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

**[the Seller]**

**and**

**[the Purchaser]**

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

**[the Limited Partnership]**

**and**

**the shares of**

**[the General Partner]**

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

[The Seller], business registration no. [business registration no. of the Seller], (the **Seller**) is the owner of

* + - 1. 90% of the units (the **Units**) of [the Limited Partnership], business registration no. [business registration no. of the target limited partnership], (the **Limited Partnership**); and
			2. 100% of the shares (the **Shares**) of [the General Partner], business registration no. [business registration no. of the General Partner], (the **General Partner**), which is itself the owner of 10% of the units of the Limited Partnership, which jointly with the General Partner is referred to as the **Legal Entities**.

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

The Limited 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 and for the Shares (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 Legal Entities;[[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. 90% of [25]% of [●]/12 of premium and repayment costs;
			3. [●]%[[5]](#footnote-5) of any loss carry forward of the General Partner (including any loss until and including the date of Closing);[[6]](#footnote-6)

minus:

* + - 1. all liabilities on the balance sheet of the Legal Entities (including the Loans), except for any deferred tax for the General Partner and provision for bad debts;[[7]](#footnote-7) and
			2. the Purchaser’s share of tax on income accruing upon repayment of the Loans, i.e. 90% of [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.[[8]](#footnote-8)
	1. The Estimated Balance Sheet and the Estimated Purchase Price, as well as repayment of the Loans[[9]](#footnote-9)

The Purchase Price payable by the Purchaser upon Closing (the **Estimated Purchase Price**), shall be determined on the basis of balance sheets for the Limited Partnership and the General Partner, respectively, as these are expected to be as per Closing (jointly referred to as 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 Legal Entities 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 Legal Entities, and a calculation of the Estimated Purchase Price, which is estimated at NOK [●].

The Seller shall, no later than five days[[10]](#footnote-10) before Closing, submit statements of outstanding debt from the bank(s) of the Legal Entities, 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.[[11]](#footnote-11)

The Seller and the Legal Entities hereby confirm that any claim between the Legal Entities 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. Updated balance sheets of the Legal Entities as per Closing (jointly 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 Legal Entities 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 Partner 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;[[12]](#footnote-12) [[13]](#footnote-13)
			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[[14]](#footnote-14) 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 Partner shall grant the chartered accountant access to all information the chartered accountant many request with regard to the Legal Entities.

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 Limited Partnership

It follows from applicable tax rules that the aggregate ordinary taxable profit/loss of the Limited Partnership for the entire sales year (the [●] tax year) will, for purposes of taxation, be attributed to the unit holders of the Limited Partnership in the relevant tax year, i.e. 10% to the General Partner and 90% to be allocated between the Seller and the Purchaser of the Units. The portion of the taxable profit/loss attributed to the Seller and the Purchaser (90% of the aggregate profit/loss of the Limited Partnership), 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 90% of the taxable profit/loss of the Limited Partnership until Closing to the Seller, and had allocated 90% of the taxable profit/loss of the Limited 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. 90% of taxable profit/loss reflecting the actual profit/loss of the Limited Partnership until and including the date of Closing;
			2. 90% of [●]/365 of tax depreciation, entries from the gain/loss account, etc., in the sales year; and
			3. 90% of [●]/12 of premium/discount and costs upon repayment of the Loans.[[15]](#footnote-15)

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.[[16]](#footnote-16) [[17]](#footnote-17)

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 and the Shares at 12:00 noon on [Closing date] (**Closing**).[[18]](#footnote-18)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 Legal Entities hereby undertake to perform their respective duties under the closing agreement.[[19]](#footnote-19) The Seller shall ensure that the Legal Entities perform their 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:[[20]](#footnote-20)

* + - 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 and the Shares 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 Legal Entities 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 Limited 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 and the Shares by the Purchaser.
			5. [To be retained only if the sale of Units and Shares 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 [, the Units or the Shares] as the result of the acquisition of the Units or the Shares by the Purchaser.[[21]](#footnote-21)
	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.[[22]](#footnote-22)
			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 and the Shares 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 this 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’ particulare duties
	1. Duties of the Seller

Until Closing, the Seller shall ensure:

* + - 1. That no distributions on the Units or the Shares, 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 Legal Entities’ 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 Legal Entities refrains from concluding any new agreements of material importance to the Legal Entities, and that none of the material agreements of the Legal Entities 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 Legal Entities 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.[[23]](#footnote-23)

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 Shares, the Property and the other assets of the Legal Entities 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.[[24]](#footnote-24)

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.[[25]](#footnote-25)

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 and the Shares, these are transferred free of any encumbrances of any type, the Units or the Shares are not subject to any pre-emptive rights, the Units do not have any unconditional or conditional obligation to issue further shares, no rights relating to the Units or the Shares (hereunder dividend rights, pre-emptive rights, etc.) have been separated from the Units or the Shares, and no unit certificate has previously been issued in relation to the Units.
			2. The Legal Entities are 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 Legal Entities have been adopted in compliance with the provisions of the Accounting Act, the Legal Entities have not provided any guarantee in respect of the liabilities of any third party, and the Legal Entities do not have any liabilities that should have been recognised in the balance sheets of the Legal Entities pursuant to the provisions of the Accounting Act, other than those recognised in the Revised Balance Sheet.
			4. The Legal Entities own 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 Legal Entities 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 Legal Entities 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 Legal Entities are 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 Limited 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 Legal Entities has no employees and no pension liabilities.
			8. The Limited 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 Legal Entities are not party to any legal proceedings or other legal disputes.
			11. The Legal Entities have 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.[[26]](#footnote-26)

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

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

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

The Purchaser shall not be entitled to invoke, as breach of Clause 6 or 7, anything that the Purchaser himself was actually aware of upon signing of this agreement, or anything that is fairly disclosed in the documents made available to the Purchaser by the Seller prior to signing of this agreement.[[27]](#footnote-27) 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, the Shares 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 Legal Entities , and ii) any amount the Legal Entities are 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 Legal Entities. 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 [●],[[28]](#footnote-28) 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 [●],[[29]](#footnote-29) 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[[30]](#footnote-30)

* 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 one seller]

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 Partner.]*

* 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.[[31]](#footnote-31)

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 Legal Entities 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 Legal Entities hereby waive any right to invoke any claim against current or former Directors or employees of the Legal Entities, 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 Legal Entities does not invoke any such claim against such persons (the **Protected Persons**), and shall indemnify such persons in the event that the Legal Entities’ or the Purchaser’s owners (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.[[32]](#footnote-32) 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 Legal Entities*[, as well as the Title-Holding Company]*
2. The most recent annual financial statements, mortgage certificate and Partnership Agreement of the Limited Partnership and Articles of Association of the Legal Entities *[and 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 the parties and [the Estate Agency] shall retain one each.

[Place], [signing date]

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

We acknowledge and accept our obligations pursuant to this agreement:

|  |  |  |
| --- | --- | --- |
| for and on behalf of [the General Partner] |  | for and on behalf of [the Limited Partnership] |
| [the General Partner’s representative] |  | [the General Partner’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 Limited Partnership as per the acquisition date* | *[●]%* |
| *Right of deduction on the part of the Limited 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

[The Seller], business registration no. [business registration no. of the Seller], (the **Seller**) and [the Purchaser], business registration no. [business registration no. of the Purchaser], (the **Purchaser**) have on this day concluded an agreement (the **Agreement**) for the sale and purchase of 90% of the units [the **Units**] of [the Limited Partnership], business registration no. [business registration no. of the target limited partnership], (the **Limited Partnership**), and 100% of the shares [the **Shares**] of [the General Partner], business registration no. [business registration no. of the General Partner], [the **General Partner**].

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.[[33]](#footnote-33)

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 Limited 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. The deed of restrictive covenant shall have effect to the extent permitted under applicable law.[[34]](#footnote-34) | Seller/ General Partner | Immediately after signing of the Agreement |  |
|  | Deliver to the Purchaser and the Closing Agent a copy of the Register of Shareholders as specified in Annex 1, reflecting the therein specified encumbrances in favour of the Closing Agent. | Seller/ General Partner | Immediately after signing of the Agreement |  |
|  | Deliver to the Closing Agent an original power of attorney as specified in Annex 2, in which the Limited 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**).[[35]](#footnote-35) The Closing Agent shall not hand over the power of attorney to the Purchaser until Closing has been completed*.* The Purchaser shall ensure that the security interests in favour of the Lender can only be invoked to the extent permitted under applicable law. | Seller/ General Partner | No later than 10[[36]](#footnote-36) 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 Partner | 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, the Shares]* and other assets belonging to the Legal Entities[[37]](#footnote-37) will be deleted upon receipt of the amounts set out in the Statement of Outstanding Debt. | Seller/Closing Agent | 5 days before Closing[[38]](#footnote-38) |  |
|  | 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.[[39]](#footnote-39) | Seller | 5 days before Closing |  |
|  | Deliver to the Purchaser and the Closing Agent a copy of Board minutes as specified in Annex 2.[[40]](#footnote-40) [[41]](#footnote-41) | Seller/General Partner | No later than 09:00 a.m. at 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 4 to the effect that the Units and the Shares have been acquired by the Purchaser*[, and that a first priority security interest in the Units and the Shares has been granted in favour of the Lender].* | 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.[[42]](#footnote-42) [[43]](#footnote-43) | Seller/General Partner | No later than 09:00 a.m. at Closing |  |
|  | Deliver to the Closing Agent the original Register of Shareholders of the General Partner as specified in Annex 6, in which the Purchaser is registered as the holder of the Shares. | Seller/General Partner | 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 and the original Register of Shareholders (cf. Clauses 3.2 and 3.3 of the Closing Agreement) to the Purchaser;
			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 3.4, the Seller shall at Closing deliver to the Purchaser all authorisations granting a right of disposal over the bank accounts of the Legal Entities, including access to the Internet banking facilities, etc., available to the Legal Entities, and any other documentation necessary to enable the Legal Entities to arrange for the right of disposal over, and access to, the accounts of the Legal Entities 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 Shares, the Property or other assets of the Legal Entities 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 Register of Shareholders to the General Partner and the unit certificate to the Seller, as well as arrange for the deregistration of the deed of restrictive covenant and the alienation clause from the Register of Shareholders of the General Partner.[[44]](#footnote-44)

1. Changes to the Board of Directors, etc., after Closing

The Purchaser shall, immediately after Closing, hold an Extraordinary Shareholders’ Meeting of the General Partner, 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.[[45]](#footnote-45) Draft minutes encompassing changes to the Board of Directors etc., are included in Annex 7

1. Deregistration of deed of restrictive covenant and alienation clause

As soon as Closing has been completed and the new Board of Directors of the General Partner[[46]](#footnote-46) has been registered with the Register of Business Enterprises, the Closing Agent shall submit the deed of restrictive covenant for deregistration and request the General Partner to deregister the alienation clause from the Register of Shareholders,[[47]](#footnote-47) unless otherwise instructed by the Purchaser.

\*\*\*

[Place], [signing date]

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

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

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

Annexes:

1. Register of Shareholders of the General Partner as per the signing of the Agreement
2. Power of attorney from the General Partner to the Purchaser, authorising the granting of a security interest in the Property
3. Minutes of a Board meeting of the General Partner
4. Notice of acquisition of units and shares
5. Unit certificate
6. Register of Shareholders of the General Partner as per Closing
7. Minutes of a Shareholders’ Meeting to change the Board of Directors, etc.
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 1 prior to Closing:

|  | **Action** | **Responsible** | **Time limit** | **Status** |
| --- | --- | --- | --- | --- |
|  | Deliver to the Purchaser a copy of the Register of Shareholders as specified in Annex 1. | Seller/ General Partner | 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.[[48]](#footnote-48) The Purchaser shall ensure that the mortgage deed can only be invoked to the extent permitted under applicable law. | Purchaser | No later than 10[[49]](#footnote-49) business days before Closing |  |
|  | Provided that Clause 2.4 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 Partner  | 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, the Shares]* and other assets belonging to the General Partner[[50]](#footnote-50) will be deleted upon receipt of the amounts set out in the Statement of Outstanding Debt. | Seller | 5 days before Closing[[51]](#footnote-51) |  |
|  | 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.[[52]](#footnote-52) | Seller | 5 days before Closing |  |
|  | Deliver to the Purchaser a copy of Board minutes as specified in Annex 2.[[53]](#footnote-53) [[54]](#footnote-54) | Seller/General Partner | 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 the mortgage deeds in favour of the Lender have been registered, cf. Clause 1.3, the parties shall close the transaction in accordance with the provisions below at Closing:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Action** | **Responsible** | **Status** |
|  | Deliver to the General Partner a notice as specified in Annex 4 to the effect that the Units and the Shares have been acquired by the Purchaser*[, and that a first priority security interest in the Shares has been granted in favour of the Lender].* | Seller and Purchaser |  |
|  | 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.[[55]](#footnote-55) [[56]](#footnote-56) | Seller/ General Partner |  |
|  | Deliver to the Purchaser the original Register of Shareholders of the General Partner as specified in Annex 6, in which the Purchaser is registered as the holder of the Shares. | Seller/ General Partner |  |
|  | Deliver to the Lender a payment instruction, as specified in Annex 6, for repayment of the Loans *[and the Seller Loan]*, as well as payment of the Estimated Purchase Price. | Seller and Purchaser |  |
|  | Deliver to Purchaser a copy of minutes of Extraordinary Shareholders’ Meeting indicated in Annex 7 for change of and release of liability for the Board of Directors. |  |  |
|  | *Deliver to the Purchaser all authorisations granting a right of disposal over the bank accounts of the Legal Entities, including access to the Internet banking facilities, etc., available to the Legal Entities, and any other documentation necessary to enable the Legal Entities to arrange for the right of disposal over, and access to, the accounts of the Legal Entities being changed in accordance with the wishes of the Purchaser at Closing.[[57]](#footnote-57)* | Seller/General Partner |  |

1. Time of delivery of the units and the Shares to the Purchaser

The Units and the Shares 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 become available in the Seller’s account, the unit certificate shall be returned to the Seller and any Register of Shareholders and notice of acquisition confirming that the Purchaser has become the holder of the Units and the Shares shall be deemed not to have been issued.

1. NOtice on Changes to the Board of Directors, etc., after Closing

The Purchaser shall, as soon as possible after Closing, report the change of the Board of Directors in the General Partner to the Register of Business Enterprises.[[58]](#footnote-58)

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Annexes:

1. Register of Shareholders of the General Partner as per the signing of the Agreement
2. Minutes of a Board meeting of the General Partner
3. Notice of acquisition of units and shares
4. Unit certificate
5. Register of Shareholders of the General Partner as per Closing
6. Minutes of a Shareholders’ Meeting to change the Board of Directors, etc.
7. Irrevocable payment instruction
8.

REGISTER OF SHAREHOLDERS
OF
[THE GENERAL PARTNER]

**Business registration no. [business registration no. of the General Partner]**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Shareholders in alphabetical order.Business name and address | Business registration no. | Share Nos. | Number of shares | Encumbrances/comments | Registration date |
| [The Seller] [Registered address] | [business registration no. of the Seller] | 1-[•]1) | [•] | 1) The shares have been sold to [the Purchaser], business registration no. [business registration no. of the Purchaser], pursuant to an agreement for the sale and purchase of shares dated [signing date]. Agreed Closing is [closing date].[[59]](#footnote-59) [[60]](#footnote-60) The holder of the shares shall not dispose of, or grant any security interest in, the shares, or any rights to the shares, without the consent of [the Estate Agency], business registration no. [business registration no. of the estate agency]. This encumbrance shall not prevent the granting of a first priority security interest in the shares in favour of [the Purchaser’s bank].[[61]](#footnote-61)  | 1) [signing date] |

[Place], [signing date]

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

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]

On behalf of [the Limited Partnership], business registration no. [business registration no. of the target limited partnership], [the General Partner], business registration no. [business registration no. of the General Partner], 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].[[62]](#footnote-62)

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

[Place], [date]

|  |
| --- |
| for and on behalf of [the Limited Partnership]for and on behalf of [the General Partner] |
| [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 Partner] 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.[[63]](#footnote-63)

[Place], [date]

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

MINUTES OF A MEETING
OF THE BOARD OF DIRECTORS
OF
[THE GENERAL PARTNER]

(the General Partner)

A Board meeting was held on the premises of the General Partner on [•]. [Alternatively: The Chairperson of the Board deemed it appropriate to hold a Board meeting via telephone on [•]]

The following persons were in attendance: [•]. Consequently, all Directors were present and the meeting was quorate.

No objections were raised in respect of procedural matters, the notice convening the meeting or the agenda.

The Board of Directors considered whether the General Partner should consent to [the Purchaser], business registration no. [business registration no. of the Purchaser], (the **Purchaser**) acquiring 90% of the units of [the Limited Partnership] and all shares of the General Partner.

The Board of Directors consented to the acquisition. Furthermore, the Board of Directors resolved to issue a unit certificate to [the Purchaser] pursuant to Clause [•] of the Partnership Agreement and approved the registration of the Purchaser in the Register of Shareholders of the General Partner as the owner of all shares of the General Partner, if and when the Purchaser has acquired the shares pursuant to the sale and purchase agreement concluded with the seller, to which agreement the General Partner is also a party. The Board of Directors approved, on behalf of the General Partner and [the Limited Partnership], the conclusion of the sale and purchase agreement and the related Closing Agreement and confirmed that [the General Partner’s representative] is authorised to conclude and sign such agreements, well as to update and sign the Register of Shareholders on behalf of the General Partner.

Furthermore, the Board of Directors approved the granting of a security interest in the property of the [Limited Partnership] in favour of the Purchaser’s lender on the terms set out in the Closing agreement. The Board of Directors noted that the security interest will not become effective until the Purchaser’s loan is disbursed upon the delivery of the units and the shares to the Purchaser, and that the Purchaser has in the closing agreement undertaken to ensure that such security interest can only be invoked to the extent permitted under applicable law.

The Directors undertook to vacate their Directorships, and to resign on such date as may be stipulated by the Shareholders’ Meeting of the General Partner.

The Directors declared that they have no outstanding claims against the General Partner or [the Limited Partnership]other than those set out in the estimated balance sheet, which has been prepared pursuant to the sale and purchase agreement concluded with the Purchaser.

\*\*\*

All resolutions were unanimous. There was no further business.

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |

1.

To the Board of Directors of [the General Partner], business registration no. [business registration no. of the General Partner]

NOTICE OF ACQUISITION OF UNITS AND SHARES [AND THE GRANTING OF A SECURITY INTEREST]

We hereby give notice to the effect that [the Purchaser], business registration no. [business registration no. of the Purchaser], has acquired, pursuant to a sale and purchase agreement dated [signing date], 90% of the units of [the Limited Partnership], business registration no. [business registration no. of the target limited partnership], and all shares of [the General Partner], business registration no. [business registration no. of the General Partner].

[Notice is given, at the same time, that a first priority security interest in these units and shares has been granted in favour of [the Purchaser’s bank], business registration no. ***[business registration no. of*** the Purchaser’s bank***].*]**

We are requesting the immediate registration of [the Purchaser] in the Register of Shareholders of [the General Partner] as the holder of all shares [*and the registration of [the Purchaser’s bank] as the holder of a security interest therein*].

[Place], [closing date]

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

\*\*\*

We hereby confirm that [the Purchaser] has acquired 90% of the units of [the Limited Partnership] and all shares of [the General Partner] pursuant to a sale and purchase agreement dated [signing date].[[64]](#footnote-64)

[Place], [Closing date]

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

1.

|  |
| --- |
| UNIT CERTIFICATE |
| With regard to units of: |  |
| **[The Limited Partnership],** business registration no. [business registration no. of the target limited partnership] |  |
| Unit holders: | Units: | Paid-up capital: | Unpaid capital: |
| [the Purchaser], business registration no. [business registration no. of the Purchaser] | 90% | NOK [•] | NOK [•] |
|  |
| This unit certificate is issued pursuant to the Partnership Agreement of [•] and represents all limited liability units of the limited partnership. Only persons who are in possession of the unit certificate and who are, according to such unit certificate or an endorsement from the general partner on such unit certificate, unit holders, have the power to make dispositions in respect of the unit certificate, and thus the limited liability units. If the 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.[[65]](#footnote-65) |

The Board of Directors of [the General Partner] hereby confirms that this unit certificate is issued by [the General Partner] in accordance with Clause [•] of the Partnership Agreement, that no unit certificate has previously been issued with regard to the units of [the Limited Partnership], and that the Board of Directors has approved the transfer of all limited liability units to [the Purchaser] *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****].***

[Place], [closing date]

Board of Directors of the General Partner

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |

\*\*\*

[The Seller], business registration no. [business registration no. of the Seller] hereby confirms that all limited liability units have been assigned to [the Purchaser], business registration no. [business registration no. of the Purchaser].

[Place], [closing date]

|  |
| --- |
| for and on behalf of [the Seller] |
| Name:  |

1.

REGISTER OF SHAREHOLDERS
OF
[THE GENERAL PARTNER]

**Business registration no. [business registration no. of the General Partner]**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Shareholders in alphabetical order.Business name and address  | Business registration no. | Share Nos. | Number of shares | Encumbrances/comments | Registration date |
| [The Purchaser][Registered address] | [business registration no. of the Purchaser] | 1-[•]1) | [•] | 1) A first priority security interest has been granted in the shares in favour of [the Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], whose address is [•].[[66]](#footnote-66) 2) The holder of the shares shall not dispose of, or grant any security interest in, the shares, or any rights to the shares, without the consent of [the Estate Agency], business registration no. [business registration no. of the estate agency].[[67]](#footnote-67)  | 1) [closing date]2) [signing date[ |

[Place], closing date]

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

1.

MINUTES

OF AN

EXTRAORDINARY shareholders’ meeting

of

[the GENERAL PARTNER]

On [closing date], an Extraordinary Shareholders’ Meeting of [the General Partner], business registration no. [business registration no. of the General Partner], was held on the premises of the company.

The shareholder of the company, [the Purchaser], business registration no. [business registration no. of the Purchaser] [, which earlier on that same day had acquired all shares of the company,] was represented by [the Purchaser’s representative][, who presented a written and dated proxy].[[68]](#footnote-68)

The agenda was as follows:

* 1. Appointment of a person to chair the meeting and a person to co-sign the minutes together with the chairperson of the meeting

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

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

The notice convening the meeting and the agenda were approved. The shareholder of the company consented to the Shareholders’ Meeting being held without the passing of any resolution by the Board of Directors, cf. Section 5-6 (3) of the Private Limited Companies Act, and without the attendance of the Chairperson of the Board of Directors, the General Manager or any representative thereof, cf. Section 5-4 (1), third sentence, of the Private Limited Companies Act.[[69]](#footnote-69)

* 1. Release of liability

The Shareholders’ 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 Shareholders’ Meeting passed the following resolution:

*“[●] shall resign as Director(s) of the company with immediate effect. [●] (Chairperson of the Board of Directors), [●] and [●] shall henceforth be the Directors of the company.”*

* 1. Change of auditors

The Shareholders’ Meeting passed the following resolution:

*“[●] shall resign as auditors of the company with immediate effect. [●], business registration no. [●], shall henceforth be the auditors of the company.”*

* 1. Amendment of the Articles of Association

The Shareholders’ Meeting resolved that the Articles of Association of the company shall henceforth be worded as follows:

*Article 1*

*Company name*

The name of the company shall be [the company].

*Article 2*

*Registered office*

The registered office of the company shall be located in the Municipality of [●].

Shareholders’ Meetings may be held in the Municipality of [●] if thus resolved by the Board of Directors.

*Article 3*

*Object*

The object of the company is to be the general partner of [the Limited Partnership], which [invests in real estate or companies that own real estate, as well as any activities relating thereto.]

*Article 4*

*Share capital*

The share capital shall be NOK [●], divided into [●] shares, with a par value of NOK [●] each.

*Article 5*

*Share acquisition consent. Right of first refusal*

The acquisition of shares shall not be conditional upon the consent of the company. The shareholders shall have no right of first refusal pursuant to the Private Limited Companies Act.[[70]](#footnote-70)

*Article 6*

*Authorisation to sign[[71]](#footnote-71)*

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

\* \* \*

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

|  |  |  |
| --- | --- | --- |
|   |  |   |
|  [the Purchaser’s representative][[72]](#footnote-72) |  |  [the co-signor] |

PROXY and CONSENT

[The Purchaser], business registration no. [business registration no. of the Purchaser], hereby appoints [the Purchaser’s representative] as our proxy for the next Extraordinary Shareholders’ Meeting of the company, the agenda of which includes changing its Directors and auditors, as well as amending its Articles of Association, with the proxy being granted the power to attend and cast votes in respect of our shares of [the General Partner] in such meeting.

The undersigned hereby consents to:

* + - 1. the Shareholders’ Meeting being held with no prior Board resolution convening such meeting, cf. Section 5-6 (3) of the Private Limited Companies Act;
			2. the Shareholders’ Meeting being held without the attendance of the Chairperson of the Board of Directors, the General Manager or any representative thereof, cf. Section 5-4 (1), third sentence, of the Private Limited Companies Act; and
			3. the agenda of the Shareholders’ Meeting being deliberated pursuant to Section 5-7 of the Private Limited Companies Act, without adhering to the requirements under Sections 5-8 to 5-16 of the Private Limited Companies Act.

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

For and on behalf of [the Purchaser]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

Please confirm as soon as possible by e-mail to

[•]

Attn. [•]

E-mail: [•]

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

Yours faithfully,

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

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

Yours faithfully,

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

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

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

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

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

Please note that the “find-and-replace” function may be used to replace [the Seller], [business registration no. of the Seller], [the Limited Partnership], [business registration no. of the target limited partnership], [the Purchaser], [business registration no. of the Purchaser], [the General Partner], [business registration no. of the General Partner], [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 Partner’s representative] and [the 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 partner has subsidiaries, the following paragraph should be added: “*The General Partner owns all shares of [●], business registration no. [●], and [●], business registration no. [●], hereinafter jointly referred to, together with the General Partner and the Limited Partnership*, *as the* ***Group****.”* The *Limited 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 Limited Partnership, the following wording may be used: “*The Limited 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 Limited 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 and the General Partner’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. The percentage depends on, *inter alia*, the amount of the loss carry forward. [↑](#footnote-ref-5)
6. 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 Limited Partnership, one may include a new letter (d) with the following wording: “*NOK [●], which represents an agreed, fixed consideration in respect of deferred tax benefit comprising loss in the gain/loss account.”* [↑](#footnote-ref-6)
7. If a gain is recorded in the gain/loss account of the Limited 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 and the General Partner’s share of deferred tax comprising gain in the gain/loss account.”* [↑](#footnote-ref-7)
8. 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-8)
9. The wording in red needs to be deleted or modified if the bank loans of the Limited Partnership are not going to be repaid. [↑](#footnote-ref-9)
10. 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-10)
11. If the Seller has provided a loan to the Limited 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 Limited Partnership, repay the debt outstanding from the Limited Partnership to the Seller (the* ***Seller Loan****), which is in the amount of [●], including accrued interest, as per Closing.”* [↑](#footnote-ref-11)
12. If the Legal Entities do 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 Limited Partnership’s accountant], to the effect that he has conducted a simplified check of the Revised Balance Sheet; and”*. [↑](#footnote-ref-12)
13. 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-13)
14. It is necessary here to consider whether the Purchaser needs a longer time limit. [↑](#footnote-ref-14)
15. Clause 2.1(c) and (f) 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-15)
16. 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-16)
17. 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-17)
18. 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 Legal Entities, 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-18)
19. If the Seller wants the name of the Legal Entities to be changed, e.g. because the name of the Legal Entities form part of the Seller’s name, the following regulation may be included: “*The Purchaser shall change the name of the Legal Entities no later than 1 month after Closing such as to remove the designation “[●]”. Neither the Purchaser, nor the Legal Entities, shall be permitted to use the designation “[●]” in marketing or otherwise after Closing.*” [↑](#footnote-ref-19)
20. The acquisition of the Units and the Shares by the Purchaser is subject to a notification requirement pursuant to Section 18 of the Competition Act if the total Norwegian turnover of the Limited Partnership (including subsidiaries and other companies that are directly or indirectly controlled, in full or in part, by the Limited 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 Limited 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 and the Shares 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 and the Shares 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 and the Shares 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 and the Shares to a third party.”* [↑](#footnote-ref-20)
21. 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-21)
22. 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 20. [↑](#footnote-ref-22)
23. 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-23)
24. 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 Limited 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-24)
25. 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 Limited 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-25)
26. 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-26)
27. 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 Legal Entities and the Property, cf. Clause 4.1(c).*” [↑](#footnote-ref-27)
28. 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-28)
29. 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-29)
30. It needs to be specifically assessed whether this limitation of liability is suitable for the transaction in question. [↑](#footnote-ref-30)
31. 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-31)
32. 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-32)
33. 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-33)
34. In practice, this restriction means that the effective value of the deed of restrictive covenant will be NOK 0. The reason why the effective value of the deed of restrictive covenant is NOK 0 is that the deed of restrictive covenant will, at least prior to Closing, be in violation of Section 3-17 of the Partnerships Act, and it would presumably be considered wrongful distribution of the assets of the Limited Partnership for the Property to be used to cover the Purchaser’s claims against the Seller. [↑](#footnote-ref-34)
35. Clause 2.3 to Clause 2.5, 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-35)
36. 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-36)
37. It here needs to be clarified whether the Limited Partnership has granted security interests or furnished guarantees in favour of any others than the creditors under the Loans. If the Limited 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 Limited Partnership is released, with effect from Closing, from any liability assumed by the Limited Partnership for the benefit of [specify name of the holder of the security interest] under the guarantee agreement dated [•].”* [↑](#footnote-ref-37)
38. 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-38)
39. 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-39)
40. If acquisition of the Shares or the Units is not conditional upon consent, this Clause may be replaced by the following Clause: “*Deliver to the Purchaser a declaration from each of the Directors of the General Partner [Legal Entities] to the effect that these have no outstanding claims against the General Partner [Legal Entities] other than those reflected in the Estimated Balance Sheet.”* As far as limited partnerships are concerned, the acquisition of units is conditional upon the consent of the general partner or the Board of Directors of the limited partnership, unless otherwise stipulated in the Partnership Agreement; cf. Section 3-21 of the Partnerships Act. It needs to be examined whether the Partnership Agreement stipulates additional conditions precedent to a change of ownership. As far as private limited companies incorporated after 1 January 1999 are concerned, the acquisition of shares of a company is conditional upon the consent of such company unless it is stipulated in its Articles of Association that such consent is not required (cf. Section 4-15 (2) of the Private Limited Companies Act). As far as private limited companies incorporated before 1 January 1999 are concerned, the acquisition of shares of a company is conditional upon the consent of such company only to the extent that its Articles of Association include provisions stipulating that acquisition or other change of ownership is conditional upon the consent of the company (cf. Section 21-2 No. 25 of the Private Limited Companies Act). [↑](#footnote-ref-40)
41. 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 Legal Entities are under no obligation to conclude any agreement for the refinancing of the liabilities of the Limited 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 change the Board of Directors at Closing and ensure that the Limited Partnership at that time accedes to the necessary loan agreements, etc. If the Limited Partnership is going to contribute to the Purchaser’s funding prior to Closing, it should satisfy itself that the Limited Partnership is in compliance with the requirements under the Partnerships Act and refrain from granting the Purchaser full discretionary authority to conclude agreements on behalf of the Limited Partnership. The following clauses may be added to the Closing Agreement if such a provision is desirable:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1.1 | Deliver to the Seller those agreements and documents that the Lender is requesting the Limited Partnership to conclude for purposes of funding the Estimated Purchase Price and/or the liabilities of the Limited 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 |  |
| 1.2 | 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 Limited Partnership and deliver these to the Purchaser. | Seller/General Partner | 5 days before Closing |  |

 [↑](#footnote-ref-41)
42. This clause should be deleted if no unit certificate is going to be issued. Please note that no security interest can be granted in the units of the Limited Partnership unless a unit certificate has been issued. If a unit certificate is going to be issued and such issuance is not expressly authorised by the Partnership Agreement of the Limited Partnership, the Partnership Agreement will have to be amended prior to Closing. In such case, the following additional obligation of the Seller may be included in Clause 2: “*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*.” [↑](#footnote-ref-42)
43. If any unit certificate has been issued over which a security interest has been granted, the following clause may be added:

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| 1.3 | 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 Partner | No later than 09:00 a.m. at Closing |  |

 [↑](#footnote-ref-43)
44. If a security interest in the shares has been granted in favour of the estate agent; cf. Note 60, “*the alienation clause from the Register of Shareholders*” should be replaced by “*the alienation clause and the security interest in favour of the Closing Agent from the Register of Shareholders”*. [↑](#footnote-ref-44)
45. If the Limited Partnership has a Board of Directors of its own, the following wording may be used: “*The Purchaser shall, as soon as possible after Closing, hold an Extraordinary Shareholders’ Meeting of the General Partner and an Extraordinary Partners’ Meeting of the Limited Partnership, in which the Purchaser appoints new Boards of Directors, and report such changes to the Boards of Directors to the Register of Business Enterprises*.” [↑](#footnote-ref-45)
46. If the Limited Partnership has a Board of Directors of its own, the *General Partner* should be replaced by the *Limited Partnership* here. [↑](#footnote-ref-46)
47. If a security interest in the shares has been granted in favour of the estate agent; cf. Note 60, “*the alienation clause from the Register of Shareholders of the General Partner”* should be replaced by “*the alienation clause and the security interest in favour of the Closing Agent from the Register of Shareholders of the General Partner”*. [↑](#footnote-ref-47)
48. Clauses 1.2 and 1.3 may be deleted if no security interest is going to be established in favour of the Purchaser’s bank prior to Closing. [↑](#footnote-ref-48)
49. 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-49)
50. It here needs to be clarified whether the Limited Partnership has granted security interests or furnished guarantees in favour of any others than the creditors under the Loans. If the Limited 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 Limited Partnership is released, with effect from Closing, from any liability assumed by the Limited Partnership for the benefit of [specify name of the holder of the security interest] under the guarantee dated [•].”* [↑](#footnote-ref-50)
51. 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-51)
52. 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-52)
53. If acquisition of the Shares or the Units is not conditional upon consent, the present Clause may be replaced by the following Clause: “*Deliver to the Purchaser a declaration from each of the Directors of the General Partner [Legal Entities] to the effect that these have no outstanding claims against the General Partner [Legal Entities] other than those reflected in the Estimated Balance Sheet.”* As far as limited partnerships are concerned, the acquisition of units is conditional upon the consent of the general partner or the Board of Directors of the limited partnership, unless otherwise stipulated in the Partnership Agreement; cf. Section 3-21 of the Partnerships Act. It needs to be examined whether the Partnership Agreement stipulates additional conditions precedent to a change of ownership. As far as private limited companies incorporated after 1 January 1999 are concerned, the acquisition of shares of a company is conditional upon the consent of such company unless it is stipulated in its Articles of Association that such consent is not required (cf. Section 4-15 (2) of the Private Limited Companies Act). As far as private limited companies incorporated before 1 January 1999 are concerned, the acquisition of shares of a company is conditional upon the consent of such company only to the extent that its Articles of Association include provisions stipulating that acquisition or other change of ownership is conditional upon the consent of the company (cf. Section 21-2 No. 25 of the Private Limited Companies Act). [↑](#footnote-ref-53)
54. Other than registering a security interest in favour of the Purchaser’s lender and obtaining statements of outstanding debt (cf. Clauses 2.5 and 2.7), the Legal Entities are under no obligation to conclude any agreement for the refinancing of the liabilities of the Limited 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 change the Board of Directors at Closing and ensure that the Limited Partnership at that time accedes to the necessary loan agreements, etc. If the Limited Partnership is going to contribute to the Purchaser’s funding prior to Closing, it should satisfy itself that the Limited Partnership is in compliance with the requirements under the Partnerships Act, and refrain from granting the Purchaser full discretionary authority to conclude agreements on behalf of the Limited Partnership. The following clauses may be added to the Closing Agreement if such a provision is desirable:

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| 1.4 | Deliver to the Seller those agreements and documents that the Lender is requesting the Limited Partnership to conclude for purposes of funding the Estimated Purchase Price and/or the liabilities of the Limited 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 |  |
| 1.5 | 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 Limited Partnership and deliver these to the Purchaser. | Seller/General Partner | 5 days before Closing |  |

 [↑](#footnote-ref-54)
55. This clause should be deleted if no unit certificate is going to be issued. Please note that no security interest can be granted in the units of the Limited Partnership unless a unit certificate has been issued. If a unit certificate is going to be issued and such issuance is not expressly authorised by the Partnership Agreement of the Limited Partnership, the Partnership Agreement will have to be amended prior to Closing. In such case, the following additional obligation of the Seller may be included in Clause 1: “*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*.” [↑](#footnote-ref-55)
56. If any unit certificate has been issued over which a security interest has been granted, the following clause may be added:

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| 2.1 | 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 Partner |  |

 [↑](#footnote-ref-56)
57. This clause may be deleted to simplify Closing if deemed desirable. [↑](#footnote-ref-57)
58. If the Limited Partnership has a Board of Directors of its own, the following wording may be used: “*The Purchaser shall, as soon as possible after Closing, hold an Extraordinary Shareholders’ Meeting of the General Partner and an Extraordinary Partners’ Meeting of the Limited Partnership, in which the Purchaser appoints new Boards of Directors, and report such changes to the Boards of Directors to the Register of Business Enterprises*.” [↑](#footnote-ref-58)
59. If closing is taking place without a closing agent, all wording subsequent to this note shall be replaced by the following wording: “*The holder of the shares shall not dispose of, or grant any security interest in, the shares, or any rights to the shares. This encumbrance shall cease to apply upon the shares being delivered to [the Purchaser], or upon it becoming evident that the shares shall not be delivered to [the Purchaser] pursuant to the agreement for the sale and purchase of shares.”* [↑](#footnote-ref-59)
60. If required by the security provisions under the liability insurance policy of the estate agent, the following wording may be inserted here: “*Besides, a security interest in the shares has been granted in favour of [the Estate Agency], business registration no. [business registration no. of the estate agency], to secure any claim arising on the part of [the Purchaser] or [the Purchaser’s Lender] in connection with the said agreement for the sale and purchase of shares (including any loan to [the Purchaser] from [the Purchaser’s Lender]).”* [↑](#footnote-ref-60)
61. Any existing encumbrances over the shares would need to be specified with antecedent priority here. [↑](#footnote-ref-61)
62. It is here assumed that the General Partner is authorised to sign on behalf of the Limited Partnership. [↑](#footnote-ref-62)
63. 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-63)
64. The background to this wording is that the Purchaser is required to demonstrate its acquisition, cf. Section 4-2 (1) of the Private Limited Companies Act, which is here done by way of the Seller confirming that the change of ownership has taken place. [↑](#footnote-ref-64)
65. If the transferability of the units is restricted, or if the units are subject to redemption without the consent of the limited partners in other circumstances than those specified by statute, or if the units are subject to special obligations other than the obligation to provide capital, such facts shall be clearly specified on the unit certificate, cf. Section 3-23 (4) of the Partnerships Act. [↑](#footnote-ref-65)
66. If a security interest in the shares has been granted in favour ofthe estate agent; cf. Note 60, the following wording may be inserted here: “*Besides, a second priority security interest in the shares has been granted in favour of [the Estate Agency], business registration no. [business registration no. of the estate agency], to secure any claim arising on the part of [the Purchaser] or [the Purchaser’s Lender] in connection with an agreement for the sale and purchase of shares dated [signing date] (including any loan to [the Purchaser] from [the Purchaser’s Lender]).”* [↑](#footnote-ref-66)
67. This last sentence should be deleted if closing takes place without a closing agent. [↑](#footnote-ref-67)
68. It is here proposed that the Shareholders’ Meeting be held as a meeting pursuant to the general provisions of the Private Limited Companies Act (see, however, Item 2 of the minutes). The simplified provisions in Section 5-7 of the Private Limited Companies Act stipulate that the Shareholders’ Meeting may be held “*in a suitable manner*” without a physical meeting, e.g. by the circulation of draft minutes or as a telephonic meeting. Section 5-7 stipulates that the minutes shall be signed by the Chairperson of the Board of Director before the changes to the Board of Directors, but this is unlikely to bar the Board of Directors from appointing another person to chair the Shareholders’ Meeting and sign the minutes, provided that the Chairperson of the Board of Directors is lawfully absent and there is no Deputy Chairperson. If the Shareholders’ Meeting is to be held pursuant to the provisions of Section 5-7, Items 1 and 2 below should be deleted, and the following wording inserted: “*The matters below were deliberated pursuant to Section 5-7 of the Private Limited Companies Act, with no prior Board resolution convening the meeting, cf. Section 5-6 (3) of the Private Limited Companies Act. The Directors, the General Manager and the auditors had been invited to present their observations on these matters, but none of them had any comments or objections*.” [↑](#footnote-ref-68)
69. There is no need to derogate from Section 5-4 if the procedural provisions of Section 5-7 are adhered to, since Section
5-4 only applies to Shareholders’ Meetings held in the form of a physical meeting. [↑](#footnote-ref-69)
70. It needs to be specifically addressed whether the acquisition of shares shall be conditional upon consent and/or subject to a right of first refusal. If the company has only one shareholder, there is not normally any reason to make applicable the provisions of the Private Limited Companies Act with regard to consent from the Board of Directors or a right of first refusal. [↑](#footnote-ref-70)
71. It is not necessary for the Articles of Association to include any provision on the authorisation to sign. In the absence of such a provision in the Articles of Association, the Board of Directors shall decide who is authorised to sign on behalf of the company, cf. Section 6-31 of the Private Limited Companies Act. [↑](#footnote-ref-71)
72. If the procedural provisions of Section 5-7 are adhered to, the minutes shall be signed by the Chairperson of the Board of Directors (before any changes to the Board of Directors). [↑](#footnote-ref-72)