taking place pursuant to Clause 2.2 of the Agreement.

It is agreed that Closing shall take place on [Closing date].

The Consideration shall be paid into account no. [•] (the **Closing Account**), which is established in the name of the Closing Agent.

Any interest accruing in the Closing Account as from the date of Closing shall be paid to the Seller, whilst any interest accruing prior to Closing shall be paid to the Purchaser. Any interest amounting to less than one half of the standard court fee shall not be paid.

1. Actions prior to Closing

The parties shall perform their obligations under this Clause 2 prior to Closing:

|  | **Action** | **Responsible** | **Time limit** | **Status** |
| --- | --- | --- | --- | --- |
|  | Issue and submit for registration a deed of restrictive covenant in respect of the Property, in the nominal amount of the Consideration, in favour of the Closing Agent. The deed of restrictive covenant shall secure any claim that may arise on the part of the Purchaser or the Purchaser’s lender in connection with the Agreement (including any loan to the Purchaser from the Purchaser’s lender), and shall prohibit the Seller from disposing of, granting any security interest in, or otherwise making dispositions in respect of, the Property without the consent of the Closing Agent. | Seller | Immediately after signing of the Agreement |  |
|  | Deliver to the Closing Agent a signed title deed issued in favour of the Purchaser. The Closing Agent shall not hand over the title deed to the Purchaser until closing has been completed*.* | Seller | Immediately after signing of the Agreement |  |
|  | Deliver to the Closing Agent a signed self-declaration to the effect that no government licence is required.[[14]](#footnote-14) | Purchaser | Immediately after signing of the Agreement |  |
|  | Provided that Clause 2.3 is met, obtain confirmation from the municipal administration to the effect that such self-declaration is appropriate. | Closing agent | As soon as possible |  |
|  | Deliver to the Closing Agent duly signed and certified mortgage deeds in respect of the Property issued by the Purchaser in favour of the [the Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], (the **Lender**).[[15]](#footnote-15) | Purchaser | No later than at Closing |  |
|  | Obtain confirmations (the **Statement of Outstanding Debt**) from all creditors holding security interests (including registered statutory security interests) to the effect that these will deregister their security interests if they receive a specified amount (the **Loans**) five business days after Closing. | Seller/ Closing Agent | Prior to Closing |  |
|  | Obtain any consents necessary for the registration of the title deed and any mortgage deeds in favour of the Lender. | Seller/  Closing Agent | Prior to Closing |  |

1. Actions at Closing

Provided that the conditions precedent in Clause 4 of the Agreement have been met or waived,that the Seller has delivered the title deed to the Closing Agent, cf. Clause 2.2, and that the deed of restrictive covenant has been registered (confirmed):

* + - 1. the Purchaser shall pay the Consideration into the Closing Account such as to make the amount available therein prior to 11:00 a.m. at Closing; and
      2. provided that the Consideration has been paid into the Closing Account, the Closing Agent shall at Closing send the title deed, the self-declaration to the effect that no government licence is required and any mortgage deeds in favour of the Lender, as well as other necessary documentation for registration of these documents, to the Norwegian Mapping Authority,

If the Loans exceed the Purchase Price, the Seller shall pay the difference between the Loans and the Purchase Price into the Closing Account such as to make the amount available therein prior to 11:00 a.m. at Closing.[[16]](#footnote-16) If the Seller fails to comply with such obligation, the Closing Agent shall not send the documents mentioned in letter (b) to the Norwegian Mapping Authority.

1. PAYMENT OF THE PURCHASE PRICE, ETC.

The Closing Agent shall ensure that the closing is completed on a day (**Closing Day)** at latest three workdays after the Lender’s deed and mortgage documents are registered (confirmed). If the Closing Day is not five workdays after the Closing, the Closing Agent shall obtain an updated Statement of Outstanding Debt as per Closing Day.

As soon as the title deed and the mortgage documents have been registered (confirmed), the Closing Agent shall verify if the Seller’s creditors have registered an execution lien in the Property. If that is not the case, the Closing Agent shall

* + - 1. pay the Loans with the amounts that appears from the Statement of Outstanding Debt as per Closing Day,
      2. pay the agreed fee and disbursements to the Closing Agent; and
      3. pay the remainder of the Purchase Price, inclusive of earned interest on the Closing Account, into the Seller’s account no. [•].

The Closing Agent shall ensure that stamp duty and registration fees are paid to the Norwegian Mapping Authority in a timely manner.

Closing shall be completed in conformity with this Closing Agreement even if the creditors of the Purchaser register an execution lien in the Property subsequent to Closing.

1. partial closing if the seller has failed to perform his obligations

If i) there exists a monetary encumbrance over the Property that the Seller shall arrange to have deleted, and that is not included in the Statement of Outstanding Debt; ii) the remainder of the Purchase Price in the Closing Account following repayment of the Loans provides, with an ample margin, adequate assurance with regard to the complete discharge of the liability secured by such encumbrance; and iii) all the other conditions in Clause 4 of the Agreement and Clauses 2 and 3(a) of the Closing Agreement have been met or waived at Closing, the Closing Agent shall perform the actions set out in Clauses 3(b) and 4 of the Closing Agreement, but shall retain an amount in the Closing Account that provides, with an ample margin, adequate assurance with regard to the full discharge of the liability secured by this encumbrance. Any excess amount in the Closing Account shall be paid into the account of the Seller no earlier than the first business day after the title deed and the mortgage deeds in favour of the Lender have been registered. The amount retained (inclusive of accrued interest in the Closing Account) shall be paid once the encumbrance has been deleted or a bank has confirmed in writing that the encumbrance will be deleted.

1. Closing not completed as agreed

If one or more of the conditions in Clauses 2 or 3(a) of the Closing Agreement are not met or waived at Closing, closing shall nevertheless, except in the cases referred to in Clause 5 be completed if and when all conditions are met or waived no later than 30 days after i) Closing or ii) postponed Closing as defined in a written amendment agreement between the parties. If one or more of the conditions has/have still not been met or waived by the expiry of this 30-day time limit, the Closing Agent shall repay any received loan amount to the Lender, inclusive of interest, and the remainder of the Consideration to the Purchaser. Moreover, the Closing Agent shall, of its own accord, arrange for the deregistration of the deed of restrictive covenant.

1. Deregistration of deed of restrictive covenant

As soon as the title deed has been registered and any encumbrances to be deleted have been deleted, the Closing Agent shall submit the deed of restrictive covenant for deregistration, unless otherwise instructed by the Purchaser.

\*\*\*

[place], [signing date]

|  |  |  |
| --- | --- | --- |
| for and on behalf of [the Seller] |  | for and on behalf of [the Purchaser] |
| [the Seller’s representative] |  | [the Purchaser’s representative] |

|  |
| --- |
| for and on behalf of [the Estate Agency] |
|  |

1. Closing Agreement with Closing Agent if the seller’s loan is to be repaid at Closing[[17]](#footnote-17) [This appendix shall be deleted if the seller’s loan is to be repaid after registration of the title deed in favour of the purchaser, or if closing is to take place without a closing agent.]
2. The Closing Agent and the Closing Account

[The Seller], business registration no. [business registration no. of the Seller], [the **Seller**) and [the Purchaser], business registration no. [business registration no. of the Purchaser], [the **Purchaser**), have on this day concluded an agreement (the **Agreement**) for the sale and purchase of the property known as land no. [●], title no. [●], with its existing buildings and facilities in the municipality of [●] (the **Property**).

Words capitalised in this agreement (the **Closing Agreement**) shall have the same meaning as in the Agreement.

The Seller and the Purchaser have for the account of the Seller appointed [the Estate Agency], business registration no. [business registration no. of the estate agency], (the **Closing Agent**) to assist with the closing of the closing as described below. The Closing Agent shall not assist with any post-closing settlement taking place pursuant to Clause 2.2 of the Agreement.

It is agreed that Closing shall take place on [closing date].

The Consideration shall be paid into account no. [•] (the **Closing Account**), which is established in the name of the Closing Agent.

Any interest accruing in the Closing Account as from the date of Closing shall be paid to the Seller, whilst any interest accruing prior to Closing shall be paid to the Purchaser. Any interest amounting to less than one half of the standard court fee shall not be paid.

This Closing Agreement derogates from Section 6-9 (3) of the Estate Agency Act, inasmuch as part of the Purchase Price is used at Closing to repay the Seller’s loans secured on the Property. The Purchaser hereby waives the right to invoke any claim against the Closing Agent as the result of derogation from Section 6-9 (3). Moreover, the Purchaser shall indemnify the Closing Agent in the event that the creditors of the Purchaser invoke any claim against the Closing Agent as the result of such derogation.

1. Actions prior to Closing

The parties shall perform their obligations under this Clause 2 prior to Closing:

|  | **Action** | **Responsible** | **Time limit** | **Status** |
| --- | --- | --- | --- | --- |
|  | Issue and submit for registration a deed of restrictive covenant in respect of the Property, in the nominal amount of the Consideration, in favour of the Closing Agent. The deed of restrictive covenant shall secure any claim that may arise on the part of the Purchaser or the Purchaser’s lender in connection with the Agreement (including any loan to the Purchaser from the Purchaser’s lender), and shall prohibit the Seller from disposing of, granting any security interest in, or otherwise making dispositions in respect of, the Property without the consent of the Closing Agent. | Seller | Immediately after signing of the Agreement |  |
|  | Deliver to the Closing Agent a signed title deed issued in favour of the Purchaser. The Closing Agent shall not hand over the title deed to the Purchaser until closing has been completed*.* | Seller | Immediately after signing of the Agreement |  |
|  | Deliver to the Closing Agent a signed self-declaration to the effect that no government licence is required.[[18]](#footnote-18) | Purchaser | Immediately after signing of the Agreement |  |
|  | Provided that Clause 2.3 is met, obtain confirmation from the municipal administration to the effect that such self-declaration is appropriate. | Closing agent | As soon as possible |  |
|  | Deliver to the Closing Agent an original power of attorney as specified in Annex 1, in which the Seller authorises the Purchaserto grant security interests in the Property in favour of the Purchaser’s lender, [the Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], (the **Lender**).[[19]](#footnote-19) The Closing Agent shall not hand over the power of attorney to the Purchaser until closing has been completed*.* | Seller | No later than 10[[20]](#footnote-20) business days before Closing |  |
|  | Deliver to the Closing Agent duly signed and certified mortgage deeds in respect of the Property issued in favour of the Lender, as well as a declaration to the effect that the Lender undertakes to deregister the mortgage deeds if Closing does not take place, irrespective of the reason therefore. | Purchaser | No later than 10 business days before Closing |  |
|  | Obtain any consents that are necessary to register the mortgage deeds in favour of the Lender. | Seller/ Closing Agent | No later than 8 business days before Closing |  |
|  | Provided that Clause 2.5 to Clause 2.7, inclusive, have been complied with, submit the mortgage deeds in favour of the Lender for registration. | Closing Agent | No later than 7 business days before Closing |  |
|  | Obtain confirmations (the **Statement of Outstanding Debt**) from all creditors holding security interests (including statutory security interests) to the effect that these will deregister their security interests at Closing if they receive a specified amount (the **Loans**). | Seller/ Closing Agent | 5 days before Closing[[21]](#footnote-21) |  |

1. Actions at Closing

Provided that the conditions precedent in Clause 4 of the Agreement have been met or waived,that the Seller has performed its obligations under Clause 2 of the Closing Agent and that the deed of restrictive covenant and any mortgage deed in favour of the Lender have been registered (confirmed), cf. Clause 2.8:

* + - 1. the Purchaser shall pay the Consideration into the Closing Account such as to make the amount available therein prior to 11:00 a.m. at Closing; and
      2. provided that the Consideration has been paid into the Closing Account, the Closing Agent shall at Closing:
         1. send the title deed, the self-declaration to the effect that no government licence is required and any mortgage deeds in favour of the Lender, as well as other necessary documentation for registration of these documents, to the Norwegian Mapping Authority; and
         2. repay the Loans in the amounts specified in the Statement of Outstanding Debt.

If the Loans exceed the Purchase Price, the Seller shall pay the difference between the Loans and the Purchase Price into the Closing Account such as to make the amount available therein prior to 11:00 a.m. at Closing.[[22]](#footnote-22) If the Seller fails to comply with such obligation, the Closing Agent shall not perform the actions mentioned in letter (b).

1. PAYMENT OF THE PURCHASE PRICE, ETC.

When the title deed has been registered (confirmed), the Closing Agent shall check whether the creditors of the Seller have registered any execution lien in the Property. If they have not done so, the Closing Agent shall pay:

* + - 1. the agreed fee and disbursements to the Closing Agent; and
      2. the remainder of the Purchase Price, inclusive of earned interest on the Closing Account, into the Seller’s account no. [•].

The Closing Agent shall ensure that stamp duty and registration fees are paid to the Norwegian Mapping Authority in a timely manner.

Closing shall be completed in conformity with this Closing Agreement even if the creditors of the Purchaser register an execution lien in the Property subsequent to Closing.

1. Partial Closing if the Seller has failed to perform its obligations

If i) there exists a monetary encumbrance over the Property that the Seller shall arrange to have deleted, and that is not included in the Statement of Outstanding Debt; ii) the remainder of the Purchase Price in the Closing Account following repayment of the Loans provides, with an ample margin, adequate assurance with regard to the complete discharge of the liability secured by such encumbrance; and iii) all the other conditions in Clause 4 of the Agreement and Clauses 2 and 3(a) of the Closing Agreement have been met or waived at Closing, the Closing Agent shall perform the actions set out in Clauses 3(b) and 4 of the Closing Agreement, but shall retain an amount in the Closing Account that provides, with an ample margin, adequate assurance with regard to the full discharge of the liability secured by this encumbrance. Any excess amount in the Closing Account shall be paid into the account of the Seller no earlier than the first business day after the title deed has been registered. The amount retained (inclusive of accrued interest in the Closing Account) shall be paid once the encumbrance has been deleted or a bank has confirmed in writing that the encumbrance will be deleted.

In the event that i) the conditions in Clause 4 of the Agreement have been met or waived; ii) the Purchaser has paid the Consideration into the Closing Account and performed all of its other obligations under the Closing Agreement; but iii) one or more of the other conditions in Clause 2 of the Closing Agreement have not been met or waived at Closing, the Purchaser shall be entitled, but not obliged, to nevertheless require, by written notice, the implementation of Closing. In such event, the Closing Agent shall:

* + - 1. to the extent possible, immediately perform the actions in Clause 3(b) and 4(a) of the Closing Agreement;
      2. retain in the Closing Account the amount that would otherwise have been paid pursuant to Clause 4(b) of the Closing Agreement;
      3. immediately upon the conditions in Clause 2 of the Closing Agreement being met or waived;
         1. unless the Loans have already been repaid, repay the Loans in the amounts specified in a new statement of outstanding debt obtained by the Closing Agent or the Seller; and
         2. pay the remainder of the Purchase Price, inclusive of earned interest in the Closing Account, to the account of the Seller.

1. Closing not completed as agreed

If one or more of the conditions in Clauses 2 or 3(a) of the Closing Agreement are not met or waived at Closing, closing shall nevertheless, except in the cases referred to in Clause 5, be completed if and when all conditions are met or waived no later than 30 days after i) Closing or ii) postponed Closing as defined in a written amendment agreement between the parties. If one or more of the conditions has/have still not been met or waived by the expiry of this 30-day time limit, the Closing Agent shall deliver the original power of attorney mentioned in Clause 2.5 to the Sellerand repay any received loan amount to the Lender, inclusive of interest accrued in the Closing Account, provided that the Lender confirms that the mortgage deeds registered in favour of the Lender will be deregistered. Any excess amount in the Closing Account that is not to be transferred to the Lender shall be repaid to the Purchaser at the same time. Moreover, the Closing Agent shall, of its own accord, arrange for the deregistration of the deed of restrictive covenant, unless the Purchaser holds a claim covered by the deed of restrictive covenant.

1. Deregistration of deed of restrictive covenant

As soon as the title deed has been registered and any encumbrances to be deleted have been deleted, the Closing Agent shall submit the deed of restrictive covenant for deregistration, unless otherwise instructed by the Purchaser.

\*\*\*

[place], [signing date]

|  |  |  |
| --- | --- | --- |
| for and on behalf of [the Seller] |  | for and on behalf of [the Purchaser] |
| [the Seller’s representative] |  | [the Purchaser’s representative] |

|  |
| --- |
| for and on behalf of [the Estate Agency] |
|  |

Annex:

1. Power of attorney authorising the granting of a security interest in the Property from the Seller to the Purchaser
2. Closing Agreement without Closing Agent [This appendix shall be deleted if closing is to take place with a closing agent]
3. Actions prior to Closing

The parties shall perform their obligations under this Clause 1 prior to Closing:

|  | **Action** | **Responsible** | **Time limit** | **Status** |
| --- | --- | --- | --- | --- |
|  | Issue and submit for registration a deed of restrictive covenant in respect of the Property, in the nominal amount of the Consideration, in favour of the [the Estate Agency], business registration no. [business registration no. of the estate agency], (the **Estate Agency**). The deed of restrictive covenant shall secure any claim that may arise on the part of the Purchaser or the Purchaser’s lender in connection with the Agreement (including any loan to the Purchaser from the Purchaser’s lender), and shall prohibit the Seller from disposing of, granting any security interest in, or otherwise making dispositions in respect of, the Property without the consent of the Estate Agency. | Seller | Immediately after signing of the Agreement |  |
|  | Sign self-declaration to the effect that no government licence is required.[[23]](#footnote-23) | Purchaser | Immediately after signing of the Agreement |  |
|  | Provided that Clause 1.2 is met, obtain confirmation from the municipal administration to the effect that such self-declaration is appropriate. | Purchaser | As soon as possible |  |
|  | Deliver to the Seller mortgage deeds in respect of the Property issued in favour of the [the Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], (the **Lender**), as well as a declaration to the effect that the Lender undertakes to deregister the mortgage deeds if Closing does not take place, irrespective of the reason therefore. | Purchaser | No later than 10[[24]](#footnote-24) business days before Closing |  |
|  | Provided that Clause 1.4 is met, obtain any consents necessary for the registration of the mortgage deeds in favour of the Lender, and submit these for registration. | Seller | No later than 8 business days before Closing |  |
|  | Deliver to the Purchaser confirmations (the **Statement of Outstanding Debt**) from all creditors holding security interests (including statutory security interests) to the effect that these will deregister their security interests if they at Closing receive a specified amount (the **Loans**). | Seller | 5 days before Closing[[25]](#footnote-25) |  |

1. Actions at Closing

Provided that the Loans do not exceed the Purchase Price, that the conditions precedent in Clause 4 of the Agreement have been met or waived, that the parties have performed their obligations under Clause 1 of the Closing Agreement and the deed of restrictive covenant and that any mortgage deeds in favour of the Lender have been registered (and that such registration has been confirmed), cf. Clause 1.5:

* + - 1. the Seller shall deliver to the Purchaser a signed title deed issued in favour of the Purchaser; and
      2. the Seller and the Purchaser shall at the same time deliver to the Lender a payment instruction, as specified in Annex 1, for repayment of the Loans, as well as payment of the remainder of the Consideration to the Seller.

1. Time of Closing of the PROPERTY to the Purchaser

The Property shall be handed over to the Purchaser upon the remainder of the Consideration, following repayment of the Loans, becoming available in the Seller’s account. If the remainder of the Consideration does not, for some reason or another, become available in the Seller’s account, the title deed shall be returned to the Seller.

1. Deregistration of deed of restrictive covenant

As soon as closing has been completed and the title deed has been registered (and such registration has been confirmed), the Estate Agency shall submit the deed of restrictive covenant for deregistration, unless otherwise instructed by the Purchaser.

\*\*\*

Annex:

1. Irrevocable payment instruction

POWER OF ATTORNEY, AUTHORISING THE GRANTING OF A SECURITY INTEREST [THIS APPENDIX SHALL BE DELETED IF CLOSING IS TO TAKE PLACE AFTER REGISTRATION OF THE TITLE DEED]

[The Seller], business registration no. [business registration no. of the Seller], hereby authorises [the Purchaser], business registration no. [business registration no. of the Purchaser], as represented by [named representative of the Purchaser], social security number [•], to grant, acting singly, a security interest in our property known as land no. [•], title no. [•], unit no. [•], section no. [•], in the municipality of [•] in favour of [the Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank].

This power of attorney may only be used in original and shall not be valid for use after [specify generous time limit].

[Place], [date]

|  |
| --- |
| for and on behalf of [the Seller] |
| [NB! Only to be signed by person(s) authorised to sign on behalf of the title holder.] |

I/we confirm that [specify name(s) of person(s) authorised to sign on behalf of the Seller] is/are over the age of 18 years and has/have signed or acknowledged his/her/their signature(s) in my/our presence. I/we am/are of full age and legal capacity and resident in Norway.[[26]](#footnote-26)

[Place], [date]

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signature of witness | Signature of witness |
|  |
| Name of witness in capital letters | Name of witness in capital letters |
| Address | Address |



IRREVOCABLE PAYMENT INSTRUCTION [This appendix shall not be used if closing is to take place with a closing agent]

[The Purchaser], business registration no. [business registration no. of the Purchaser], hereby irrevocably instructs [the Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], to immediately make the following payments by swift:

|  | **Payee:** | **Account number:** | **Message to the payee:** | **Amount in NOK:** |
| --- | --- | --- | --- | --- |
|  | [•] | [•] | Repayment of loan no. [•] and [earned interest, as well as premium] | [•] |
|  | [Estate Agency], business registration no. [business registration no. of the Estate Agency] | [•] | Fee | [•] |
|  | [Seller], business registration no. [business registration no. of the Seller] | [•] | Consideration for the sale of real estate | [•] |
|  | Total: |  |  | [•] |

Please confirm as soon as possible by e-mail to

[•]

Attn. [•]

E-mail: [•]

that the payments under Items 1-[•] above have been irrevocably initiated by swift.

Yours faithfully,

|  |
| --- |
| for and on behalf of [the Purchaser] |
| [the Purchaser’s representative] |

We hereby confirm that the payment instruction is, to the best of our knowledge, correct.

Yours faithfully,

|  |
| --- |
| for and on behalf of [the Seller] |
| [the Seller’s representative] |

1. **Important information concerning cross-references**

   If new paragraphs are to be added, it shall always be done by placing the cursor at the end of the preceding paragraph before pressing “Enter”. Any cross-referenced clause will then be shifted. Cross-references always point to the clause, and not to the text.

   Deletion of a cross-referenced clause will result in the message **Feil! Fant ikke referansekilden.** being displayed. If existing text in a clause is to be replaced by new text, the new text must be inserted (in the same clause) *prior to* the deletion of relevant text. Otherwise the cross-referencing will be removed.

   When using “Track Changes”, all forms of numbering (of paragraphs and footnotes) may be displayed incorrectly until pressing “Accept All Changes in Document”.

   Please note that the “find-and-replace” function may be used to replace [the Seller], [business registration no. of the Seller], [the Purchaser], [business registration no. of the Purchaser], [signing date], [the Estate Agency], [business registration no. of the estate agency], [the Purchaser’s bank], [business registration no. of the Purchaser’s bank], [Closing date], [the Seller’s representative] and [the Purchaser’s representative] with the correct designation throughout the document.

   All cross-references should be updated after “Accept All Changes in Document” has been pressed. This is done as follows**:**

   1. Cursor to be placed in text

   a) Press Ctrl + A (all text selected)

   b) Press F9 (all cross-references updated)

   2. Cursor to be placed in the footnote field

   a) Carry out steps a) and b) above [↑](#footnote-ref-1)
2. NB: If closing of the property sale is conditional upon circumstances outside the control of the parties and it is uncertain when such conditions will be satisfied, the following wording should be used instead: “*Closing shall take place [●] banking days after all conditions in Clauses 4.1 and 4.2 have been satisfied or waived”*. Moreover, a new Clause 4.5 should be added under the following heading: “*Time limit for closing of the agreement”: If the conditions precedent to closing of this agreement have not been satisfied or waived within [●], both the Seller and the Purchaser may terminate this agreement by written notice to the other party. If a condition has not been satisfied as the result of breach of the agreement by one of the parties, the party in breach shall not be entitled to terminate the agreement.”* [↑](#footnote-ref-2)
3. The acquisition of the Property by the Purchaser is subject to a notification requirement pursuant to Section 18 of the Competition Act if the total rent from the Property and the Purchaser (including all companies in the Purchaser’s group, as well as other companies that are controlled, in full or in part, by the Purchaser’s group) exceeds NOK 1 billion, and the individual Norwegian turnover from the Property and the Purchaser (including these companies) exceeds NOK 100 million. If the transaction is subject to such notification requirement and the Seller shall assume the risk that the Norwegian Competition Authority approves the transaction, the following term may be inserted here: “*The acquisition of the Property by the Purchaser has been cleared by the Norwegian Competition Authority either by the Authority stating that the examination of the transaction by the Authority has been completed, or by the Authority refraining from giving notice of further examination within the time limits stipulated in the Competition Act.”*

   If the transaction is subject to such notification requirement and the Purchaser shall assume the risk that the Norwegian Competition Authority approves the transaction, the following wording may be included as a new Clause headed: “*Notification to the Norwegian Competition Authority*”: “*The acquisition of the Property by the Purchaser is subject to a notification requirement pursuant to Section 18 of the Competition Act. The Purchaser shall notify the transaction to the Norwegian Competition Authority no later than three days after the signing of this agreement. Closing shall (if necessary) be postponed until the date that is one week after the expiry of the closing prohibition under Section 19, Sub-section 1, of the Competition Act. The parties shall not be entitled to invoke any claim against each other as the result of such postponement.*

   *Furthermore, the Purchaser assumes the risk that the Authority prohibits the acquisition of the Property by the Purchaser or imposes conditions precedent to such acquisition. The Purchaser shall under any circumstance pay the Consideration on the earlier of the date that is i) one week after the expiry of the closing prohibition under Section 19,   
   Sub-section 1, of the Competition Act; and ii) [●] weeks after the signing of this agreement. If the Authority prohibits such acquisition, the Purchaser shall be entitled to sell the Property to a third party.”* [↑](#footnote-ref-3)
4. This provision may be applicable in the event of anticipated breach of the obligation of the Purchaser to pay the purchase price, e.g. because the Purchaser has suspended its payments, or because a material delay occurs as a result of the Purchaser failing to send the competition notification by the agreed time; see Note 3. [↑](#footnote-ref-4)
5. Prior to the conclusion of an agreement, the Seller will ordinarily provide the Purchaser with extensive information and reply to a number of questions concerning the Property. Section 3-8 of the Sale of Real Estate Act imposes a very strict, objective liability on the Seller for any incorrect information that may have had an impact on the terms of the agreement, even though the Seller neither realised, nor ought to have realised, that such information was incorrect. The Seller should, in order to reduce the risk of liability when disclosing documents to the Purchaser or replying to questions, specify that all the information it discloses to the Purchaser is correct to the best of the knowledge of the Seller and state that there may be errors in lessee specifications, etc. Moreover, a cautious Seller will typically demand that objective liability for incorrect information be made conditional upon culpability in the same manner as the liability for incomplete information in Section 3-8 of the Sale of Real Estate Act. In such case the following sentence should be inserted here: “*There shall nonetheless only be a defect within the meaning of Section 3-8 of the Sale of Real Estate Act if the Seller must have been aware that the information provided by the Seller was incorrect at the time of the signing of this agreement*.” [↑](#footnote-ref-5)
6. In order to further limit the group of persons in respect of whom the Seller is liable, this paragraph may be replaced by the following paragraph: “*The Seller shall only be liable, in the application of Sections 3-7 and 3-8 of the Sale of Real Estate Act, for incorrect or incomplete information provided by the following persons (hereinafter jointly referred to as the* ***Key Persons****): The Directors and the General Manager of the Seller, as well as [●],[●]]. The Seller shall under no circumstance be liable for any information prepared by anyone other than the Seller, despite the Key Persons having made such information available to the Purchaser, unless the Key Persons are aware that such information is incorrect. Any reference in Clause 7 to what the Seller is aware of is exclusively a reference to what the Key Persons are aware of.”* [↑](#footnote-ref-6)
7. If the Purchaser is going to conduct a due diligence investigation subsequent to the signing of the agreement, cf. Clause 4.1(c), the following wording should be added here: “… *or anything of wich the Purchaser became aware in connection with the performance of the Purchaser’s due diligence investigation of the Company and the Property, cf. Clause 4.1(c)*”*.* [↑](#footnote-ref-7)
8. In practice, this amount tends to be 0.1% of the Purchase Price, although no less than NOK 50,000 and no more than NOK 1 million. [↑](#footnote-ref-8)
9. This financial threshold is often put at 1% of the Purchase Price, but is rarely less than NOK 500,000 or more than NOK 3 million. [↑](#footnote-ref-9)
10. If Closing takes place before the Purchaser has paid the Purchase Price in its entirety, the following may be added: “*The Seller reserves the right to terminate for breach in the cases governed by Section 5-3 (4) of the Sale of Real Estate Act*.” [↑](#footnote-ref-10)
11. Whether the prerequisites for the assignment of adjustment obligations and rights are satisfied, and whether this provision shall in such event be inserted, needs to be evaluated in each individual case. What effect the assignment of these obligations/rights should have on the purchase price needs to be examined specifically by the parties. [↑](#footnote-ref-11)
12. The following wording may be used if arbitration is desirable:

    *“Any dispute that may arise in relation to this agreement shall be resolved by arbitration pursuant to the Act of 14 May 2004 relating to Arbitration. The arbitral tribunal shall comprise three members, of whom the parties shall appoint one arbitrator each. These shall appoint the third arbitrator, who shall be the Chairperson of the arbitral tribunal. The Chairperson of the arbitral tribunal shall be a Norwegian lawyer. In the absence of agreement as to the identity of the third arbitrator, such arbitrator shall be appointed by the Chief District Court Judge of the Oslo District Court.*

    *The arbitration shall take place in [●], and the language of arbitration shall be Norwegian.*

    *The arbitral proceedings shall be deemed to have commenced when one party sends a request to the other party to the effect that the dispute be resolved by arbitration. The arbitration proceedings and the ruling of the arbitral tribunal shall be subject to a duty of confidentiality, and the parties shall be obliged to conclude, as soon as the arbitral proceedings have commenced, a separate agreement confirming this.*

    *The group of courts having jurisdiction under the ordinary provisions on provisional measures is not limited by this clause.”* [↑](#footnote-ref-12)
13. This closing agreement is based on the premise, in conformity with Section 6-9 (3) of the Estate Agency Act, that no part of the Purchase Price shall be paid from the Closing Account until the title deed has been registered (and such registration has been confirmed). The Seller shall pay any interest costs on its own loans from Closing until such loans are repaid, and assumes any risk of changes in the loan premium/discount from Closing until repayment. [↑](#footnote-ref-13)
14. The Real Estate Acquisition Licence Act with appurtenant regulations needs to be examined to check whether such a self-declaration is sufficient, or whether a government licence is in fact required. [↑](#footnote-ref-14)
15. This clause should be deleted if the Property is not going to be mortgaged in connection with closing. [↑](#footnote-ref-15)
16. In order for the Seller is to avoid paying such difference, it will be necessary to obtain new Statements of Outstanding Debt confirming that the creditors will delete all security interests if they receive an amount less than the Purchase Price. [↑](#footnote-ref-16)
17. This closing agreement is premised on derogation from Section 6-9 (3) of the Estate Agency Act, with the Seller’s loans secured on the Property being repaid at Closing and not subsequent to registration of the title deed. [↑](#footnote-ref-17)
18. The Real Estate Acquisition Licence Act with appurtenant regulations needs to be examined to check whether such a self-declaration is sufficient, or whether a government licence is in fact required. [↑](#footnote-ref-18)
19. Clause 2.5 to Clause 2.8, inclusive, may be deleted if no security interest is going to be established in favour of the Purchaser’s bank prior to Closing. [↑](#footnote-ref-19)
20. These time limits need to reflect the time available between signing of the agreement and Closing, and to take into account the time it takes to get the mortgage deeds registered. [↑](#footnote-ref-20)
21. If the Seller has concluded swap agreements in connection with the Loans, the Seller should check whether it is practically feasible to obtain statements of outstanding debt five days before Closing. [↑](#footnote-ref-21)
22. In order for the Seller is to avoid paying such difference, it will be necessary to obtain new Statements of Outstanding Debt confirming that the creditors will delete all security interests if they receive an amount less than the Purchase Price. [↑](#footnote-ref-22)
23. The Real Estate Acquisition Licence Act with appurtenant regulations needs to be examined to check whether such a self-declaration is sufficient, or whether a government licence is in fact required. [↑](#footnote-ref-23)
24. These time limits need to reflect the time available between signing of the agreement and Closing, and to take into account the time it takes to get the mortgage deeds registered. [↑](#footnote-ref-24)
25. If the Seller has concluded swap agreements in connection with the Loans, the Seller should check whether it is practically feasible to obtain statements of outstanding debt five days before Closing. [↑](#footnote-ref-25)
26. The Norwegian Mapping Authority requires the signature of the title holder to be witnessed by two witnesses of full age and legal capacity who are resident in Norway or by one attorney-at-law, certified estate agent, lawyer licensed to be in charge of estate agency activities and to be in charge of an estate agency, or estate agent licensed to be in charge of an estate agency. A deputy certified estate agent may also witness alone. The same applies to a chartered or registered accountant. [↑](#footnote-ref-26)