**STANDARD ESTATE AGENCY TERMS WITH WARRANTY INSURANCE, OCTOBER 2015, FOR THE SALE AND PURCHASE OF A PRIVATE LIMITED LIABILITY COMPANY,** **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 shares of**

**[the Company]**

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 100% of the shares (the **Shares**) of [the Company], business registration no. [business registration no. of the target company], (the **Company**).

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

The Company 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 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 Company;[[4]](#footnote-4)
			2. [●]%[[5]](#footnote-5) of any loss carry forward (until and including the date of Closing);[[6]](#footnote-6)

minus:

* + - 1. all liabilities on the balance sheet of the Company (including the Loans as defined in Clause 2.2) with the exception of deferred tax and provision for bad debts;[[7]](#footnote-7) and
			2. 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 a balance sheet for the Company as it is expected to be as per Closing (the **Estimated Balance Sheet**). The Estimated Balance Sheet shall be prepared in accordance with generally accepted accounting principles, consistently applied, and otherwise as follows:

* + - 1. Expected profit/loss after tax until and including the date of Closing shall be included.
			2. The liabilities of the Company 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.
			3. Payable tax and deferred tax benefits shall reflect i) the income/costs that will arise upon repayment of the Loans, and ii) the Company’s tax depreciation and entries from the gain/loss account, etc., in the sales year, allocated on the basis of the period of ownership during the sales year, calculated as the number of days of ownership, with the date of Closing being allocated to the Seller.
			4. Deferred tax benefits and deferred tax shall not be recorded as one net amount, but as two gross items under assets and liabilities.

Appendix 3 contains an Estimated Balance Sheet prepared by the accountant of the Company, 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 to the Purchaser statements of outstanding debt from the bank(s) of the Company, 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, including payable tax and deferred tax benefit. 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 Company hereby confirm that any claim between the Company and the Seller or other companies in the same group as the Seller, is settled with final effect *[after [•] has received NOK [•] from [•] upon Closing]*, and that any claim omitted in the Revised Balance Sheet is waived in its entirety with effect from Closing.

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

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

* + - 1. An updated balance sheet as per Closing (the **Revised Balance Sheet**), prepared pursuant to the same principles as the Estimated Balance Sheet, cf. Clause 2.2 (provided, however, that any arrangements made by the Company 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 Company 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)and
			3. A calculation of the Purchase Price (the **Revised Purchase Price**) on the basis of the Revised Balance Sheet.

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 Company shall grant the chartered accountant access to all information the chartered accountant many request with regard to the Company.

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. 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 Shares at 12:00 noon on [Closing date] (**Closing**).[[15]](#footnote-15) 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 Company hereby undertake to perform their respective duties under the closing agreement.[[16]](#footnote-16) The Seller shall ensure that the Company performs its duties under the closing agreement.

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

The obligation of the Purchaser to close shall be conditional upon the following conditions having been satisfied or waived by the Purchaser:[[17]](#footnote-17)

* + - 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 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 an agreement with the Company 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 Shares by the Purchaser.
			4. [To be retained only if the sale of 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 [or the Shares] as the result of the acquisition of the Shares by the Purchaser.[[18]](#footnote-18)
	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.[[19]](#footnote-19)
			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 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 Clause 4.1(b)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’ particular duties

Until Closing, the Seller shall ensure:

* + - 1. That no distributions on the Shares, or other wholly or partly gratuitous transfers, to shareholders or anyone else, are resolved, other than those reflected in the Estimated Balance Sheet.
			2. That the Company’s business is operated in the ordinary course during the period from signing of this agreement until Closing, including that the Property is maintained in a proper manner and to an extent no less than before the signing of this agreement.
			3. That the Company refrains from concluding any new agreements of material importance to the Company, and that none of the material agreements of the Company 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 Company in a professional manner and in compliance with public law requirements.

Until Closing, the Purchaser shall ensure that no changes are made to the Warranty Insurance defined in Clause 10, or that this ceases to apply.

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

The Shares, the Property and the other assets of the Company shall be acquired “as is”, cf. Section 19 (1) of the Sale of Goods Act. 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) letters a, b and 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.

If the Seller breaches this agreement, the Purchaser may only claim specific performance and/or compensation. The Purchaser waives its right to other remedies, including termination or rectification.

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 (v), inclusive, will only be given upon signing of this agreement:

* + - 1. The Seller owns the Shares, the Shares are transferred free of any encumbrances of any type, the Shares are not subject to any pre-emptive rights, the Company does not have any unconditional or conditional obligation to issue further shares, and no rights relating to the Shares (hereunder dividend rights, pre-emptive rights, etc.) have been separated from the Shares.
			2. The Company is lawfully incorporated and registered in the Register of Business Enterprises, and that all details (including the most recently adopted Articles of Association) required to be registered in the Register of Business Enterprises have been registered.
			3. The Company’s annual financial statements for [year] have been adopted in compliance with the provisions of the Accounting Act, the Company has not provided any guarantee in respect of the liabilities of any third party, and the Company does not have any liabilities that should have been recognised in the balance sheet of the Company pursuant to the provisions of the Accounting Act, other than those recognised in the Revised Balance Sheet.
			4. The Company owns the assets included in the Estimated and Revised Balance Sheets, and these assets are free of any encumbrances (other than such encumbrances as will be extinguished upon repayment of the Loans at Closing, as well as the encumbrances specified in Appendix 4).
			5. The Company has 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 Company 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 Company is in possession of the documentation required under applicable Value Added Tax provisions for the acquisition/production or use of capital goods.
			7. The activities of the Company consist exclusively of the ownership and operation of real estate, [*other than the ownership of shares of subsidiaries engaged in such activities*], and the Company has no employees and no pension liabilities.[[20]](#footnote-20)
			8. The Company 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 Company is not party to any legal proceedings or other legal disputes.
			11. The Company has not been in breach of the leases, with appurtenant addenda, specified in Appendix 5, and the Seller is not aware of any lessee having been in breach of any lease.
			12. The Property is leased pursuant to the leases, with appurtenant addenda, as specified in Appendix 5, and such leases are valid and include all terms that have been agreed with the lessees.
			13. The provided guarantees or security for the leases included in Appendix 5 are valid and include all terms that have been agreed with the guarantor.
			14. Certificates of completion exist for all projects which have been performed on the Property, which, pursuant to law, require a certificate of completion.
			15. The Company operates, and during the last three years has operated, its business in accordance with applicable laws and regulations, written orders, permits, legal judgements and administration judgements.
			16. As far as the Seller is aware, the Property complies with all public and private regulations.
			17. As far as the Seller is aware, there is no pollution on the Property, or use of unpermitted hazardous substances/matter on the Property.
			18. As far as the Seller is aware, there are no archaeological and historical monuments or sites on the Property.
			19. 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.
			20. There exists no written order, etc., from government authorities in relation to the Property that has not been paid or otherwise complied with.
			21. The Seller has informed the Purchaser of all material circumstances regarding the Shares and the Company’s assets and liabilities that the Seller is aware of, and which the Purchaser could reasonably expect to obtain, and the omission which could be presumed to have affected the terms of this agreement.
			22. As far as the Seller is aware, the information given by the Seller to the Purchaser regarding the Shares and the Company’s assets and liabilities, which can be presumed to have affected the terms of this agreement, is correct. [[21]](#footnote-21)

References to circumstances of which the Seller is aware means, in this Clause 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 7 anything that [name the relevant persons in the buyer’s deal team] was aware of at signing of this agreement,[[22]](#footnote-22) or that is fairly disclosed in the documents in the data room saved on the DVD/memory stick in Appendix 9.[[23]](#footnote-23)

* 1. Notification of breach

If the Seller breaches this agreement, the Purchaser shall no later than 60 days after the Purchaser discovered such breach, notify the Seller in writing that the Seller will make a claim, including a description of the breach and the estimated loss (**Notification**). If the Purchaser fails to send a Notification within the time limit, the Purchaser shall only lose the claim against the Seller if and to the extent the failure has increased the Purchaser’s loss.

Any right of the Purchaser to invoke a breach of this agreement shall lapse if the Purchaser fails to send a Notification within two years after Closing. However, this time limit is extended to seven years from Closing for a breach of Clauses 7(e) and (f) (*concerning taxes and duties*) or Clauses 7(a) or (h) (*concerning ownership of the Shares and the Property etc.*).

* 1. The scope of any damages

The Purchaser’s right to compensation shall be equivalent to its loss caused by a breach of this agreement. However, this only applies to losses which could reasonably have been foreseen as a possible consequence of such breach. Compensation for breach of the warranties in Clause 7, including Clause (n) (*regarding certificate of completion*), does not include costs for repair of circumstances that the Purchaser is aware of pursuant to Clause 8.1, or that are fairly disclosed in from the documents in the data room.

The loss of the Purchaser shall be calculated on a net basis, after deduction of the benefit of any tax and VAT savings the Purchaser or the Company may benefit from.

* 1. Financial limitation of liability

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

* + - 1. The Purchaser cannot invoke any individual breach entailing a loss of less than NOK [●],[[24]](#footnote-24) 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 [●],[[25]](#footnote-25) but the Purchaser shall, if the aggregate loss exceeds this threshold, be entitled to damages 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 Clauses 7(a) or 7(h) (*concerning ownership of the Shares and the Property etc*.).

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

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

The aggregate liability of the Seller in respect of any breach of this agreement (including Clause 5, 7 and 9) shall, under any circumstance, be limited to the higher of the Revised Purchase Price and [20]% of the Property Value.[[26]](#footnote-26)

* 1. Liability in case of wilful misconduct

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 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 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. indemnification by the seller

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

* + - 1. Damage to the Property in the period between signing of this agreement and 12:00 pm at the day of Closing. Such indemnification shall not apply if the loss is below the threshold amount in Clause 8.4(a), or if i) the costs associated with reconstruction/repair and any loss of rent as the result of such damage are fully covered by an insurance policy or covered by the Seller, or if the Seller furnishes adequate collateral in respect of such costs and any loss of rent, and ii) all lessees at the Property confirm that they will continue or resume their leases on the same terms following reconstruction/repair. The Purchaser shall be deemed to have waived the right to invoke this clause if the Purchaser fails to submit to the Seller, within 45 days of Closing, a written notice to the effect that it is claiming indemnification of the loss.
			2. [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.]
			3. *[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 indemnification(s) in this Clause 9.

1. Warranty insurance

The Purchaser shall take out the warranty insurance included in Appendix 10 (the **Warranty Insurance**) which covers the Purchaser’s loss caused by the Seller’s breach of the warranties in Clause 7 (the **Warranties**) which shall not exceed NOK [●] (the **Insurance Cover**). The Warranty Insurance premium shall be covered by the Seller *[and the Purchaser with 50% each]* and the [Seller’s part of the premium] will be deducted from the Estimated Purchase Price.

With the exception set out in the next paragraph, the Purchaser waives its right to make any claim towards the Seller as the result of a breach of the Warranties, unless the loss is caused by the Seller’s fraudulent or intentional conduct. This limitation of liability will prevail in case of conflict with any other Clause in this agreement.

The Purchaser can nevertheless make claims against the Seller:[[27]](#footnote-27)

* + - 1. If the Purchaser is entitled to compensation pursuant to Clause 9 (*the Seller’s indemnities*), or
			2. If after signing of this agreement circumstances occur which constitute a breach of the Warranties, and such becomes known to the Purchaser before Closing,[[28]](#footnote-28) or
			3. If the Purchaser’s loss as a result of breach of the warranties in Clauses 7(a) or 7(h) (*concerning ownership of the Shares and the Property etc*.) exceeds the Insurance Cover, the Purchaser can require that the Seller compensates the excess loss, which shall not exceed the difference between the Seller’s aggregate remaining liability pursuant to Clause 8.5 and the Insurance Cover.[[29]](#footnote-29)
1. The liability of the respective sellers [To be deleted if only one seller]

The shareholders 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 shareholders 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 shareholder shall not exceed a portion of the claim equal to such shareholder’s ownership stake in the Company.]*

1. SPECIFICATION OF ACQUISITIONS SUBJECT TO A DUTY/RIGHT OF ADJUSTMENT

The Seller has prepared a specification of those acquisitions of the Company 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 Company hereby waive any right to invoke any claim against current or former Directors or employees of the Company, 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 Company does not invoke any such claim against such persons (the **Protected Persons**), and shall indemnify such persons in the event that the Company’s or the Purchaser’s shareholders (direct and indirect) or creditors invoke any claim against them as the result of their actions or omissions in connection with entry into or closing of this agreement with appendices.

The waiver of liability and the indemnification provision in the preceding paragraph shall not apply to the extent that the claim against the Protected Persons arises out of their wilful misconduct or a specific agreement with the Protected Persons. Further, this Clause 14 does not limit the Purchaser’s right to make claims under the Warranty Insurance in Clause 10.

1. COMMUNICATIONS

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

For the Seller: [●]

For the Purchaser: [●]

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

[the Estate Agency]

[specify business name and address of the estate agency]

1. GOVERNING LAW AND DISPUTE RESOLUTION

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

Any dispute that may arise in relation to this agreement shall be resolved by legal proceedings before the ordinary courts of law, with [●] as the exclusive venue.[[30]](#footnote-30) The group of courts having jurisdiction under the ordinary provisions on provisional measures is not limited by this clause.

1. APPENDICES

The following are appended:

1. Transcripts from the Register of Business Enterprises in respect of the Seller, the Purchaser and the Company*[, as well as the Title-Holding Company]*
2. Articles of Association of the Company *[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. Warranty Insurance
11. 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 Company] |
| [the Company’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 Company as per the acquisition date* | *[●]%* |
| *Right of deduction on the part of the Company as per Closing* | *[●]%* |
| *Annual adjustment amount* | *NOK [●]* |

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

APPENDIX 8
Closing Agreement

1. 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/ Company | 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.[[31]](#footnote-31) The Purchaser shall ensure that the mortgage deed can only be invoked to the extent permitted under applicable law. | Purchaser | No later than 10[[32]](#footnote-32) business days before Closing |  |
|  | Provided that Clause 1.2 has been complied with, arrange for any consents that are necessary to register the mortgage deeds of the Lender to be obtained, and submit these for registration. | Seller/ Company  | 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 Shares]* and other assets belonging to the Company[[33]](#footnote-33) will be deleted upon receipt of the amounts set out in the Statement of Outstanding Debt. | Seller | 5 days before Closing[[34]](#footnote-34) |  |
|  | 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.[[35]](#footnote-35) | Seller | 5 days before Closing |  |
|  | Deliver to the Purchaser a copy of Board minutes as specified in Annex 2.[[36]](#footnote-36) [[37]](#footnote-37) | Seller/Company | No later than Closing |  |
|  | Deliver a declaration as specified in Annex 3 in which the Seller informs whether it has become aware of circumstances which have occurred after signing of the agreement constituting a breach of the Seller’s warranties. | Seller | At Closing |  |

1. Actions at Closing

Provided that the conditions precedent in Clause 4 of the agreement have been met or waived, the parties have performed their obligations under Clause 1 of this appendix and the mortgage deeds in favour of the Lender have been registered, cf. Clause 1.2 the parties shall close the transaction in accordance with the provisions below at Closing:

|  | **Action** | **Responsible** | **Status** |
| --- | --- | --- | --- |
|  | Deliver to the Company a notice as specified in Annex 4 to the effect that 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 Purchaser the original Register of Shareholders of the Company as specified in Annex 5, in which the Purchaser is registered as the holder of the Shares. | Seller/Company |  |
|  | 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 and the premium for the Warranty Insurance. | Seller and Purchaser |  |
|  | Deliver to the Seller a copy of Minutes of a Shareholders’ Meeting as specified in Annex 7 to change the Directors and release them from liability. | Purchaser |  |
|  | *Deliver to the Purchaser all authorisations granting a right of disposal over the bank accounts of the Company, including access to the Internet banking facilities, etc., available to the Company, and any other documentation necessary to enable the Company to arrange for the right of disposal over, and access to, the accounts of the Company changed in accordance with the wishes of the Purchaser at Closing.[[38]](#footnote-38)* | Seller/Company |  |

1. Time of DELIVERY of the Shares to the Purchaser

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, any Register of Shareholders and notice of share acquisition confirming that the Purchaser has become the holder of 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 Company’s changes to the Board of Directors to the Register of Business Enterprises.

\*\*\*

Annexes:

1. Register of Shareholders of the Company as per the signing of the agreement
2. Minutes of a Board meeting of the Company
3. Declaration from the Seller regarding new circumstances after signing that constitute a breach of the agreement
4. Notice of acquisition of the shares of the Company
5. Register of Shareholders of the Company as per Closing
6. Irrevocable payment instruction
7. Minutes of a Shareholders’ Meeting to change the Board of Directors, etc.
8.

REGISTER OF SHAREHOLDERS
OF
[THE COMPANY]

**Business registration no. [business registration no. of the target company]**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 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]. [The Seller] 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.[[39]](#footnote-39)  | 1) [signing date] |

 [Place], [signing date]

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

1.

MINUTES OF A MEETING
OF THE BOARD OF DIRECTORS
OF
[THE COMPANY]

(the Company)

A Board meeting was held on the premises of the Company 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 Company should consent to [the Purchaser], business registration no. [business registration no. of the Purchaser], (the **Purchaser**) acquiring all shares of the Company.

The Board of Directors consented to the share acquisition, and to the Purchaser being registered in the Register of Shareholders of the Company as the owner of all shares of the Company, if and when the Purchaser has acquired the shares pursuant to the sale and purchase agreement concluded with the seller, to which agreement the Company is also a party. The Board of Directors approved the conclusion of the sale and purchase agreement and the related closing agreement and confirmed that [the Company’s representative] is authorised to conclude and sign such agreements on behalf of the Company, as well as to update and sign the Register of Shareholders on behalf of the Company.

Furthermore, the Board of Directors approved the granting of a security interest in the property of the Company 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 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 Company.

The Directors declared that they have no outstanding claims against the Companyother 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.

**DECLARATION**

Reference is made to the sale and purchase agreement dated [date of signing] (the **Agreement**) between [the Seller] [enterprise registration no. of the Seller], and Purchaser [enterprise registration no. of the Purchaser].

We hereby confirm that we are unaware of any new circumstances having arisen after the signing of the Agreement, and which constitute or may constitute a breach of the Seller’s warranties pursuant to Clause 7 of the Agreement.

*[Alternatively: We hereby confirm that we are aware of the following circumstances having arisen after the signing og the Agreement, and which constitute a breach of the Seller’s warranties pursuant to Clause 7 of the Agreement:*

*[further description]*

*We are unaware of other circumstances having arisen after the signing of the Agreement, and which constitute or may constitute a breach of the Seller’s warranties pursuant to Clause 7 of the Agreement.]*

Oslo, [date of handover]

For [the Seller]

1.

To the Board of Directors of [the Company], business registration no. [business registration no. of the target company]

NOTICE OF SHARE ACQUISITION [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], all shares of [the Company].

[*Notice is given, at the same time, that a first priority security interest in these 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 Company] 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 all shares of [the Company] pursuant to a sale and purchase agreement dated [signing date].[[40]](#footnote-40)

[Place], [Closing date]

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

1.

REGISTER OF SHAREHOLDERS
OF
[THE COMPANY]

**Business registration no. [business registration no. of the target company]**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 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 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 [•].  | 1) [Closing date] |

[Place], [Closing date]

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

1.

Dear Sirs,

IRREVOCABLE PAYMENT INSTRUCTION IN CONNECTION WITH THE ACQUISITION OF
[THE COMPANY]

[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 | [•] |
|  | [●] | [●] | Premium for warranty insurance |  |
|  | [Seller] | [•] | Consideration for the sale of 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.

MINUTES

OF AN

EXTRAORDINARY shareholders’ meeting

of

[the company]

On [Closing date], an Extraordinary Shareholders’ Meeting of [the Company], business registration no. [business registration no. of the target company], was held on the premises of the company.

The sole 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].[[41]](#footnote-41)

The agenda was as follows:

* 1. Appointment of a person to chair the meeting and a person to co-sign the minutes alongside 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 alongside 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 sole 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.[[42]](#footnote-42)

* 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 adopted 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 adopted 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 company shall engage in [investment 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.[[43]](#footnote-43)

*Article 6*

*Authorisation to sign[[44]](#footnote-44)*

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][[45]](#footnote-45) [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 company] 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]

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

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 Company], [business registration no. of the target company], [the Purchaser], [business registration no. of the Purchaser], [signing date], [the Estate Agency], [business registration no. of the estate agency], [the Purchaser’s bank], [business registration no. of the Purchaser’s bank], [Closing date], [the Seller’s representative], [the Purchaser’s representative], [the Company’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 Company has subsidiaries, the following paragraph should be added: “*The Company owns all shares of [●], business registration no. [●], and [●], business registration no. [●], hereinafter jointly referred to, together with the Company*, *as the* ***Group****.”* The *Company* 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 Company, the following wording may be used: “*The Company 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. [↑](#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 Company, 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.”* 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-6)
7. If a gain is recorded in the gain/loss account of the Company, one may include a new letter (e) with the following wording: “*NOK [●], which represents an agreed, fixed deduction in respect 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 Company 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 Company 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 Company, repay the debt outstanding from the Company to the Seller (the* ***Seller Loan****), which is in the amount of [●], including accrued interest, as per Closing.”* [↑](#footnote-ref-11)
12. If the Company does not have any auditor, or if it for other reasons is not desired that an auditor conducts such check, this clause may be deleted or reworded as follows: “*A certification from [name of the Company’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. NB: If closing of the sale of shares is conditional upon circumstances outside the control of the parties and it is uncertain when such conditions will be satisfied, the following wording should be used instead: “*Closing shall take place [●] banking days after all conditions in Clauses 4.1 and 4.2 have been satisfied or waived*”. Moreover, a new Clause 4.5 should be added under the following heading: “*Time limit for closing of the agreement”: If the conditions precedent to closing of this agreement have not been satisfied or waived within [●], both the Seller and the Purchaser may terminate this agreement by written notice to the other party. If a condition has not been satisfied as the result of breach of the agreement by one of the parties, the party in breach shall not be entitled to terminate the agreement.”* 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 Company, 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-15)
16. If the Seller wants the name of the Company to be changed, e.g. because the name of the Company forms part of the Seller’s name, the following regulation may be included: “*The Purchaser shall change the name of the Company no later than 1 month after Closing such as to remove the designation “[●]”. Neither the Purchaser, nor the Company, shall be permitted to use the designation “[●]” in marketing or otherwise after Closing.”* [↑](#footnote-ref-16)
17. The acquisition of 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 Company (including subsidiaries and other companies that are directly or indirectly controlled, in full or in part, by the Company) 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 Company 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 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 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 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 Shares to a third party.”* [↑](#footnote-ref-17)
18. Please note that the sale of all shares of a company 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-18)
19. 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 17. [↑](#footnote-ref-19)
20. The Seller here confirms that the Company is a real estate company within the meaning of Regulations 2007/1336, which derogates from Section 8-10 of the Private Limited Companies Act. Please note that a company engaged in the development of real estate will, as a main rule, fall outside the scope of this definition of a real estate company (which may exclusively be engaged in the “*operation*” of the property, although “*some development of the property must probably be accepted*”); see the ruling published on page 1,601 onwards of the 2013 volume of the *Norsk Retstidende* court reporter for the Supreme Court, especially paragraph 46 onwards, for further details. [↑](#footnote-ref-20)
21. 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)to (e), inclusive, as well as (n) 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/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-21)
22. A somewhat more detailed wording which broadens the circle of persons that the purchaser is liable for, is: *“… anything which the Purchaser himself is aware of at the time of the signing of the this agreement (and then in such a way that the knowledge of the Purchaser’s advisors and other contract assistants is disregarded)”* [↑](#footnote-ref-22)
23. The warranty insurance does not cover warranty breaches that is due to circumstances occurring after signing of the agreement, and that the Purchaser becomes aware of before Closing. To avoid the Seller being liable for such breaches, the following seller friendly paragraph may be added: “*If there, after signing of this agreement, occur any circumstances that constitute breach of this agreement, and the Purchaser becomes aware of this before Closing, the Purchaser cannot claim compensation for the breach. If such breach occurs, the Purchaser may declare himself free from this agreement on the conditions set out in Clause 4.1(a), but he may not present any other claims towards the Seller.”* [↑](#footnote-ref-23)
24. 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-24)
25. 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-25)
26. It needs to be specifically assessed whether this limitation of liability is suitable for the transaction in question. [↑](#footnote-ref-26)
27. Unless otherwise agreed, this regulation leads to the Purchaser not being able to claim damages for the loss of which the Seller is responsible according to this agreement, but that is excluded from the Warranty Insurance coverage. This may be of particular significance if the insurance does not cover the loss as a consequence of “construction defects”. [↑](#footnote-ref-27)
28. Normally, the warranty insurance does not cover such breach of warranties given as per Closing. [↑](#footnote-ref-28)
29. If the Warranty Insurance has an own risk that the Seller shall be liable for pursuant to this agreement, a new letter d) may be added: *“To the extent that the Warranty Insurance insurer in case of breach of the Warranties makes deduction for the excess under the Warranty Insurance (Retention). In such case the Purchaser may claim that the Seller covers the own risk upward limited to NOK [ specify excess].”*

If the Seller shall provide security for the excess, the following text may be added: *“As security for the Purchaser’s claim pursuant to letter d), NOK [specify excess] of the Estimated Purchase Price shall be withheld on a, for both parties, restricted (Escrow) account until and including [specify expiration of the time allowed for claims]. Rightful claims that the Purchaser has against the Seller, shall be settled by payments from the account. If a rightful claim has not been put forward to the Seller within expiration of [specify expiration of the time allowed for claims], the cash balance on the account including interest shall be paid to the Seller. In case of disagreement on whether claims are rightful or not, the dispute shall be settled pursuant to Clause 16.”* [↑](#footnote-ref-29)
30. The following wording may be used if arbitration is desirable:

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

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

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

The group of courts having jurisdiction under the ordinary provisions on provisional measures is not limited by this clause.” [↑](#footnote-ref-30)
31. 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. Security interests in respect of the Purchaser’s acquisition funding **may only be established if i) the procedural provisions of Section 8-10 are complied with; ii) the prerequisites for an exemption from Section 8-10 of the Private Limited Companies Act have been met pursuant to the regulations appurtenant thereto; or iii) an exemption decision has been made in response to a specific application.** [↑](#footnote-ref-31)
32. 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-32)
33. It here needs to be clarified whether the Company has granted security interests or furnished guarantees in favour of any others than the creditors under the Loans. If the Company 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 Company is released, with effect from Closing, from any liability assumed by the Company for the benefit of [specify name of the holder of the security interest] under the guarantee agreement dated [•].*” [↑](#footnote-ref-33)
34. 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-34)
35. 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-35)
36. If acquisition of shares of the Company 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 Company to the effect that these have no outstanding claims against the Company other than those reflected in the Estimated Balance Sheet.*” As far as 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 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-36)
37. Other than registering a security interest in favour of the Purchaser’s lender and obtaining statements of outstanding debt (cf. Clauses 1.3 and 1.4), the existing Board of Directors of the Company is under no obligation to conclude any agreement for the refinancing of the liabilities of the Company 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 Company at that time accedes to the necessary loan agreements, etc. If the existing Board of Directors of the Company is going to contribute to the Purchaser’s funding, it should satisfy itself that the Company is in compliance with the requirements under the Private Limited Companies Act (including the financial assistance prohibition in Section 8-10 of the Private Limited Companies Act and the requirement for consideration on arm’s length terms, etc.) and refrain from granting the Purchaser full discretionary authority to conclude agreements on behalf of the Company. 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 Company to conclude for purposes of funding the Estimated Purchase Price and/or the liabilities of the Company 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 1.7, ensure that the agreements and documents received by the Seller are signed by a person authorised to sign on behalf of the Company and deliver these to the Purchaser. | Seller/Company | 5 days before Closing |  |

 [↑](#footnote-ref-37)
38. This clause may be deleted to simplify closing if deemed desirable. [↑](#footnote-ref-38)
39. Any existing encumbrances over the shares would need to be specified with antecedent priority here. [↑](#footnote-ref-39)
40. 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-40)
41. 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-41)
42. 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-42)
43. 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-43)
44. 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-44)
45. 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-45)