**STANDARD ESTATE AGENCY TERMS, OCTOBER 2015, FOR THE SALE AND PURCHASE OF A GENERAL PARTNERSHIP,** **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**

**[Seller 1],**

**[Seller 2],**

**[Purchaser 1]**

**and**

**[Purchaser 2]**

**relating to the sale and purchase of the units of**

**[the General Partnership]**

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

[Seller 1], business registration no. [business registration no. of Seller 1], and [Seller 2], business registration no. [business registration no. of Seller 2], (jointly referred to as the **Seller**) are the owners of a total of 100% of the units (the **Units**) of [the General Partnership], business registration no. [business registration no. of the target general partnership], (the **General Partnership**).

The Seller, [Purchaser 1], business registration no. [business registration no. of Purchaser 1] and [Purchaser 2], business registration no. [business registration no. of Purchaser 2], (jointly referred to as the **Purchaser**) agree that the Units shall be transferred from the Seller to the Purchaser on the terms set out in this agreement.[[2]](#footnote-2)

The General Partnership is the owner of land no. [●], title no. [●], together with its existing buildings and facilities in the municipality of [●] (the **Property**).[[3]](#footnote-3)

1. THE PURCHASE PRICE
	1. The Property Value and calculation of the Purchase Price

The Purchase Price for the Units (the **Purchase Price**) shall be:

* + - 1. NOK [●], which represents an agreed, fixed value for the Property (the **Property Value**);

plus:

* + - 1. the cash and receivables on the balance sheet of the General Partnership;[[4]](#footnote-4)
			2. the Purchaser’s share of tax deduction in respect of costs upon repayment of the Loans (defined in Clause 2.2) in the sales year, i.e. [25]% of [●]/12 of premium and repayment costs;

minus:

* + - 1. all liabilities on the balance sheet of the General Partnership (including the Loans), with the exception of provision for bad debts;[[5]](#footnote-5) and
			2. the Purchaser’s share of tax on income accruing upon repayment of the Loans, i.e. [25]% of [●]/12 of discount and repayment costs; and
			3. NOK [●], which represents an agreed, fixed amount to compensate for the difference between the Property Value (less the agreed value of the land) and the basis for tax depreciation of the Property.[[6]](#footnote-6)
	1. The Estimated Balance Sheet and the Estimated Purchase Price, as well as repayment of the Loans[[7]](#footnote-7)

The Purchase Price payable by the Purchaser upon Closing (the **Estimated Purchase Price**), shall be determined on the basis of a balance sheet for the General Partnership as it is expected to be as per Closing (the **Estimated Balance Sheet**). The Estimated Balance Sheet shall be prepared in accordance with generally accepted accounting principles, consistently applied, and otherwise as follows:

* + - 1. Expected profit/loss until and including the date of Closing shall be included.
			2. The liabilities of the General Partnership shall include all income/costs, including any premium or discount and any costs incurred upon the discharge of swap agreements, that will arise upon repayment of the Company’s bank loans (in aggregate the **Loans**) upon Closing.

Appendix 3 contains an Estimated Balance Sheet prepared by the accountant of the General Partnership, and a calculation of the Estimated Purchase Price, which is estimated at NOK [●].

The Seller shall, no later than five days[[8]](#footnote-8) before Closing, submit statements of outstanding debt from the bank(s) of the General Partnership, showing the exact amount of the Loans as per Closing. The Seller shall, at the same time, submit an updated calculation of the Estimated Purchase Price in which the Loans are updated with the correct amount, but without changes having been made to the other entries. If Closing is delayed for any reason, the Seller shall, without undue delay, provide a new statement of outstanding debt and a new calculation of the Estimated Purchase Price as per the date of Closing.

The Purchaser shall pay the Estimated Purchase Price upon Closing and repay the Loans in the amounts set out in the statement of outstanding debt.[[9]](#footnote-9)

The Seller and the General Partnership hereby confirm that any claim between the General Partnership and the Seller or other companies in the same group as the Seller, is settled with final effect *[after [•] has received NOK [•] from [•] upon Closing]*, and that any claim omitted in the Revised Balance Sheet is waived in its entirety with effect from Closing.

* 1. The Revised Balance Sheet and the Revised Purchase Price

The Seller shall send the following to the Purchaser no later than 45 days after Closing:

* + - 1. An updated balance sheet as per Closing (the **Revised Balance Sheet**), prepared pursuant to the same principles as the Estimated Balance Sheet, cf. Clause 2.2 (provided, however, that any arrangements made by the General Partnership on the date of Closing after the Purchaser has taken delivery of the Shares shall be disregarded), and approved and signed by those who served as Directors of the General Partnership immediately prior to Closing;
			2. A certification from an auditor appointed by the Seller, to the effect that such auditor has conducted a simplified audit check of the Revised Balance Sheet;[[10]](#footnote-10) [[11]](#footnote-11)
			3. A calculation of the Purchase Price (the **Revised Purchase Price**) on the basis of the Revised Balance Sheet, and
			4. A calculation of Calculated Seller Taxable Profit/Loss, cf. Clause 2.4.

The Purchaser may, no later than 14 days[[12]](#footnote-12) after receiving the Revised Balance Sheet and the calculation of the Revised Purchase Price (hereinafter jointly referred to as the**Purchase Price Calculation**), notify the Seller in writing if he has objections to the Purchase Price Calculation. If the Purchaser fails to invoke any objection within the aforementioned time limit, the Purchase Price Calculation prepared by the Seller shall become final and binding on the parties.

If the Purchaser invokes an objection against the Purchase Price Calculation within the aforementioned time limit and the parties do not reach agreement within an additional 14 days, an independent chartered accountant, jointly appointed and paid for by the parties, shall determine the Purchase Price Calculation with final and binding effect for the parties. The outcome of such determination shall be submitted no later than 14 days after the chartered accountant has been appointed.

If the parties do not reach agreement as to which chartered account should be used, either of the parties may require that such chartered accountant be appointed by the Chairperson of the Norwegian Financial Services Association (FNH). To the extent that the chartered accountant needs to take a view on legal issues for purposes of his or her determination, such determination shall be deemed to constitute an arbitral award, and shall be governed by the provisions of the Arbitration Act to the extent that they do not conflict with this provision, and such award may only be set aside by the ordinary courts of law via legal action as mentioned in Section 42 of the Arbitration Act. The chartered accountant shall be made aware of this, as well as of the final and binding effect the chartered accountant’s decision will have for the parties. The chartered accountant shall be entitled to appoint, at his or her own discretion and for the account of the parties, an independent lawyer to perform a legal assessment of the objection, in which case such assessment shall be submitted to both parties for commenting prior to a decision being made. The parties and the General Partnership shall grant the chartered accountant access to all information the chartered accountant many request with regard to the General Partnership.

If the Revised Purchase Price deviates from the Estimated Purchase Price;

* + - 1. any positive difference shall be paid by the Purchaser to an account specified by the Seller; and
			2. any negative difference shall be paid by the Seller to an account specified by the Purchaser.

The difference shall be paid no later than 14 days after the Purchase Price Calculation has been determined with final effect, with the addition of [●]% interest p.a. as from Closing until payment is made, provided, however, that late payment interest pursuant to the Late Payment Interest Act shall accrue after the due date.

The fact that the Purchase Price Calculation is final and binding shall not prevent the Purchaser from invoking claims as the result of breach of any other provision of this agreement.

* 1. Adjustment of the Purchase Price upon changes in the profit or loss of the General Partnership

It follows from applicable tax rules that the aggregate ordinary taxable profit/loss of the General Partnership for the entire sales year (the [●] tax year) will, for purposes of taxation, be attributed to the unit holders of the General Partnership in the relevant tax year. The ordinary taxable profit/loss of the General Partnership for the [●] tax year shall be allocated between the Seller and the Purchaser on the basis of the number of months of ownership, with the month of Closing being allocated to the Purchaser. In other words, it follows from the tax rules that tax liability is allocated between the Seller and the Purchaser irrespective of whether the profit or loss pertains to the period before or after Closing.

However, the parties wish to be placed in the financial position that would have resulted if the tax rules had allocated the taxable profit/loss of the General Partnership until Closing to the Seller, and had allocated the taxable profit/loss of the General Partnership after Closing to the Purchaser.

The parties therefore agree that a subsequent financial settlement shall be effected between them, by adjustment of the Purchase Price of the Units, with the following being attributed to the Seller:

* + - 1. taxable profit/loss reflecting the actual profit/loss of the General Partnership until and including the date of Closing;
			2. [●]/365 of tax depreciation, entries from the gain/loss account, etc., in the sales year; and
			3. [●]/12 of premium/discount and costs upon repayment of the Loans.[[13]](#footnote-13)

Such profit/loss on the part of the Seller (the **Calculated Seller Taxable Profit/Loss**) shall be calculated on the basis of the Revised Balance Sheet; cf. Clause 2.3.

The following adjustment shall be made to the Purchase Price of the Units after the ordinary taxable profit/loss to be attributed to the Seller of the Units, according to applicable tax rules, for the [●] tax year (the **Actual Seller Taxable Profit/Loss**) has been determined with final effect:

* + - 1. If the Actual Seller Taxable Profit/Loss exceeds the Calculated Seller Taxable Profit/Loss, [25]% of the difference shall be paid by the Purchaser to the Seller.
			2. If the Actual Seller Taxable Profit/Loss is less than the Calculated Seller Taxable Profit/Loss, [25]% of the difference shall be paid by the Seller to the Purchaser.[[14]](#footnote-14) [[15]](#footnote-15)

The amount to be paid pursuant to this Clause 2.4 shall fall due for payment 14 days after the Actual Seller Taxable Profit/Loss has been established, with final effect, by filing of the partnership tax return and partner statement with the tax authorities.

* 1. Late payment

If the Estimated Purchase Price 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 Units at 12:00 noon on [Closing date] (**Closing**).[[16]](#footnote-16)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 shall take place in accordance with the Closing Agreement in Appendix 8, and the Seller, the Purchaser and the General Partnership hereby undertake to perform their respective duties under the Closing Agreement.[[17]](#footnote-17) The Seller shall ensure that the General Partnership performs its 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:[[18]](#footnote-18)

* + - 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 Units by the Purchaser on the terms set out in this agreement (including the Property Value). 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 General Partnership or 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 an agreement with the General Partnership features a change of control provision, and Closing shall be conditional upon consent to the continuation of such agreement without any amendment to the terms thereof] The creditor under the Loans *[or specify other contracting party]* has confirmed in writing that it will not rescind, terminate or demand amendments to the loan agreement dated [●] *[or the agreement dated [●] regarding [●]]* as the result of the acquisition of the Units by the Purchaser.
			5. [To be retained only if the sale of the Units 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 [or the Units] as the result of the acquisition of the Units by the Purchaser.[[19]](#footnote-19)
	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.[[20]](#footnote-20)
			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 Units by the Purchaser on the terms set out in this agreement (including the Property Value). 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 parties’ particular duties
	1. Duties of the Seller

Until Closing, the Seller shall ensure:

* + - 1. That no distributions on the Units, or other wholly or partly gratuitous transfers, to the Seller or anyone else, are resolved, other than those reflected in the Estimated Balance Sheet.
			2. That the General Partnership’s business 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.
			3. That the General Partnership refrains from concluding any new agreements of material importance to the General Partnership, and that none of the material agreements of the General Partnership are rescinded, amended or terminated without the written consent of the Purchaser.
			4. That it refrains from instigating or doing anything that would be in breach of the warranties of the Seller in Clause 7.
			5. That the Property is insured for its full reinstatement value.
			6. That the Adjustment Specification in Appendix 7 is updated if necessary.
			7. [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 General Partnership in a professional manner and in compliance with public law requirements.
	1. Duties of the Purchaser

The Purchaser shall ensure that the Limited Partnership does not, during the course of the [year] tax year:

* + - 1. dispose of the Property; or
			2. record any other extraordinary income or expenses during the tax year; or
			3. record any other extraordinary accounting entries during the tax year, including extraordinary repayment of debt, failure to claim maximum declining balance depreciation/deduction of loss in the gain/loss account, etc.[[21]](#footnote-21)

Besides, the Purchaser shall not resell the Units or make any other changes on the ownership side, including any merger/demerger, etc., without the written consent of the Seller, until final tax assessment and adjustment of the Purchase Price pursuant to Clause 2.4 have been completed. Consent cannot be withheld if the new purchaser accepts corresponding duties.

1. THE SELLER’S LIABILITY UNDER THE SALE OF GOODS ACT, ETC.

The Units, the Property and the other assets of the General Partnership shall be acquired “as is”, cf. Section 19 (1) of the Sale of Goods Act. There is a defect if the Seller, prior to the signing of this agreement, provides incorrect information as mentioned in Section 19 (1), letter a, of the Sale of Goods Act or fails to disclose information as mentioned in Section 19 (1), letter b.[[22]](#footnote-22)

The Seller shall not, in the application of Section 19 (1), letters a and b, 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.[[23]](#footnote-23)

The Purchaser hereby waives, to the extent permitted under applicable law, any right to invoke any claim against the Seller pursuant to Section 19 (1) letter c, of the Sale of Goods Act, Section 3-7, Section 3-8 and Section 3-9 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 (l) to (n), inclusive, will only be given upon signing of this agreement:

* + - 1. The Seller owns the Units, the Units are transferred free of any encumbrances of any type, the Units are not subject to any pre-emptive rights, the General Partnership does not have any unconditional or conditional obligation to issue further shares, and no rights relating to the Units (hereunder dividend rights, pre-emptive rights, etc.) have been separated from the Units, and that no unit certificate has been issued in relation to the Units.
			2. The General Partnership is lawfully incorporated and registered in the Register of Business Enterprises, and that all details (including the most recently adopted Articles of Association) required to be registered in the Register of Business Enterprises have been registered.
			3. The most recent annual financial statements of the General Partnership have been adopted in compliance with the provisions of the Accounting Act, the General Partnership has not provided any guarantee in respect of the liabilities of any third party, and the General Partnership does not have any liabilities that should have been recognised in the balance sheet of the General Partnership pursuant to the provisions of the Accounting Act, other than those recognised in the Revised Balance Sheet.
			4. That the General Partnership owns the assets included in the Estimated and Revised Balance Sheets, and these assets are free of any encumbrances (other than such encumbrances as will be extinguished upon repayment of the Loans at Closing, as well as the encumbrances specified in Appendix 4).
			5. The Seller and the General Partnership have submitted required, correct and complete information to the tax and VAT authorities, and there neither exists, nor will arise, any tax or VAT liabilities on the part of the General Partnership or the Purchaser in relation to the period prior to Closing that are not fully covered by provisions made in the Revised Balance Sheet.
			6. The Adjustment Specification in Appendix 7 is complete and correct, and the General Partnership is in possession of the documentation required under applicable Value Added Tax provisions for the acquisition/production or use of capital goods.
			7. The activities of the General Partnership consist exclusively of the ownership and operation of real estate, [*other than the ownership of shares of subsidiaries engaged in such activities*], and the General Partnership has no employees and no pension liabilities.
			8. The General Partnership owns and holds title to the Property.
			9. The Property is not subject to any encumbrances (including any pre-emptive rights) other than those specified in Appendix 4.
			10. The General Partnership is not party to any legal proceedings or other legal disputes.
			11. The General Partnership has not been in breach of the leases, with appurtenant addenda, specified in Appendix 5, and the Seller is not aware of any lessee having been in breach of any lease.
			12. The Property is leased pursuant to the leases, with appurtenant addenda, as specified in Appendix 5 and such leases are valid and include all terms that have been agreed with the lessees.
			13. 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.
			14. There exists no written order, etc., from government authorities in relation to the Property that has not been paid or otherwise complied with.[[24]](#footnote-24)

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 Clauses 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.[[25]](#footnote-25) This limitation of the Seller’s liability shall not apply to any breach of Clause 7, letters (e) and (f) (*concerning taxes*), or Clause 7, letter (a) or (h) (*concerning ownership of the Units and the Property*), hereinafter jointly referred to as the **Fundamental Warranties**.

* 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 the Fundamental Warranties. As far as such breach is concerned, the Purchaser shall send a written notification of such breach no 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 and VAT savings to the Purchaser or the General Partnership, and ii) any amount the General Partnership 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 General Partnership. 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 [●],[[26]](#footnote-26) 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 [●],[[27]](#footnote-27) but the Purchaser shall, if the aggregate loss 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 Property Value]*. However, this limitation of liability shall not apply to any breach of the Fundamental Warranties.

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 the Fundamental Warranties and Clauses 5.1, 6, 7 or 10) shall, under any circumstance, be limited to the higher of the Revised Purchase Price and [20]% of the Property Value.[[28]](#footnote-28)

* 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 Shares to the Purchaser.

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

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

* 1. The implications of the limitations of liability for the Property Value

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

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 Goods 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. However, the Purchaser shall not be entitled to require rectification pursuant to Section 34 of the Sale of Goods Act, but the Seller shall be entitled to perform rectification pursuant to Section 36 of the Sale of Goods Act.[[29]](#footnote-29)

1. INDEMNIFICATION BY THE SELLER

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

(a) 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.

(b) Failure to pay the receivables entered on the Revised Balance Sheet within 30 days of maturity. The receivables shall, in the event of such non-payment, be assigned from the Company to the Seller, in return for the Seller paying the nominal amount of the receivable to the Company no later than 5 business days after the Purchaser gives written notice of the non-payment to the Seller. The Purchaser shall be deemed to have waived the right to invoke this clause if the Purchaser fails to submit to the Seller, within 60 days of the maturity date of the receivables, a written notice to the effect that the receivable is being assigned to the Seller.

(c) *[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. SPECIFICATION OF ACQUISITIONS SUBJECT TO A DUTY/RIGHT OF ADJUSTMENT

The Seller has prepared a specification of those acquisitions of the General Partnership that are subject to a duty/right of adjustment pursuant to the provisions on the adjustment of input Value Added Tax on capital goods, which contains the information required under applicable Value Added Tax provisions for the registration of the acquisition/production of capital goods (the **Adjustment Specification**), cf. Appendix 7.

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 and the General Partnership hereby waive any right to invoke any claim against current or former Directors or employees of the General Partnership, 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 ensure that the General Partnership does not invoke any such claim against such persons (the **Protected Persons**), and shall indemnify such persons in the event that the General Partnership’s partners or 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.[[30]](#footnote-30) 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, the Purchaser and the General Partnership*[, as well as the Title-Holding Company]*
2. The most recent annual financial statements, mortgage certificate and Partnership Agreement of the General Partnership *[and Articles of Association of the Title-Holding Company]*
3. The Estimated Balance Sheet and estimated purchase price calculation
4. Transcripts from the Register of Land Titles and Land Charges
5. Leases, with appendices
6. Prospectus, with appendices
7. Adjustment Specification
8. Closing Agreement
9. [Data room on DVD/memory stick]
10. SIGNATURE

This agreement is signed on this day in three copies, of which [Seller 1], [Purchaser 1] and [the Estate Agency] shall retain one each.

[Place], [signing date]

|  |  |  |
| --- | --- | --- |
| for and on behalf of [Seller 1] |  | for and on behalf of [Seller 2] |
| [the Seller’s representative] |  | [the Seller’s representative] |

|  |  |  |
| --- | --- | --- |
| for and on behalf of [Purchaser 1] |  | for and on behalf of [Purchaser 2] |
| [the Purchaser’s representative] |  | [the Purchaser’s representative] |

We acknowledge and accept our obligations pursuant to this agreement:

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

1. Adjustment Specification

*The following capital goods are subject to a duty/right of adjustment as per Closing:*

|  |  |
| --- | --- |
| *[Insert specification of the relevant capital goods]* |  |
| *Completion date/acquisition date* | *[Date]*  |
| *Acquisition cost net of Value Added Tax* | *NOK [●]* |
| *Total Value Added Tax* | *NOK [●]* |
| *Value Added Tax deducted as per the acquisition date* | *NOK [●]* |
| *Right of deduction on the part of the General Partnership as per the acquisition date* | *[●]%* |
| *Right of deduction on the part of the General Partnership as per Closing* | *[●]%* |
| *Annual adjustment amount* | *NOK [●]* |

*[Insert one table for each of the capital goods if there are several of these.]*

1. Closing Agreement with Closing Agent [This appendix shall be deleted if closing is to take place without a closing agent]
2. The Closing Agent and the Closing Account

[Seller 1], business registration no. [business registration no. of Seller 1], [Seller 2], business registration no. [business registration no. of Seller 2], (jointly referred to as the **Seller**), and [Purchaser 1], business registration no. [business registration no. of Purchaser 1], [Purchaser 2], business registration no. [business registration no. of Purchaser 2], (jointly referred to as the **Purchaser**), have on this day concluded an agreement (the **Agreement**) for the sale and purchase of the units of [the General Partnership], [business registration no. of the target general partnership].

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 implementation of the closing as described below. The Closing Agent shall not assist with any post-closing settlement taking place pursuant to Clauses 2.3 and 2.4 of the Agreement.

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

The Estimated Purchase Price[, the Seller Loan and the Loans][, as well as any fee for the registration of security interests in favour of the Purchaser’s lender] shall be paid into account no. [•] (the**Closing Account**), which is established in the name of the Closing Agent.[[31]](#footnote-31)

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 NOK [•], 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 General Partnership 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/ General Partnership | Immediately after signing of the Agreement |  |
|  | Deliver to the Purchaser and the Closing Agent a copy of the minutes of a Partnership Meeting as specified in Annex 1, in which it is resolved that the Partnership Agreement shall be as specified in Annex 2, thus authorising the issuance of unit certificates.[[32]](#footnote-32) | Seller/ General Partnership | Immediately after signing of the Agreement |  |
|  | Deliver to the Closing Agent an original power of attorney as specified in Annex 3, in which the General Partnership 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**).[[33]](#footnote-33) The Closing Agent shall not hand over the power of attorney to the Purchaser until Closing has been completed*.* | Seller/ General Partnership | No later than 10[[34]](#footnote-34) 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 |  |
|  | Arrange for any consents that are necessary to register the mortgage deeds of the Lender to be obtained. | Seller/General Partnership | No later than 8 business days before Closing |  |
|  | Provided that Clause 2.3 to Clause 2.5, 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 the creditors under the Loans, specifying the exact amounts of the Loans as per Closing, in which the creditors confirm that all of their security interests in the Property*[, the Units]* and other assets belonging to the General Partnership[[35]](#footnote-35) will be deleted upon receipt of the amounts set out in the Statement of Outstanding Debt. | Seller/Closing Agent  | 5 days before Closing[[36]](#footnote-36) |  |
|  | Deliver to the Purchaser and the Closing Agent an updated estimated purchase price calculation as specified in Clause 2.2 of the Agreement, in which the Loans and the Estimated Purchase Price are adjusted for the amounts in the Statement of Outstanding Debt.[[37]](#footnote-37) | Seller | 5 days before Closing |  |
|  | Deliver to the Purchaser and the Closing Agent a declaration as specified in Annex 5 from the Directors and General Manager, if any, of the General Partnership.[[38]](#footnote-38) [[39]](#footnote-39) | Seller/General Partnership | No later than the day before Closing |  |

1. Actions at Closing

Provided that the conditions precedent in Clause 4 of the Agreement have been satisfied or waived, and the parties have performed their obligations under Clause 2 of the Closing Agreement and the deed of restrictive covenant and the mortgage deeds in favour of the Lender have been registered, cf. Clause 2.5, the parties shall close the transaction in accordance with the provisions below at Closing.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Action** | **Responsible** | **Time limit** | **Status** |
|  | Deliver to the Closing Agent a notice as specified in Annex 5 to the effect that the Units have been acquired by the Purchaser*[, and that a first priority security interest in the Units has been granted in favour of the Lender].* [[40]](#footnote-40) | Seller and Purchaser | No later than 09:00 a.m. at Closing |  |
|  | Deliver to the Closing Agent an original unit certificate in respect of the Units as specified in Annex 6, with a signed declaration from the Seller to the effect that the Units have been assigned to the Purchaser.[[41]](#footnote-41) [[42]](#footnote-42) | Seller/General Partnership | No later than 09:00 a.m. at Closing |  |
|  | Ensure that the Estimated Purchase Price*[, the Seller Loan and the Loans] is[/are]* available in the Closing Account. | Purchaser | No later than 11:00 a.m. at Closing |  |

1. Duties of the Closing Agent at Closing

As soon as the conditions in Clause 3 of the Closing Agreement have been satisfied or waived, the Closing Agent shall:

* + - 1. hand over the original unit certificate (cf. Clause 3.2 of the Closing Agreement) to the Lender;[[43]](#footnote-43)
			2. pay the agreed fee and disbursements to the Closing Agent;
			3. repay the Loans in the amounts stipulated in the Statement of Outstanding Debt; and
			4. pay [*the Seller Loan and*] the remainder of the Estimated Purchase Price, inclusive of accrued interest in the Closing Account, to account no. [•] of the Seller.
1. Transfer of right of disposal over accounts, etc.

Provided that the Purchaser has performed its obligation under Clause 3.3, the Seller shall at Closing deliver to the Purchaser all authorisations granting a right of disposal over the bank accounts of the General Partnership, including access to the Internet banking facilities, etc., available to the General Partnership, and any other documentation necessary to enable the General Partnership to arrange for the right of disposal over, and access to, the accounts of the General Partnership being changed in accordance with the wishes of the Purchaser at Closing.

1. Partial Closing if the Seller has failed to perform its obligations [this clause may be deleted if deemed desirable]

If i) there exists a monetary encumbrance over the Units, the Property or other assets of the General Partnership that shall, according to this Closing Agreement, be deleted, and that is not included in the Statement of Outstanding Debt; ii) the Estimated Purchase Price 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 of the Closing Agreement have been satisfied or waived at Closing, the Closing Agent shall perform the actions set out in Clause 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 the said encumbrance. Any excess amount in the Closing Account shall immediately be paid into the account of the Seller. 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 satisfied or waived; ii) the Estimated Purchase Price is available in the Closing Account; and iii) the Purchaser has performed all of its other obligations under the Closing Agreement; but iv) one or more of the other conditions in Clauses 2 and 3 of the Closing Agreement have not been satisfied 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 4(a) to (c) of the Closing Agreement;
			2. retain in the Closing Account the amount that would otherwise have been paid pursuant to Clause 4(d) of the Closing Agreement;
			3. immediately upon the conditions in Clauses 2 and 3 of the Closing Agreement being satisfied 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;
				2. *[pay the Seller Loan to the Seller; and]*
				3. pay the remainder of the Estimated Purchase Price, inclusive of accrued 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 of the Closing Agreement are not satisfied or waived at Closing, Closing shall nevertheless, except in the cases referred to in Clause 6, be completed if and when all conditions are satisfied 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 satisfied or waived by the expiry of the said 30-day time limit, the Closing Agent shall deliver the original power of attorney mentioned in Clause 2.3 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, return the unit certificate to the Seller, as well as arrange for the deregistration of the deed of restrictive covenant.

1. Changes to the Board of Directors, etc., after Closing[[44]](#footnote-44)

The Purchaser shall, immediately after Closing, hold an Extraordinary Partners’ Meeting of the General Partnership, in which the Purchaser gives the Board of Directors discharge and appoints a new Board of Directors, and report such changes to the Board of Directors to the Register of Business Enterprises. Draft minutes encompassing changes to the Board of Directors, etc., are included in Annex 7.

1. Deregistration of deed of restrictive covenant

As soon as Closing has been completed and the new Board of Directors of the General Partnership has been registered with the Register of Business Enterprises, 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 [Seller 1] |  | for and on behalf of [Seller 2] |
| [the Seller’s representative] |  | [the Seller’s representative] |

|  |  |  |
| --- | --- | --- |
| for and on behalf of [Purchaser 1] |  | for and on behalf of [Purchaser 2] |
| [the Purchaser’s representative] |  | [the Purchaser’s representative] |

|  |  |  |
| --- | --- | --- |
| for and on behalf of [the General Partnership] |  | for and on behalf of [the Estate Agency] |
| [the General Partnership’s representative] |  |  |

Annexes:

1. Minutes of Partners’ Meeting
2. New Partnership Agreement of the General Partnership
3. Power of attorney from the General Partnership to the Purchaser, authorising the granting of a security interest in the Property
4. Confirmation
5. Notice of acquisition of the Units and declaration of resignation
6. Unit certificate
7. Minutes of Extraordinary Partners’ Meeting
8. Closing Agreement without Closing Agent [This appendix shall be deleted if closing is to take place with a closing agent]
9. Actions prior to Closing

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

|  | **Action** | **Responsible** | **Time limit** | **Status** |
| --- | --- | --- | --- | --- |
|  | Deliver to the Purchaser a copy of the minutes of a Partners’ Meeting as specified in Annex 1, in which it is resolved that the Partnership Agreement shall be as specified in Annex 2, thus authorising the issuance of unit certificates.[[45]](#footnote-45) | Seller/ General Partnership | Immediately after signing of the agreement |  |
|  | Deliver to the Seller mortgage deeds in respect of the Property issued in favour of the Purchaser’s lender, [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.[[46]](#footnote-46)  | Purchaser | No later than 10[[47]](#footnote-47) business days before Closing |  |
|  | Provided that Clause 1.2 has been complied with, arrange for any consents that are necessary to register the mortgage deeds of the Lender to be obtained, and submit these for registration. | Seller/ General Partnership  | No later than 8 business days before Closing |  |
|  | Deliver to the Purchaser confirmations (the **Statement of Outstanding Debt**) from the creditors under the Loans, specifying the exact amounts of the Loans as per Closing, in which the creditors confirm that all of their security interests in the Property*[, the Units]* and other assets belonging to the General Partnership[[48]](#footnote-48) will be deleted upon receipt of the amounts set out in the Statement of Outstanding Debt. | Seller | 5 days before Closing[[49]](#footnote-49) |  |
|  | Deliver to the Purchaser an updated estimated purchase price calculation as specified in Clause 2.2 of the agreement, in which the Loans and the Estimated Purchase Price are adjusted for the amounts in the Statement of Outstanding Debt.[[50]](#footnote-50) | Seller | 5 days before Closing |  |
|  | *Deliver to the Purchaser and the Closing Agent a declaration as specified in Annex 5, from the Directors and General Manager, if any, of the General Partnership.[[51]](#footnote-51) [[52]](#footnote-52)* | Seller/General Partnership | No later than Closing |  |

1. Actions at Closing

Provided that the conditions precedent in Clause 4 of the agreement have been satisfied or waived, that the parties have performed their obligations under Clause 1 of this Appendix and that any mortgage deeds in favour of the Lender have been registered, cf. Clause 2.4, the parties shall close the transaction in accordance with the provisions below at Closing:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Action** | **Responsible** | **Status** |
|  | Deliver to the General Partnership a notice as specified in Annex 5 to the effect that the Units have been acquired by the Purchaser*[, and that a first priority security interest in the Units has been granted in favour of the Lender].[[53]](#footnote-53)* | Seller and Purchaser |  |
|  | Deliver to the Purchaser an original unit certificate in respect of the Units as specified in Annex 6, with a signed declaration from the Seller to the effect that the Units have been assigned to the Purchaser.[[54]](#footnote-54) [[55]](#footnote-55) | Seller/General Partnership |  |
|  | Deliver to the Lender a payment instruction, as specified in Annex 8, for repayment of the Loans*[ and the Seller Loan]*, as well as payment of the Estimated Purchase Price. | Seller and Purchaser |  |
|  | Deliver to Seller a copy of minutes of Extraordinary Partners’ Meeting indicated in Annex 7 for change of and release of liability for the Board of Directors. | Purchaser |  |
|  | *Deliver to the Purchaser all authorisations granting a right of disposal over the bank accounts of the General Partnership, including access to the Internet banking facilities, etc., available to the General Partnership, and any other documentation necessary to enable the General Partnership to arrange for the right of disposal over, and access to, the accounts of the General Partnership being changed in accordance with the wishes of the Purchaser at Closing.[[56]](#footnote-56)* | Seller/General Partnership |  |

1. Time of delivery of the UNITS to the Purchaser

The Units shall be delivered to the Purchaser upon the Estimated Purchase Price becoming available in the Seller’s account. If the Estimated Purchase Price does not, for some reason or another, become available in the Seller’s account, the unit certificate shall be returned to the Seller and notice of acquisition confirming that the Purchaser has become the holder of the Units shall be deemed not to have been issued.

1. notice on Changes to the Board of Directors, etc., after Closing[[57]](#footnote-57)

The Purchaser shall, as soon as possible after Closing, report the change of the Board of Directors in the General Partnership to the Register of Business Enterprises.

Annexes:

1. Minutes of Partners’ Meeting
2. New Partnership Agreement of the General Partnership
3. Confirmation
4. Notice of acquisition of the Units and declaration of resignation
5. Unit certificate
6. Minutes of Extraordinary Partners’ Meeting to change the board of directors, etc.
7. Irrevocable payment instruction
8.

MINUTES

OF AN

EXTRAORDINARY PARTNERS’ MEETING

OF

[THE GENERAL PARTNERSHIP]

An Extraordinary Partners’ Meeting of [the General Partnership], business registration no. [business registration no. of the General Partnership] was held in the premises of the general partnership on [•].

[Seller 1], business registration no. [business registration no. of Seller 1], and [Seller 2], business registration no. [business registration no. of Seller 2], were in attendance, and both were represented by [the Seller’s representative]. All partners participated in the Partners’ Meeting.

The following matters were deliberated:

* 1. Appointment of a person to chair the meeting and a person to sign the minutes

[The Seller’s representative] was appointed to chair the meeting.

[The Seller’s co-signor] was appointed to sign the minutes together with the person chairing the meeting.

* 1. Approval of the notice convening the meeting and the agenda

The notice convening the Extraordinary Partners’ Meeting, as well as the agenda thereof, was approved.

* 1. Approval of the acquisition of units. New Partnership Agreement

The partners have approved and signed an agreement dated [•] for the sale of all units of the general partnership to [Purchaser 1] and [Purchaser 2]. The Partnership Agreement needs to be amended in connection with such sale, to permit the issuance of unit certificates evidencing the units. The Partners’ Meeting passed the following resolution for, *inter alia*, the said reason:

*“The appended Partnership Agreement shall hereinafter govern the affairs of the general partnership. This Partnership Agreement shall replace and rescind, in all respects, the Partnership Agreement dated [•].*

*[Seller 1] and [Seller 2] shall sign the appended declaration of resignation upon the transfer of the units of the general partnership to [Purchaser 1] and [Purchaser 2].*

*One unit certificate shall be issued with regard to all units of the general partnership, in accordance with Clause [•] of the Partnership Agreement. A security interest may be granted over such unit certificate.”*

* 1. Decision to rescind the appointments of the Directors [Only relevant if the partnership is not going to have a separate Board of Directors]

The Partners’ Meeting passed the following resolution:

*“The appointments of all Directors of the general partnership are rescinded with immediate effect. The general partnership shall, as specified in the appended Partnership Agreement, not have a separate Board of Directors.”*

\* \* \*

All resolutions were unanimous. There was no further business.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| [the Seller’s representative] |  | [the Seller’s co-signor] |

1.

PARTNERSHIP AGREEMENT

OF

THE GENERAL PARTNERSHIP

[the General Partnership]

* 1. Name of the General Partnership

The name of the General Partnership is [the General Partnership], business registration no. [business registration no. of the target general partnership].

* 1. Partners of the General Partnership

The partners of the General Partnership are [Seller 1], business registration no. [business registration no. of Seller 1], with registered address [•], and [Seller 2], business registration no. [business registration no. of Seller 2], with registered address [•].

* 1. Activities of the General Partnership

The General Partnership shall be engaged in investment in, and the management and development of, real estate, including participation in other business, as well as any activities associated therewith.

* 1. Mailing address and registered address of the General Partnership

The registered address of the General Partnership is [•], whilst its mailing address is P.O. Box [•].

* 1. Liability of the partners for the liabilities of the General Partnership

The partners shall have direct, unlimited, joint and several liability for the liabilities of the General Partnership.

[If the General Partnership is a general partnership with apportioned liability, the following provision shall be inserted: “The partners shall have direct liability for the liabilities of the General Partnership, but such liability shall be apportioned on the basis of their ownership stakes, cf. Clause 7.” Moreover, the designation “DA” needs to be included in the business name of such a general partnership.]

* 1. Scheduled capital contributions from the partners

No further capital contributions from the partners to the General Partnership have been scheduled.

* 1. The apportionment of the equity, profit and loss of the General Partnership to each partner

The equity of the General Partnership shall be apportioned to each partner as follows:

– [Seller 1]: 99%

– [Seller 2]: 1%

Any profit or loss of the General Partnership shall be apportioned to each partner as stipulated above, as well as any positive or negative equity of the General Partnership upon resignation from, exclusion from, or dissolution of, the General Partnership.

* 1. Financial statements and auditing

The accounts and annual financial statements of the General Partnership shall be audited. [•], business registration no. [•], are the auditors of the General Partnership.

* 1. Board of Directors and authorisation to sign on behalf of the General Partnership

The General Partnership shall not have a separate Board of Directors or a separate General Manager. [Seller 1] shall be authorised to sign on behalf of the General Partnership.

*[Alternatively:*

*The General Partnership shall have a separate Board of Directors, comprising between one and five Directors, but shall not have a separate General Manager. The Board of Directors shall be responsible for the general management of the affairs of the General Partnership.*

*The Chairperson of the Board, acting singly, or any two Directors, acting jointly, shall be authorised to sign on behalf of the General Partnership.]*

* 1. Disposal of, and the granting of security interests over, partnership ownership interests (“partnership units”)

Any partner may freely transfer, grant security interests over, or otherwise make dispositions in respect of, its partnership units, without requiring the consent of the other partners *[or of the Board of Directors]* of the General Partnership. The partners have no pre-emptive rights.

The partners may require the issuance of unit certificates evidencing the units, with possession of the unit certificate representing possession of the partnership units. Only persons who are in possession of a unit certificate and who are, according to such unit certificate or an endorsement from the General Partnership on such unit certificate, unit holders, have the power to make dispositions in respect of the unit certificate (and thus the partnership units). If a unit certificate is transferred, or if a security interest is granted over a unit certificate, the provisions of Sections 14 and 15, cf. Section 13, of Act of 17 February 1939 No. 1 relating to Promissory Notes shall apply correspondingly.

Repayment of partnership capital or other capital, in full or in part, may only be requested against the return of the unit certificate or endorsement thereon.

* 1. Resignation of a partner and its legal successors from the General Partnership

Each partner may resign from the General Partnership on three months’ written notice, and require the settlement of its partnership interests.

Any capital to be paid to, or contributed by, a resigning partner shall be determined on the basis of a balance sheet audited by an auditor.

The assets of the General Partnership shall be recorded at market value in the balance sheet prepared for purposes of the settlement of partnership interests. Accounts payable shall nevertheless be recorded at nominal value or, if applicable, such lesser amount as can be expected to be recovered from the debtor. Goodwill shall be calculated as ten per cent of all other equity.

* 1. Exclusion of a partner from the General Partnership

Clause 11, second and third paragraphs, shall apply correspondingly. Any capital to be paid to, or contributed by, an excluded partner shall fall due for payment immediately.

* 1. Dissolution of the General Partnership

Each partner may require the dissolution of the General Partnership with immediate effect.

A Board of Liquidators, comprising one or three members, shall be appointed. Any partnership liabilities that cannot be settled during the dissolution process shall be secured by a banker’s guarantee for the joint account of the partners.

* 1. Relationship to the previous Partnership Agreement

This Partnership Agreement replaces and rescinds the Partnership Agreement dated [•] in all respects.

**\*\*\***

[Place], [date of signing]

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Seller 1] |  | For and on behalf of [Seller 2] |
|  |  |  |

1.

POWER OF ATTORNEY, AUTHORISING THE GRANTING OF A SECURITY INTEREST [THIS APPENDIX SHALL BE DELETED IF CLOSING IS TO TAKE PLACE WITHOUT A CLOSING AGENT]

[The General Partnership], business registration no. [business registration no. of the target general partnership], 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].

The present 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 General Partnership] |
| [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 General Partnership] is/are over the age of 18 years and has/have signed or acknowledged its/their signature(s) in my/our presence. I/we am/are of full age and legal capacity and resident in Norway.[[58]](#footnote-58)

[Place], [date]

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

1.

CONFIRMATION

I undertake to vacate my directorship and to resign with effect from such time as the Partners’ Meeting of [the General Partnership] may stipulate.

I hereby confirm that I hold no outstanding claims against [the General Partnership] [other than those set out in the estimated balance sheet enclosed as Appendix [•] to the Sale and Purchase Agreement dated [•]

[Place], [date]

|  |
| --- |
|  |
|  |

1.

NOTICE OF TRANSFER OF OWNERSHIP OF [AND THE GRANTING OF A SECURITY INTEREST OVER] UNITS
DECLARATION OF RESIGNATION

It is hereby confirmed that [Seller 1], business registration no. [business registration no. of Seller 1], and [Seller 2], business registration no. [business registration no. of Seller 2], have on this day transferred the ownership of all units of [the General Partnership], business registration no. [business registration no. of the target general partnership], to [Purchaser 1], business registration no. [business registration no. of Purchaser 1], and [Purchaser 2], business registration no. [business registration no. of Purchaser 2].

*Notice is given, at the same time, to the effect that a first priority security interest has been granted over these units in favour of [the Purchaser’s bank],* business *registration no.* ***[***business ***registration no. of the*** *Purchaser’s bank****].*** *[Purchaser 1] and [Purchaser 2] request the immediate Closing of the unit certificate to [the Purchaser’s bank].*

Consequently, [Seller 1] and [Seller 2] have with effect from this day resigned as partners of the General Partnership, whilst [Purchaser 1] and [Purchaser 2] have at the same time become new partners of the General Partnership.

The abovementioned change of partners of [the General Partnership] shall be reported to, and registered in, the Register of Business Enterprises as soon as possible.

[Place], [Closing date]

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Purchaser 1] |  | For and on behalf of [Purchaser 2] |
| For and on behalf of [Seller 1] |  | For and on behalf of [Seller 2] |
|  |  |  |

1.

|  |
| --- |
| UNIT CERTIFICATE |
| With regard to units of: |  |
| **[The General Partnership],** business registration no. [business registration no. of the target general partnership] |  |
| Unit holders: | Units: | Paid-up capital: | Unpaid capital: |
| [Purchaser 1], business registration no. [business registration no. of Purchaser 1] | [•]% | NOK [•] | NOK [•] |
| [Purchaser 2], business registration no. [business registration no. of Purchaser 2] | [•]% | NOK [•] | NOK [•] |
| Total units: | 100% |
|  |
| This unit certificate is issued pursuant to the Partnership Agreement of [•] and represents all units of [the General Partnership]. Only persons who are in possession of a unit certificate and who are, according to such unit certificate or an endorsement from the General Partnership on such unit certificate, unit holders, have the power to make dispositions in respect of the unit certificate (and thus the units of the General Partnership). If a unit certificate is transferred, or if a security interest is granted over a unit certificate, the provisions of Sections 14 and 15, cf. Section 13, of Act of 17 February 1939 No. 1 relating to Promissory Notes shall apply correspondingly.Repayment of partnership capital or other capital, in full or in part, may only be requested against the return of the unit certificate or endorsement thereon. |

The partners/Board of Directors of [the General Partnership] hereby confirm that this unit certificate is issued in accordance with Clause [•] of the Partnership Agreement, that no unit certificate has previously been issued with regard to the units of [the General Partnership], and that the partners have approved the transfer of all units of [the General Partnership] to [Purchaser 1] and [Purchaser 2] *and* *the granting of a security interest over these units in favour of [the Purchaser’s bank], business registration no.* ***[business registration no. of*** *the Purchaser’s bank****].***

[Alternative if the Partnership Agreement is as specified in Annex 2: The partners/Board of Directors of [the General Partnership] hereby confirm(s) that this unit certificate is issued in accordance with Clause 10 of the Partnership Agreement and that no unit certificate has previously been issued with regard to the units of [the General Partnership].]

[Place], [Closing date]

|  |  |  |
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[Seller 1], business registration no. [business registration no. of Seller 1], and [Seller 2], business registration no. [business registration no. of Seller 2] hereby confirm that all units of [the General Partnership] have been assigned to [Purchaser 1], business registration no. [business registration no. of Purchaser 1], and [Purchaser 2], business registration no. [business registration no. of Purchaser 2].

[Place], [Closing date]

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Seller 1] |  | For and on behalf of [Seller 2] |
|  |  |  |

1.

MINUTES OF AN

EXTRAORDINARY PARTNERS’ MEETING OF

[THE GENERAL PARTNERSHIP]

An Extraordinary Partners’ Meeting of [the General Partnership], business registration no. [business registration no. of the target general partnership] was held in the premises of the general partnership on [the Closing date].

[Purchaser 1], business registration no. [business registration no. of Purchaser 1], and [Purchaser 2], business registration no. [business registration no. of Purchaser 2], were in attendance, and both were represented by [the Purchaser’s representative]. All partners participated in the Partners’ Meeting.

The following matters were deliberated:

* 1. Appointment of a person to chair the meeting and a person to sign the minutes

[The Purchaser’s representative] was appointed to chair the meeting. [The Purchaser’s co-signor] was appointed to sign the minutes together with the person chairing the meeting.

* 1. Approval of the notice convening the meeting and the agenda

The notice convening the Extraordinary Partners’ Meeting, as well as the agenda thereof, was approved.

* 1. Release of liability

The Partners’ Meeting resolved to release all current and former Directors from any liability in relation to their appointments as directors of the company. Such release of liability shall apply to the widest extent permitted under applicable law.

* 1. Change of Directors

The Partners’ Meeting adopted the following resolution:

*“[●] shall resign as Directors of the general partnership with immediate effect. The Board of Directors of the general partnership shall hereafter comprise [●] (Chairperson of the Board of Directors), [●] and [●].”*

* 1. Change of auditors

The Partners’ Meeting adopted the following resolution:

*“[●] shall resign as auditors of the general partnership with immediate effect. The auditors of the general partnership shall hereafter be [●], business registration no. [●].”*

\* \* \*

There was no further business, and the Partners’ Meeting was adjourned.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| [the Purchaser’s representative] |  | [the Purchaser’s co-signor] |

PROXY

[Seller 1], business registration no. [business registration no. of Seller 1], and [Seller 2], business registration no. [business registration no. of Seller 2], hereby appoint [the Seller’s representative] as our proxy for the next Extraordinary Partners’ Meeting of the general partnership, the agenda of which includes amending the Partnership Agreement of [the general partnership], with the said proxy being granted the power to attend and cast votes in respect of our units of [the general partnership] in such meeting.

[Place], \_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Seller 1] |  | For and on behalf of [Seller 2] |
|  |  |  |

PROXY

[Purchaser 1], business registration no. [business registration no. of Purchaser 1], and [Purchaser 2], business registration no. [business registration no. of Purchaser 2], hereby appoint [the Purchaser’s representative] as our proxy for the next Extraordinary Partners’ Meeting of the general partnership, the agenda of which includes changing the Board of Directors and the auditors, with the said proxy being granted the power to attend and cast votes in respect of our units of [the general partnership] in such meeting.

[Place], \_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Purchaser 1] |  | For and on behalf of [Purchaser 2] |
|  |  |  |

1.

Dear Sirs,

IRREVOCABLE PAYMENT INSTRUCTION IN CONNECTION WITH THE ACQUISITION OF [THE GENERAL PARTNERSHIP] [This appendix shall not be used if closing is to take place with a closing agent]

[Purchaser 1], business registration no. [business registration no. of Purchaser 1], 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 [accrued interest, as well as premium] | [•] |
|  | [Estate Agency], business registration no. [business registration no. of the Estate Agency] | [•] | Fee | [•] |
|  | [Seller 1], business registration no. [business registration no. of Seller 1]  | [•] | Consideration for the sale of units | [•] |
|  | 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 [Purchaser 1] |
| [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 [Seller 1] |
| [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 [Seller 1], [business registration no. of Seller 1], [Seller 2], [business registration no. of Seller 2], [the General Partnership], [business registration no. of the target general partnership], [Purchaser 1], [business registration no. of Purchaser 1], [Purchaser 2], [business registration no. of Purchaser 2], [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], [the Purchaser’s representative], [the General Partnership’s representative], [the Seller’s co-signor] and [the Purchaser’s co-signor] 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. If the General Partnership has subsidiaries, the following paragraph should be added: “*The General Partnership owns all shares of [●], business registration no. [●], and [●], business registration no. [●], hereinafter jointly referred to, together with the General Partnership*, *as the* ***Group****.”* The *General Partnership* should thereafter be replaced by the *Group* wherever necessary or appropriate in the agreement. [↑](#footnote-ref-2)
3. If a title-holding company is registered as holding title to the Property in the Register of Land Titles and Land Charges, and such title-holding company is owned by the General Partnership, the following wording may be used: “*The General Partnership is also the owner of all shares of [●] AS, business registration no. [●], (the* ***Title-Holding Company****), which is registered as holding title to the Property in the Register of Land Titles and Land Charges*.” [↑](#footnote-ref-3)
4. Any other assets for which consideration is payable, including any right of adjustment triggered with regard to Value Added Tax, need to be specified here. In practise, the purchase price is not increased or reduced to reflect temporary differences in the balance sheet. If a loss is recorded in the gain/loss account of the General Partnership, one may include a new letter (d) with the following wording: “*NOK [●], which represents an agreed, fixed consideration in respect of the Purchaser’s share of deferred tax benefit comprising loss in the gain/loss account.”* If the Seller is going to be paid for the right to carry forward interest costs that have not qualified for deduction under the interest limitation rule, this will need to be specifically agreed here. [↑](#footnote-ref-4)
5. If a gain is recorded in the gain/loss account of the General Partnership, one may include a new letter (e) with the following wording: “*NOK [●], which represents an agreed, fixed deduction in respect of the Purchaser’s share of deferred tax comprising gain in the gain/loss account.”* [↑](#footnote-ref-5)
6. If one would like to control the basis for tax depreciation as per Closing, one may instead include the following formula for calculating the deduction: “*[●]% of the difference between i) NOK [●], which corresponds to the Property Value after the deduction of the estimated market value of the land, and ii) the basis for tax depreciation of the Property as per Closing (including estimated depreciation until the date of Closing, inclusive).”* [↑](#footnote-ref-6)
7. The wording in red needs to be deleted or modified if the bank loans of the General Partnership are not going to be repaid. [↑](#footnote-ref-7)
8. If the Seller has entered into 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-8)
9. If the Seller has provided a loan to the General Partnership that shall be repaid upon Closing, the following wording may be added: “*Furthermore, the Purchaser shall, at the same time and on behalf of the General Partnership, repay the debt outstanding from the General Partnership to the Seller (the* ***Seller Loan****), which is in the amount of [●], including accrued interest, as per Closing.”* [↑](#footnote-ref-9)
10. If the General Partnership does not have any auditor, or if it for other reasons is not desired that an auditor conducts such check, this clause may be deleted or reworded as follows: “*A certification from [name of the General Partnership’s accountant], to the effect that he has conducted a simplified check of the Revised Balance Sheet; and*”. [↑](#footnote-ref-10)
11. If it is desirable for the auditors to conduct a more thorough check of the Revised Balance Sheet, the following wording may be used: “*A certification from the auditors to the effect that the Revised Balance Sheet has been prepared and audited in conformity with the provisions governing annual financial statements;”* [↑](#footnote-ref-11)
12. It is necessary here to consider whether the Purchaser needs a longer time limit. [↑](#footnote-ref-12)
13. Clause 2.1(c) and (e) provide the Seller with an addition to, or deduction from, the purchase price corresponding to the Purchaser’s share of any tax deduction or any tax on income accruing upon repayment of the Loans. Consequently, the overall effect of Clauses 2.1 and 2.4 is that the Seller is placed in the financial position that would have resulted if the tax rules had allocated all tax deduction or all tax on income accruing as the result of any premium/discount and other costs upon repayment of the Loans to the Seller. [↑](#footnote-ref-13)
14. The following regulation may be included to prevent minor adjustments: “*However, no adjustment shall be made if the above difference is less than NOK [●].”* [↑](#footnote-ref-14)
15. It may be agreed, if the Seller is one or more private individuals, that the Purchaser shall, in addition to [25]%, pay a net amount to cover the tax of the Seller on the supplementary consideration and the Purchaser’s payment of the tax. [↑](#footnote-ref-15)
16. NB: If closing 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 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”* Finally, Clause 2.2, third paragraph, should be amended as follows: “*The Seller shall, no later than [five days] before Closing, submit statements of outstanding debt from the bank(s) of the General Partnership, showing the exact amount of the Loans as per Closing (inclusive of any premium and discount, as well as all repayment costs). The Seller shall, at the same time, submit an updated calculation of the Estimated Purchase Price in which the Loans and all other entries are entered with updated amounts.*” [↑](#footnote-ref-16)
17. If the Seller wants the name of the General Partnership to be changed, e.g. because the name of the General Partnership forms part of the Seller’s name, the following regulation may be included: “*The Purchaser shall change the name of the General Partnership no later than 1 month after Closing such as to remove the designation “[●]”. Neither the Purchaser, nor the General Partnership, shall be permitted to use the designation “[●]” in marketing or otherwise after Closing.”* [↑](#footnote-ref-17)
18. The acquisition of the Units by the Purchaser is subject to a notification requirement pursuant to Section 18 of the Competition Act if the total Norwegian turnover of the General Partnership (including subsidiaries and other companies that are directly or indirectly controlled, in full or in part, by the General Partnership) 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 of each of the General Partnership and the Purchaser (including the said 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 Units 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 Units 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. Moreover, 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 Units by the Purchaser or imposes conditions precedent to such acquisition. The Purchaser shall under any circumstance pay the Estimated Purchase Price 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 Units to a third party.”* [↑](#footnote-ref-18)
19. Please note that the sale of all shares/units of a company/partnership that is the owner of a property encumbered by a right of first refusal or other pre-emptive right will trigger such pre-emptive right in respect of such property, unless otherwise implied by the legal act establishing the pre-emptive right, cf. Section 11 and Section 3 of Act 1994/64 relating to Pre-Emptive Rights. [↑](#footnote-ref-19)
20. 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 18. [↑](#footnote-ref-20)
21. Special accounting entries on the part of the Limited Partnership after Closing, but in the same tax year, may result in higher tax on the part of the Seller. The purpose of this provision is, in particular, to minimise the risk of large adjustments, and the credit risk associated therewith, between the Purchaser and the Seller pursuant to Clause 2.4. [↑](#footnote-ref-21)
22. 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 General Partnership and the Property. Section 19 (1), letter a, of the Sale of Goods 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 19 (1), letter b, of the Sale of Goods Ac. In such case the following sentence should be inserted here: “*There shall nonetheless only be a defect within the meaning of Section 19 (1), letter a, of the Sale of Goods 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-22)
23. 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 Section 19 (1), letters a and b, 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 and the General Partnership, 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-23)
24. If a title-holding company is registered as the title holder in the Register of Land Titles and Land Charges, the following wording may be added: “*The warranties set out in letters (a), (b), (c), (e) and (j), shall apply correspondingly to the Title-Holding Company and to the shares of the Title-Holding Company. In addition, it is warranted that the balance sheet of the Title-Holding Company as per Closing will not contain any other assets or liabilities than approximately NOK [●] deposited in the Title-Holding Company’s account with a Norwegian bank.”* At the same time, the following should be deleted from letter (h): *“and holds title thereto”.* [↑](#footnote-ref-24)
25. 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 which 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-25)
26. In practice, this amount tends to be 0.1% of the Property Value, although no less than NOK 50,000 and no more than NOK 1 million. [↑](#footnote-ref-26)
27. This financial threshold is often put at 1% of the Property Value, but is rarely less than NOK 500,000 or more than NOK 3 million. [↑](#footnote-ref-27)
28. It needs to be specifically assessed whether this limitation of liability is suitable for the transaction in question. [↑](#footnote-ref-28)
29. 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 54 (4) of the Sale of Goods Act*. *The Purchaser shall at Closing grant a first priority security interest in the Shares in favour of the Lender to secure any claims of the Seller against the Purchaser arising out of this agreement. Such security interest shall be cancelled once the Purchaser has paid the Revised Purchase Price.”* Furthermore, the granting of such security interest should be regulated in the closing agreement with appendices. [↑](#footnote-ref-29)
30. 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-30)
31. It needs to be clarified whether the Loans shall be repaid by way of the Purchaser paying the loan amount to the Closing Agent, with the Closing Agent thereafter repaying the Loans, or by way of the Purchaser transferring the loan amount directly to the Lender. The phrase “*the Loans*” shall in the latter case be deleted from the brackets, with the following wording being added: “*The Purchaser shall itself repay the Loans*”. [↑](#footnote-ref-31)
32. This clause may be deleted if the Partnership Agreement authorises the issuance of unit certificates. It should be noted that no security interest in the units of the General Partnership can be granted unless a unit certificate has been issued. [↑](#footnote-ref-32)
33. Clause 2.3 to Clause 2.6, 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-33)
34. 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-34)
35. It here needs to be clarified whether the General Partnership has granted security interests or furnished guarantees in favour of any others than the creditors under the Loans. If the General Partnership has done so, a new Clause 2.7 may be inserted here: “*Deliver to the Purchaser a confirmation to the effect that the security interest held by [specify name of the holder of the security interest] in the Property will be deleted after [specify name of the holder of the security interest] has received NOK [•] of the Estimated Purchase Price upon Closing, and that the General Partnership is released, with effect from Closing, from any liability assumed by the General Partnership for the benefit of [specify name of the holder of the security interest] under the guarantee agreement dated [•].”* [↑](#footnote-ref-35)
36. If the Seller has entered into 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-36)
37. This wording presupposes the updating of the purchase price calculation prior to Closing on the basis of statements of outstanding debt that will be obtained later. [↑](#footnote-ref-37)
38. This clause should be deleted if the General Partnership has no Board of Directors or General Manager. [↑](#footnote-ref-38)
39. Other than registering a security interest in favour of the Purchaser’s lender and obtaining statements of outstanding debt (cf. Clauses 2.7 and 2.7), the General Partnership is under no obligation to conclude any agreement for the refinancing of the liabilities of the General Partnership upon Closing or to otherwise assist with the Purchaser’s funding. The interests of the Purchaser’s lender may be attended to by way of the Purchaser undertaking, vis-à-vis the lender, to ensure that the General Partnership at Closing accedes to the necessary loan agreements, etc. If it is desirable for the General Partnership to contribute to the Purchaser’s funding *prior* *to* Closing, the following clauses may be added to the Closing Agreement:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2.9 | Deliver to the Seller those agreements and documents that the Lender is requesting the General Partnership to conclude for purposes of funding the Estimated Purchase Price and/or the liabilities of the General Partnership as per Closing, and demonstrate that the conclusion of such agreements or documents would not be in infringement of applicable law. | Purchaser | 8 days before Closing |  |
| 2.10 | Provided that the Purchaser has performed its duties under 2.9, ensure that the agreements and documents received by the Seller are signed by a person authorised to sign on behalf of the General Partnership and deliver these to the Purchaser. | Seller/General Partnership | 5 days before Closing |  |

 [↑](#footnote-ref-39)
40. If the Partnership Agreement of the General Partnership is not going to be amended, cf. Clause 2.2, it needs to be checked whether it stipulates any additional conditions precedent to the transfer of the Units. [↑](#footnote-ref-40)
41. This clause should be deleted if no unit certificate is going to be issued. [↑](#footnote-ref-41)
42. If any unit certificate has been issued over which a security interest has been granted, the following clause may be added:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2.10 | Deliver to the Closing Agent a declaration from [the existing lender] to the effect that the bank will send, to the Lender, the unit certificate dated [•] in respect of the Units upon receipt of the amount payable to the bank according to the Statement of Outstanding Debt. | Seller/General Partnership | No later than 09:00 a.m. at Closing |  |

 [↑](#footnote-ref-42)
43. The Lender should here be replaced by the Purchaser if no security interested is to be granted in the units. [↑](#footnote-ref-43)
44. This clause should be deleted if the General Partnership does not have a Board of Directors. [↑](#footnote-ref-44)
45. This clause may be deleted if the Partnership Agreement authorises the issuance of unit certificates. It should be noted that no security interest in the units of the General Partnership can be granted unless a unit certificate has been issued. [↑](#footnote-ref-45)
46. Clauses 1.1 and 1.2 may be deleted if no security interest is going to be established in favour of the Purchaser’s bank prior to Closing. [↑](#footnote-ref-46)
47. 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-47)
48. It here needs to be clarified whether the General Partnership has granted security interests or furnished guarantees in favour of any others than the creditors under the Loans. If the General Partnership has done so, a new Clause 1.5 may be inserted here: “*Deliver to the Purchaser a confirmation to the effect that the security interest held by [specify name of the holder of the security interest] in the Property will be deleted after [specify name of the holder of the security interest] has received NOK [•] of the Estimated Purchase Price upon Closing, and that the General Partnership is released, with effect from Closing, from any liability assumed by the General Partnership for the benefit of [specify name of the holder of the security interest] under the guarantee agreement dated [•].*” [↑](#footnote-ref-48)
49. If the Seller has entered into 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-49)
50. The wording of Clause 1.5 presupposes the updating of the purchase price calculation prior to Closing on the basis of statements of outstanding debt that will be obtained later. [↑](#footnote-ref-50)
51. This clause should be deleted if the General Partnership has no Board of Directors or General Manager. [↑](#footnote-ref-51)
52. Other than registering a security interest in favour of the Purchaser’s lender and obtaining statements of outstanding debt (cf. Clauses 1.3 and 1.4), the General Partnership is under no obligation to conclude any agreement for the refinancing of the liabilities of the General Partnership upon Closing or to otherwise assist with the Purchaser’s funding. The interests of the Purchaser’s lender may be attended to by way of the Purchaser undertaking, vis-à-vis the lender, to ensure that the General Partnership at Closing accedes to the necessary loan agreements, etc. If it is desirable for the General Partnership to contribute to the Purchaser’s funding *prior* *to* Closing, the following clauses may be added to the Closing Agreement:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1.7 | Deliver to the Seller those agreements and documents that the Lender is requesting the General Partnership to conclude for purposes of funding the Estimated Purchase Price and/or the liabilities of the General Partnership as per Closing, and demonstrate that the conclusion of such agreements or documents would not be in infringement of applicable law. | Purchaser | 8 days before Closing |  |
| 1.8 | Provided that the Purchaser has performed its duties under 1.7, ensure that the agreements and documents received by the Seller are signed by a person authorised to sign on behalf of the General Partnership and deliver these to the Purchaser. | Seller/General Partnership | 5 days before Closing |  |

 [↑](#footnote-ref-52)
53. If the Partnership Agreement of the General Partnership is not going to be amended, cf. Clause 1.1, it needs to be checked whether it stipulates any additional conditions precedent to the transfer of the Units. [↑](#footnote-ref-53)
54. This clause should be deleted if no unit certificate is going to be issued. [↑](#footnote-ref-54)
55. If any unit certificate has been issued over which a security interest has been granted, the following clause may be added:

|  |  |  |  |
| --- | --- | --- | --- |
| **1.1** | Deliver to the Purchaser a declaration from [the existing lender] to the effect that the bank will send, to the Lender, the unit certificate dated [•] in respect of the Units upon receipt of the amount payable to the bank according to the Statement of Outstanding Debt. | Seller/General Partnership |  |

 [↑](#footnote-ref-55)
56. This clause may be deleted to simplify closing if deemed desirable. [↑](#footnote-ref-56)
57. This clause should be deleted if the General Partnership has no Board of Directors. [↑](#footnote-ref-57)
58. 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-58)